

## SRI LANKA STOP KILLINGS OF CIVILIANS

Three years ago, in April 1992, Human Rights Watch/Asia released *The Sri Lankan Conflict and Standards of Humanitarian Law; an Appeal to the Government of Sri Lanka and the LTTE Leadership*. That appeal, motivated by severe breaches of humanitarian law by combatants in the Sri Lankan civil war, warned both the Sri Lankan armed forces and the Liberation Tigers of Tamil Eelam (LTTE) against engaging in further indiscriminate or targeted attacks on civilians, and reminded both parties of their legal obligation to protect noncombatants. The renewal of hostilities in April 1995 has made it necessary to repeat that appeal. Human Rights Watch/Asia is deeply concerned about new reports of abuses by combatants that rival, in character if not in scale, those committed at the height of the conflict in 1990 and 1991. Following the outbreak of the third phase of the Sri Lankan civil war on April 19, 1995, the Sri Lankan armed forces and the LTTE have both engaged in acts of violence that had by July claimed the lives of hundreds of civilians.<sup>1</sup> Among these were a massacre of forty-two Sinhalese villagers in eastern Sri Lanka by the LTTE on May 26; the killing of five Muslim civilians between the ages of two and seventy in northern Trincomalee district by soldiers on May 6; and on July 9, the deaths of over one hundred persons, including at least thirteen infants, in a bombing of a church crowded with refugees displaced by "Operation Leap Forward," a major military offensive launched on the Jaffna Peninsula that day.<sup>2</sup>

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<sup>1</sup>Since 1983, the Sri Lankan government has been engaged in a civil war with the Tamil separatist Liberation Tigers of Tamil Eelam (LTTE) for control of the northern and eastern portions of the island, areas with high concentrations of Tamil residents. This conflict has been briefly interrupted by two cease-fires, one in 1989 and a second in January 1995. In both cases the two parties undertook negotiations aimed at finding a political solution to conflict, only to have the cease-fires broken by the LTTE in apparent frustration over the government's hesitation to meet its demands. The third phase of the war, "Eelam War III," erupted in April 1995 when the LTTE sank two navy gunboats off the eastern coast and then shot down two air force planes.

<sup>2</sup>In a press release dated July 11, the International Committee of the Red Cross (ICRC) confirmed the deaths of sixty-five persons and the wounding of 150. By July 13, a church official from Jaffna had reported the death toll from the bombing at 121 and climbing, as bodies continued to be found in the rubble.

In May, human rights organizations in Sri Lanka reported that the army in Batticaloa had used civilians as human mine detectors and shields against LTTE attacks, and that they had received complaints of arbitrary arrests, disappearances and extrajudicial executions of Tamils.

Since July 9, bombing and shelling of highly populated areas of the Jaffna peninsula have displaced hundreds of thousands of civilians in areas affected by army operations. According to press reports which cited relief workers and church officials, between July 9 and July 16, when the army announced its intention to suspend "Operation Leap Forward," some 3,000 people with serious injuries had arrived at the Jaffna Teaching Hospital.

The most serious incident in this latest offensive was the destruction of Saint Peter's Church and several adjacent buildings in Navaly, north of Jaffna town, which resulted in the deaths of over one hundred people and injuries to hundreds more. Eyewitnesses were quoted as saying that the church, which was packed with area residents who had fled earlier air raids, was hit by a series of air force strikes at 4:30 PM on July 9. Previously, the Sri Lankan forces had reportedly dropped leaflets warning people to seek shelter in churches or temples to avoid injury during the attacks. On July 11, Sri Lankan President Chandrika Kumaratunge released a statement expressing "sorrow at the loss of lives" and ordered the military to investigate the bombing. But as of July 18, although they could confirm that the church had been badly damaged, military sources said they could not get close enough to verify the origin of the bombs that destroyed it.

Over the course of the Sri Lankan conflict, restrictions on the import of essential supplies into LTTE-controlled territory have put heavy burdens on medical staff and the civilian population. Since the renewal of fighting, medical sources and international humanitarian organizations have complained that although the government had authorized the delivery of some essential supplies by the International Committee of the Red Cross (ICRC), hospitals in the north were experiencing severe shortages which made it almost impossible to perform surgery. They charged that deliveries of drugs and fuel to run hospital generators had been stalled by military bureaucracy since May, in spite of the partial lifting of an official ban on the import of such supplies into LTTE-held territory which accompanied the January cease-fire. Food was also reported to be in dangerously short supply in some portions of the north and east under LTTE control. Reports from human rights organizations and the press indicate that government restrictions on the amount of food people are allowed to transport into these areas (reported to be only what is sufficient for one person for three days in the case of northern Batticaloa district ) have compounded the problem.<sup>3</sup>

Similar conditions in April 1992, and concerns that political pressure was building on the Sri Lankan government to launch a large-scale military offensive against LTTE strongholds, led Human Rights Watch/Asia to publish guidelines designed to remind both combatants in the Sri Lankan civil war and the international community of the obligations of all warring parties to protect civilians lives. In that report we concluded,

[Human Rights Watch/Asia] 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

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<sup>3</sup> A government embargo, which had at times covered an enormous array of goods, including candles, sweets, soy-based foods, drugs, bandages, fuel, batteries and even sanitary napkins, was relaxed following the cease-fire in January. The import of fuel and batteries (which are used in the manufacture of landmines) remains restricted. The current embargo allows for ten food trucks a day into LTTE-controlled areas. In practice however, sources from Jaffna complain that military approval for delivery of such authorized shipments is not always forthcoming. The situation has been compounded by the loss of an ICRC ship to a mine in June.

residential areas. In the interests of protecting noncombatants, [we] appeal...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.

What follows is a summary of some of the key standards as they pertained to the Sri Lankan conflict in 1992, based on documented instances of abuse which had occurred during the course of that conflict. This was not designed as a comprehensive list of the international obligations applicable to both parties, but rather an outline of minimum requirements. The cease-fire in January 1995 raised hopes that negotiations between the Sri Lankan government and the LTTE might finally lead to a long-awaited political settlement, and with it, an end to the kind of violations that have come to characterize the Sri Lankan conflict. To our great disappointment, as the war enters its thirteenth year, virtually every concern raised in the original document still applies.

## I. Relevant Rules of the Laws of War

Since the conflict in Sri Lanka is no longer an international one, the armed forces must adhere to the standards governing noninternational, or internal, conflicts.<sup>4</sup> 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 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," states the 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

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<sup>4</sup> Between July 1987 and April 1989, northern and eastern Sri Lanka had been under the control of the Indian Peace-Keeping Forces (IPKF), sent in by then Indian Prime Minister Rajiv Gandhi, ostensibly to disarm the LTTE and other militants, stop the carnage against the Tamils and try to end the war. The IPKF itself proved to be abusive and unpopular. As the presence of the Indian troops became an increasing political liability for the Sri Lankan government, the latter began negotiating with the LTTE. By June 1989, they had declared a cease-fire with government security forces and by July, both the LTTE and the Sri Lankan government had demanded the withdrawal of Indian troops. In September, the Indian government agreed to withdraw its troops, and by the end of 1989 the IPKF had withdrawn from all but two districts, Trincomalee and Jaffna. As they withdrew, the LTTE began to take over primary responsibility for policing the northeast. In March 1990, the last Indian troops finally left Sri Lanka. Three months later, in June 1990, the LTTE broke its cease-fire with the Sri Lankan government, expressing frustration at the slowness of the government to accede to its political demands.

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."

Among the acts specifically prohibited by Article 3 are:

- "violence to life and person, in particular murder of all kinds, cruel treatment and torture";
- "taking of hostages";
- "outrages upon personal dignity, in particular humiliating and degrading treatment";
- "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

Article 3 also imposes an obligation on all parties to a conflict to collect and care for the wounded and sick.

Protocol II codifies a series of customary principles for the treatment of civilians in noninternational armed conflicts. These include:

- "The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations." (Article 13(1).)
- "The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited." (Article 13(2).)
- By inference, the civilian population is also protected from indiscriminate or disproportionate attacks (Article 13), such as:
  - attacks not directed at a specific military objective;
  - attacks employing a method or means of combat that cannot be directed at a specific military objective;
  - attacks that treat as a single military objective a number of clearly separate and distinct military objectives in an area populated by civilians;
  - attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or any combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.
- Attacks on medical facilities and personnel are prohibited. (Articles 9 to 11.)

- "Starvation of civilians as a method of combat" is prohibited, including by attacking or removing for that purpose "objects indispensable to the survival of the civilian population, such as foodstuffs." (Article 14.)
- "If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction" must be permitted. (Article 18(2).)
- The displacement of the civilian population should not be ordered for reasons related to the conflict "unless the security of the civilians involved or imperative military reasons so demand." (Article 17(1).)
- "All persons who do not take a direct part or who have ceased to take part in hostilities. . . shall in all circumstances be treated humanely, without any adverse distinction." (Article 4(1).) Prohibited acts (Article 4(2)) include the following:
  - "violence to the life, health and physical and mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment";
  - "collective punishments";
  - "taking of hostages";
  - "acts of terrorism";
  - "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault";
  - "slavery and the slave trade in all their forms";
  - "pillage";
  - "threats to commit any of the foregoing acts."
- Penal prosecutions related to the armed conflict must be conducted by independent and impartial tribunals that adhere to fundamental due process guarantees (Article 6(2)), including:
  - the right to be "informed without delay of the particulars of the offense alleged" and "all necessary rights and means of defense";
  - the right to be punished only for crimes committed individually;
  - the right to be punished only for actions or omissions that were crimes at the time they were committed, and for no more than the punishment prescribed at the time;
  - the presumption of innocence until proved guilty according to the law;

- the right to a trial in the presence of the accused;
- the right not to be compelled to testify against oneself or to confess guilt.

These standards apply to all warring parties, including irregular forces acting with the authorization of military units.

## **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**

Over the course of the conflict, credible reports have revealed that killings of groups of civilians have been committed by both government forces 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**

In the course of the conflict, 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." As the ICRC explained in its separate *Commentary* on Protocol II, this provision "means that the obligation does not consist only in abstaining from attacks, but also in avoiding, or in any case reducing to a minimum, incidental losses, and in taking safety measures," including "reducing the effects of military operations which could affect protected persons." Such precautions include a

requirement that the warring parties distinguish military targets from noncombatants and avoid disproportionate collateral harm to civilians.

#### **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.

The Sri Lankan government is entitled to punish captured LTTE members for the commission of pre-existing crimes under Sri Lankan domestic law. An LTTE guerilla who kills a government soldier, for example, can be tried for murder, treason, sedition, or other offenses. Nevertheless, criminal sentences can be imposed only after a regularly constituted court of law has pronounced judgment. Article 3 expressly requires the intervention of such a court, and demands that those persons captured by government forces be extended judicial guarantees "recognized as indispensable by civilized peoples." These guarantees are authoritatively enumerated and codified in Article 6(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. It also violates the customary-law principle codified in Article 13(1) of Protocol II that "the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations."

#### **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 11 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 ICRC 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."

Related to the prohibition on using starvation of civilians as a method of combat is Article 18(2) of Protocol II, which provides:

If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the [government] concerned.

As the ICRC *Commentary* notes, Protocol II thus does "not allow the argument of military necessity to be used to justify starving the civilian population. As soon as there is a lack of indispensable objects, the international relief actions provided for in Article 18. . . should be authorized to enable the obligation following from Article 14 to be respected." The ICRC *Commentary* continues: "The fact that consent is required [for a relief action to be undertaken] does not mean that the decision is left to the discretion of the parties. If the survival of the population is threatened and a humanitarian organization fulfilling the required conditions of impartiality and non-discrimination is able to remedy this situation, relief actions must take place."

#### **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, [Human Rights Watch/Asia] 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.

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### *Human Rights Watch/Asia*

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