

the yields from the exercise of popular sovereignty. International responsibility thus entails that sovereignty be exercised in such a manner as to facilitate the role of the United Nations and that, still more, everything possible be done to strengthen the role of the United Nations.

For when the United Nations is strong, each of its Member States is strong. When the United Nations is strong, each

people is strong. When the United Nations is strong, small and weak States can be protected. When the United Nations is strong, the sovereignty of the people is reinforced. Sovereignty and international responsibility thus require support for the United Nations and its sister institutions.

THE SRI LANKAN CONFLICT AND STANDARDS OF HUMANITARIAN LAW

The following extracts are from an appeal made by Asia Watch, an international human rights organization based in New York, to the Sri Lankan government and the LTTE leadership. It appeared in Asia Watch Newsletter, April 23, 1992.

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

In the interests of protecting noncombatants, *Asia Watch* appeals to the armed forces in the current conflict — both the central government and its armed opposition, especially the LTTE — to respect international standards on the conduct of warfare, particularly those designed to protect people who are not or are no longer taking an active part in the conflict.

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

as a matter of customary international law. This appeal draws on both sets of standards.

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

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

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

II. Application to the Sri Lankan Conflict

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



a) Massacres and Widespread Torture of Civilians

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

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

b) Reprisals

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

c) Bombardment of Civilians

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

The bombardment of civilians and civilian objects as a means of conducting hostilities is prohibited by customary law as codified in Article 13(2) of Protocol II, which prohibits attacks on civilians as such. Attacks on military targets in civilian areas in which precautions are not taken to avoid civilian casualties are indiscriminate and thus prohibited by the customary-law principle codified in Article 13(1) of Protocol II, which provides that "the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations."

d) The Use of Contact Land Mines

Contact land mines have been used by the parties to the conflict, particularly the LTTE, in a manner that is indiscriminate, in that there is no way of directing them at military targets as opposed to civilians who might use the same route and stumble upon a mine. Such indiscriminate use of weapons is

prohibited under the customary-law principle set forth in Article 13(1) of Protocol II.

e) Religious and Ethnic Discrimination

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

f) Selected Executions and Disappearances

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

g) Use of Civilians as Human Shields

Eyewitnesses have described government forces rounding up civilians from refugee camps and forcing them to march ahead of government troops into LTTE gunfire or through mine fields. Execution has been threatened of those who try to escape. Such activity violates the requirement of humane treatment for noncombatants and the prohibition of cruel and degrading treatment for such people contained in common Article 3 and codified as a principal of customary international law in Article 4(2) of Protocol II.

h) Hostages

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

i) Attacks Upon Medical Facilities and Places of Worship

On several reported occasions, Sri Lankan government forces have attacked medical facilities because they were treating wounded LTTE fighters. Such attacks violate the principle set forth in Article II that "medical units and transports shall be respected and protected at all times and shall not be the object of attack...unless they are used to commit hostile acts, outside

their humanitarian function." Treating wounded combatants is fully compatible with a medical facility's humanitarian purpose and does not render it subject to attack.

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

j) Interdicting Essential Supplies

Although the ICC has been permitted to make some deliveries to the Jaffna peninsula, government troops at other times, reportedly have deprived civilians of essential food and medical supplies. Article 14 of Protocol II prohibits "starvation of civilians as a method of combat," including by attacking or removing for that purpose "objects indispensable to the survival of the civilian population, such as foodstuffs." As the ICRC *Commentary* notes, this prohibition "is really only a specific application of common Article 3, which imposes on parties to the conflict the obligation to guarantee humane treatment for all persons not participating in the hostilities, and in particular prohibits violence to life." Thus, as the ICRC *Commentary* explains, "the use of blockade and siege as methods of warfare... [must be] directed exclusively against combatants."

k) Displacement of Persons

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

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

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

- 1) Deliberate killing of noncombatants.
- 2) Indiscriminate attacks in civilian areas, including by bombardment or the use of contact land mines.

- 3) Attacks causing disproportionate harm to civilians or civilian objects.
- 4) Attacks in civilian areas in which all feasible steps are not taken to avoid collateral civilian casualties.
- 5) Reprisals against noncombatants by acts of violence or destruction of property.
- 6) Torture and other deliberate mistreatment of any person.
- 7) Subjecting noncombatants to adverse distinction in the duty to treat them humanely because of their religion or ethnic background.
- 8) Using noncombatants as human shields to protect a warring party from enemy fire or to detect mine fields.
- 9) Taking or using noncombatants as hostages.
- 10) Summarily executing or punishing persons suspected of participating in a rebellion or aiding enemy forces.
- 11) Imposing any punishment for a criminal offense without a trial before an independent and impartial tribunal affording fundamental due process rights.
- 12) Attacks on medical facilities and places of worship that are being used for humanitarian purposes.
- 13) Using starvation of civilians as a method of combat, or denying impartial humanitarian relief operations when there is a lack of supplies essential for the survival of the civilian population.

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

1. During the last week in February, the army launched the largest of these recent operations, "Vanni Wickrema III." This operation, employing 3,000 troops, armor and air support took control of LTTE territory around Poornawasakulan, 15 miles northwest of Vavuniya, and Thalaimannar. Another major offensive was launched against Mullaitivu in March.
2. The food embargo was relaxed in August 1991, but by the end of the year there was still a lengthy list of prohibited items, including medicines, soya-based foods, sanitary napkins, surgical equipment, bandages, batteries, gasoline and matches. All goods transported to the northeast are subject to military approval and anything which is potentially useful to the militants is banned, no matter how essential to the general public. The official list, published in August 1991 shows only a fraction of the goods that are actually kept from reaching the north. Local commanders on the road have the final say over the import of essential supplies.