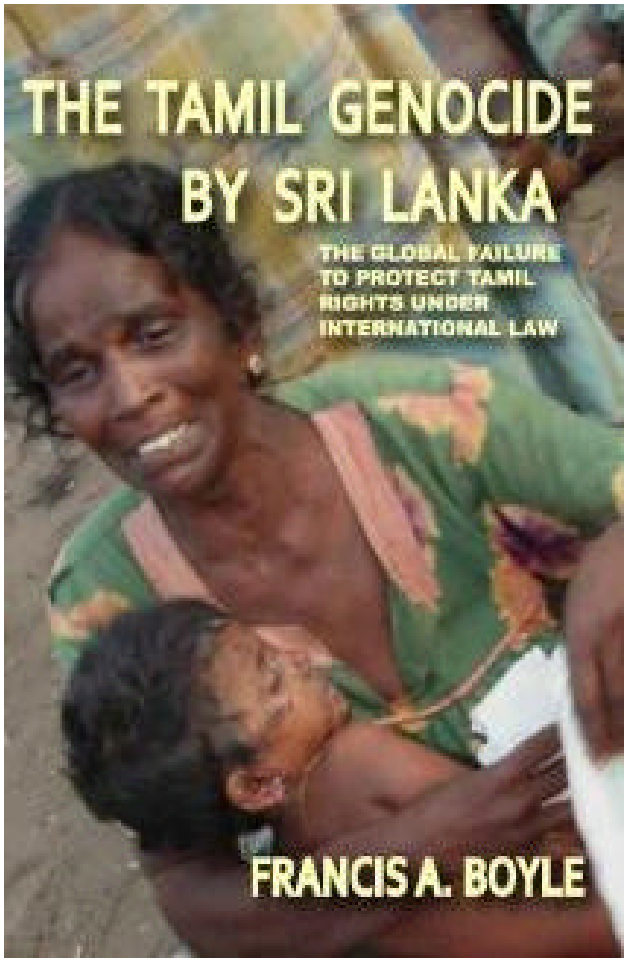
Evidence Submitted to:
The People's Tribunal on Sri Lanka - Dublin, Ireland

DRAFT

Authoritative Legal case for War Crimes/Genocide Against Sri Lanka



Documented by:

Clarity Press and

TAMILS AGAINST GENOCIDE

P.O. Box 529, Glen Echo
MD 20812-0529, USA

January/01/2010

Executive Summary

The articles included in this submission trace the ongoing engagement and commentary of international lawyer Francis A. Boyle during the last year of the conflict in Sri Lanka. Prof. Boyle has been among the very few addressing the international legal implications of the Sri Lankan Government's grave and systematic violations of Tamil human rights while the conflict was taking place. This series of articles develops an authoritative case for war crimes and genocide charges against the Government of Sri Lanka under international law.

Professor Francis A. Boyle has been a consulting attorney for Tamils Against Genocide, and TAG would like to present this series of legal analyses for use in the Tribunal's deliberations as the members of the Tribunal consider the evidence presented to determine the level of culpability of Sri Lanka's military and political hierarchy in allegations of war crimes and genocide.

Professor Francis A. Boyle

A.B. University of Chicago
A.M., J.D., Ph.D. Harvard University

A scholar in the areas of international law and human rights, Professor Boyle received a J.D. degree *magna cum laude* and A.M. and Ph.D. degrees in political science from Harvard University. Prior to joining the faculty at the College of Law, he was a teaching fellow at Harvard and an associate at its Center for International Affairs. He also practiced tax and international tax with Bingham, Dana & Gould in Boston.

He has written and lectured extensively in the United States and abroad on the relationship between international law and politics. His eleventh book, Breaking All the Rules: Palestine, Iraq, Iran and the Case for Impeachment was recently published by Clarity Press. His Protesting Power: War, Resistance and Law (Rowman & Littlefield Inc. 2007) has been used successfully in anti-war protest trials. In the September 2000 issue of the prestigious *The International History Review*, Professor Boyle's *Foundations of World Order: The Legalist Approach to International Relations (1898-1922)* was proclaimed as "a major contribution to this re-interrogation of the past" and "required reading for historians, political scientists, international relations specialists, and policy-makers." That article was translated into Korean and published in Korea in 2003 by *Pakyoungsa Press*.

As an internationally recognized expert, Professor Boyle serves as counsel to Bosnia and Herzegovina and to the Provisional Government of the State of Palestine. He also represents two associations of citizens within Bosnia and has been instrumental in developing the indictment against Slobodan Milosevic for committing genocide, crimes against humanity, and war crimes in Bosnia and Herzegovina.

Professor Boyle is Attorney of Record for the Chechen Republic of Ichkeria, conducting its legal affairs on a worldwide basis. Over his career, he has represented national and international bodies including the Blackfoot Nation (Canada), the Nation of Hawaii, and the Lakota Nation, as well as numerous individual death penalty and human rights cases. He has advised numerous international bodies in the areas of human rights, war crimes and genocide, nuclear policy, and bio-warfare.

From 1991-92, Professor Boyle served as Legal Advisor to the Palestinian Delegation to the Middle East Peace Negotiations. He also has served on the Board of Directors of Amnesty International, as well as a consultant to the American Friends Service Committee, and on the Advisory Board for the Council for Responsible Genetics. He drafted the U.S. domestic implementing legislation for the Biological Weapons Convention, known as the Biological Weapons Anti-Terrorism Act of1989,that was approved unanimously by both Houses of the U.S. Congress and signed into law by President George H.W. Bush. That story is told in his book Biowarfare and Terrorism (Clarity Press: 2005).

In 2001 he was selected to be the Dr. Irma M. Parhad Lecturer by the Faculty of Medicine at the University of Calgary in Canada. In 2007 he became the Bertrand Russell Peace Lecturer at McMaster University in Canada. Professor Boyle is listed in the current edition of *Marquis' Who's Who in America*.

For full Vitae refer to: http://www.law.uiuc.edu/faculty-admin/documents/vitae/boyle.pdf

THE TAMIL GENOCIDE BY SRI LANKA

THE TAMIL GENOCIDE BY SRI LANKA

THE GLOBAL FAILURE TO PROTECT TAMIL RIGHTS UNDER INTERNATIONAL LAW

BY

FRANCIS A. BOYLE

TAMILS AGAINST GENOCIDE CLARITY PRESS, INC.

ISBN: 0-932863-70-1 / 978-0-932863-70-6

In-house editor: Diana G. Collier

Tamils Against Genocide
P.O. Box 529, Glen Echo
Maryland 20812
http://www.TamilsAgainstGenocide.org
tagdesk@gmail.com

Clarity Press, Inc.
Ste. 469, 3277 Roswell Rd. NE
Atlanta, GA. 30305, USA
http://www.claritypress.com

TABLE OF CONTENTS

International lawyer Francis A. Boyle (far left) on the floor of the World Court in 1993, squaring off against his adversary, Shabtai Rosenne (far right) of Israel representing the rump Yugoslavia, just before he argued and then won the first of his two World Court Orders for Bosnia on the basis of the 1948 Genocide Convention.

Australia aiding and abetting Sri Lanka's war crimes—Prof. Boyle

[TamilNet, Saturday, 14 November 2009, 00:25 GMT]

"Australia is a contracting party to the 1951 Convention Relating to the Status of Refugees as well as to its related 1967 Protocol. Thereunder Australia has an absolute obligation to provide meaningful and humane asylum procedures, regulations and hearings to all Tamils fleeing from Sri Lanka," said Francis A. Boyle, professor of International Law at the University of Illinois College of Law, in a note sent to TamilNet Friday.

"To the contrary, this Australian agreement with the GOSL to cut-off Tamil Asylum seekers violates this 1951 Refugees Convention and its 1967 Refugees Protocol as well as the peremptory norm of customary international human rights law set forth in Article 14(1) of the 1948 Universal Declaration of Human Rights: 'Everyone has the right to seek and to enjoy in other countries asylum from persecution.'

"As such this 'Agreement' between GOSL and Australia is void ab initio. It is not entitled to any legal significance or recognition whatsoever.

"In addition, by means of implementing this agreement Australia will now become an aider and abettor to GOSL's war crimes, crimes against humanity and genocide against the Tamils in violation of Australia's own solemn legal obligations under the Genocide Convention, the Rome Statute for the International Criminal Court, the Four Geneva Conventions of 1949 and their Two Additional Protocols of 1977, among others," Professor Boyle said.*

"Of course it comes as no surprise that the White Racist Australian Government would criminally mistreat Tamils of Color after its longstanding history of criminal mistreatment of Australia's own Indigenous People of Color for which Australia has not yet properly atoned, rectified, and compensated," Boyle further said.

"This agreement between Australia and the GOSL is similar to the agreement between the United States and the military dictatorship then ruling Haiti to cut-off Haitian refugees then fleeing governmental persecution in Haiti by ship to the United States in gross violation of their international legal rights.

"That U.S.-Haiti agreement was condemned by every human rights body and human rights organization that considered the matter, which would be too numerous to list here. But that same body of international law and human rights decisions, jurisprudence, principles, and condemnations would also apply here," Professor Boyle added.

***** *See also* Tony Iltis & Stuart Munckton, *Sri Lanka: Australian Complicity in Genocide*, International News, Green Left Weekly No. 818, November 18, 2009

States financing Tamil internment, UN complicit in Crimes against Humanity—Boyle

[TamilNet, Friday, 16 October 2009, 02:36 GMT]

United Nations Organization and other Western States financing the Nazi-style concentration camps, where nearly 300,000 Tamil civilians are held against their wishes under Sri Lanka military supervision,* are complicit in Sri Lanka's genocide against Tamils, and also complicit in these crimes against humanity, said Francis A. Boyle, professor of International Law at the University of Illinois College of Law, in a note sent to TamilNet Thursday.

Prof. Boyle said: "Crimes against Humanity are a precursor to genocide. In this regard, Article II of the 1948 Genocide Convention provides in relevant part:

'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:

> ... (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;...'

"For the Government of Sri Lanka (GoSL) to continue to imprison 300,000 Tamils "as such" within these Nazi-style concentration camps constitutes the international crime of genocide as defined by Articles II(b) and (c) of the 1948 Genocide Convention as quoted above," Boyle added.

"Furthermore, for the United Nations Organization and Western States to continue to finance these Nazi-style concentration camps renders them complicit in this instance of the GoSL's genocide against the Tamils in violation of Genocide Convention Article III(e) that criminalizes 'Complicity in genocide.'

"In addition, both the United Nations Organization and these financing Western States are also complicit in these Crimes against Humanity perpetrated by the GoSL against the Tamils," Professor Boyle said.

**See, e.g.*, Emily Wax, *In Sri Lanka, Anger over Detainees' Fate*, Washington Post, Nov. 11, 2009.

SLA war crimes eerily similar to Srebrenica Scorpions' terror, says Boyle

[TamilNet, Wednesday, 26 August 2009, 00:27 GMT]

Summary executions violate Common Article 3 to the Four Geneva Conventions of 1949, to which Sri Lanka is a contracting Party, prohibiting in subsection I(d) "... the carrying out of executions without previous judgment pronounced by a regularly constituted court...." Violations of the Geneva Conventions are war crimes, said Professor Francis Boyle, after watching the video on the cold-blooded extra-judicial killings carried out by the Sri Lanka Army (SLA) soldiers published by a German-based group "Journalists for Democracy in Sri Lanka (JDS)," Tuesday.

"We have a video of the same being done to Bosnians at Srebrenica by Serbia's 'Scorpions,' which I viewed with one of the few male survivors while in the killing fields of Srebrenica itself," Boyle added, continuing: "Of course the Scorpion executions were just a small element of the Serbian genocide at Srebrenica."

Srebrenica massacre of 6 Bosnian Muslims

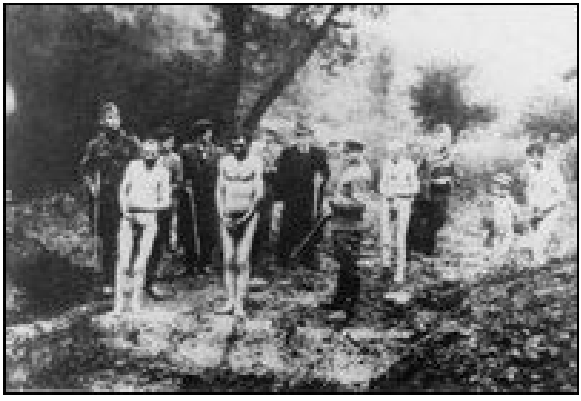
A video of Serb paramilitary soldiers Scorpions, caught in the act of murdering six Bosnian Muslim youths in July 17, 1995, near the town of Trnovo, Srebrenica, discovered 10 years later, shocked Serbia and led to the arrest and later conviction of the soldiers. The six Muslim men and boys were forced to lie down with their hands tied before being shot in the back by their captors. Two of the victims were 17, while the others were in their 20s and 30s. A Belgrade war-crimes court sentenced four Scorpions to a total of 58-years in prison.

The New York Times reporting on the story on the 6-person massacre by the Scorpions, said: "The faces of the perpetrators can be seen and their insults to the Muslims can be heard. The film was shot by a Scorpions member."

In remarkable eerie similarity with the SLA crimes, the SLA terror video was also obtained by an SLA soldier using a mobile-phone camera, and the SLA soldiers are also heard spewing insults to the naked Tamil prisoners.

"Scorpions, however, did not strip and then murder the Bosnians in the nude. But the GoSL Army did exactly that, which is even more akin to what the Nazis did to the Jews, depriving their victims of the last shred of their humanity before dying," Boyle observed.

Killings by SLA



German police ready to shoot dead Jewish men stripped naked

On the disappearances inside internment camps, the press release issued by the JDS said: "The Sri Lankan government justifies the internment of approximately 280,000 Tamil people, for over three months now, on the basis that they are 'screening' for LTTE cadres. These camps still remain out of bounds for independent media and human rights observers. Apart from these known camps, it is widely

believed that there are over 10,000 Tamils held in undisclosed locations. Further, as a recent BBC report reveals the interned Tamils have to regularly experience the trauma of the appearance of the 'dolphin vans' in the camps—as these whisk away people—who then disappear."

Commenting on the disappearances, Boyle said, "when the enforced disappearances are 'widespread' or 'systematic' they become Crimes against Humanity under the Rome Statute for the International Criminal Court," adding: "Crimes against Humanity are the precursor to genocide, just as Hitler and the Nazis did to the Jews—I also visited Dachau."

The Scorpions (Škorpioni) were a Serbian paramilitary group which actively sought out the extermination of other ethnicities in the wars in Croatia, Bosnia and Herzegovina, and Kosovo. The unit was formed in 1991 in what was then the breakaway Croatian Serb Republic of Serbian Krajina. The Scorpion leader was Slobodan Medić.

Boyle: India a moral failure, Colombo's monstrosity matched only by Nazis

[TamilNet, Tuesday, 25 August 2009, 00:51 GMT]

"India's support to Rajapaksa Government is an atrocious crime. Tamils are undergoing unspeakable hardship, and the monstrosity is only matched by the Nazis terror on Jews. The world had simply closed its eyes....Failure to ensure safety to Sri Lanka Tamils is a moral disgrace to India and a stain in India's illustrious history," said Francis Boyle, expert in International Law and Professor at the University of Illinois College of Law, during an interview with Tamil Nadu magazine, Dalit Murasu.

English translation of the Tamil article follows: (Note: The Tamil article is a translation of a recorded interview conducted in English):

Dalit Murasu: When more than 300,000 Tamils are held against their wishes in internment camps, do you think there remains any prospect of reaching a resolution to the conflict through intervention of International Rights Organizations including United Nations?

Prof. Francis A Boyle: It is imperative that these organizations should intervene. The 1948 Genocide Convention and the 1949 Geneva Conventions obligate the United Nations to engage in Sri Lanka's conflict and seek resolution. I have been consistently writing and advocating the urgent need for the UN and the International Community to intervene and save the Tamil people held by the Sri Lanka Government in the several internment camps. Reports indicate nearly 1400 people die in a week in these camps, and that the conditions within the camps are very similar to those in the Nazi internment camps.

DM: Even after Sri Lanka's military unilaterally declared that the "war was over in Sri Lanka," the International Community, various Rights Organizations, and the media have failed to expose the gross rights violations that occurred during and after the war. You have noted in several articles that the internment camps are nothing but "death camps." Do you think similar silence would have prevailed if the affected people are from Palestine or from a European country?

FAB: One cannot be certain how the International Community will react to your hypothetical scenarios. While the U.S. supported peace talks between the two adversaries in Sri Lanka, U.S.'s approach to mediating conflicts took a dramatic turn after the 9-11, when the Bush administration started to aggressively pursue the "war on terror" on all movements that used violence

to achieve their goals. The President of India sending a congratulatory message to Sri Lanka's President is indeed a sad event. India has assured Sri Lanka of its cooperation, and India's position vis-a-vis Sri Lanka is totally unacceptable. India is ready and willing to continue support to Sri Lanka while standing on the bodies of 30,000 Tamils killed during the last several weeks of war. China and Pakistan both are collaborating with Sri Lanka.

The 65 million Tamils in Tamil Nadu should soon rise up to constrain India. The uprising in numbers and intensity should surpass the protests that occurred while Sri Lanka was slaughtering the Tamils. If India reconfigures its policy on Sri Lanka, US will likely support that. US will view with concern a friendly China-Sri Lanka relationship.

India's support to Rajapaksa Government is an atrocious crime. Tamils are undergoing unspeakable hardship, and the monstrosity is only matched by Nazis terror on Jews. The world had simply closed its eyes.

DM: The world was waiting to hear the details of the last weeks of the war from the doctors detained by the Sri Lanka Government. These Doctors were later paraded in front of the media and were forced to recant casualty figures. Do you think there is any chance for the truth to come out?

FAB: That depends on you, me, the other media, and is in the hands of the 65 millions Tamils in Tamil Nadu. Sri Lanka Government has been systematically destroying physical evidence after barring news organizations from visiting the crime area and imposing censorship on journalists reporting the details. US will have detailed evidence of what's happening, and of what has happened. While the world watches in silence atrocities are continuing.

DM: Why is the International Community not taking effective action to resettle the displaced people?

FAB: I don't think the International Community has any interest in the welfare of the Tamil people. That is why they kept silent during the slaughter of nearly 50,000 Tamils between February and May 2009. Finally the IMF loan is also going to be awarded. [was awarded early this month]. What happened in Sri Lanka is an attempt at extermination of a race, a racist war. Same thing happened in the 1930's against the Jews. Only after millions were killed the world began to know the truth of the atrocities. The world would not do anything.

DM: If the IC does not have an interest in Sri Lanka, why did they express their commendations to Sri Lanka after the war?

FAB: I only said they have no interest in Tamils. Countries certainly have geopolitical interest in creating conditions advantageous to them. Use of sea ports, and control of land mass in the Indian Ocean is certainly of interest to many powers.

DM: Will the Sri Lanka Government, which did not heed to the righteous demands of the Tamils when they had military power, attend to Tamils welfare now that Tamils appear defeated and powerless?

FAB: Definitely not. Sri Lankan state has set about to exterminate or, in the least, marginalize the Tamil people. The State inebriated with military victory have incarcerated the Tamil people in internment camps. For every 3 Tamils there are 14 Sinhala soldiers. This is violation of Geneva Conventions. What we witness in Sri Lanka is a clear attempt to destroy a race in whole or in part. All should identify this act as genocide.

DM: Why is the US unwilling to release satellite images it may have taken during the last stages of war?

FAB: US is cognizant of the serious repercussions that may result when the world sees the truth. These images will reveal the slaughter of Tamils with the use of heavy weapons, heavy artillery, and aerial bombardments by the Sri Lanka military. US's behavior was the same with respect to Bosnia. US is unlikely to reveal Sri Lanka images as truth may lead the civilized world to demand a solution that will be inimical to US's interest.

DM: What's the US position on Sri Lanka's Tamils? Has the US revealed its true policy?

FAB: I believe the US will continue to support Rajapaksa. The IMF loan is a clear indication of US's policy towards Sri Lanka. Earlier US supported peace talks. There is no more space for US to take that position. What's happening in Sri Lanka is a clear case of genocide. However, if the US accepts this, then Article I of the Genocide Convention will obligate the US to intervene to stop the genocide. US does not want to do that. Similar thing happened in Bosnia too.

DM: Tamils are contemplating the establishment of a transnational government. In the future if Tamils declare a State of Tamil Eelam either within Sri Lanka or outside, what will be US's position?

FAB: The US will not be disposed to supporting it.

DM: What do you think is a feasible political solution to the struggle waged by the Tamils for the last half a century?

FAB: The political solution has to be determined by the Tamils themselves. One of three solutions are possible. 1. Create a free, sovereign, separate state for themselves. 2. Form a confederation with another independent state. And 3. Any other solution agreed by a majority Tamil people. International laws dictate that Tamils are entitled to the right of self-determination. India, you, me or the Sri Lanka Government cannot dictate terms to what Tamils should do.

I want to emphasize one point here. Historically, peoples who have suffered through genocide-level atrocities like what the Tamil people have been through, assured their safety only after creating a separate state for themselves.

During the last few months when more than 50,000 Tamils were slaughtered in Vanni no country was able to stop the killings. All countries failed to execute their obligatory duty as required by the 1948 Genocide Convention. For Tamils to safeguard their lives from the Sri Lankan State, International Community should assist the Tamils to form their own separate state. International covenants declare that it is necessary and just that such peoples who have been affected by genocidal crimes to form their own state.

India's reason for not supporting Sri Lanka's Tamils is that a separate Tamil State in Sri Lanka will trigger fissiparous tendencies within Tamil Nadu. This is a lie and simply double talk. Failure to ensure safety to Sri Lanka Tamils is a moral disgrace to India and a stain in India's illustrious history.

The International Covenant on Civil and Political Rights (ICCPR) makes it clear that the Tamil people have the right to self-determination. Sri Lanka is a signatory to this covenant. Sri Lanka has accepted that Tamil people is a distinct race with their own language and have lived in areas of historical inhabitation.

Therefore, they have the right to exercise their right to self-determination, and as a free people they can then safeguard and nurture their social, economic, and cultural well-being.

Boyle debunks Kohona's war-crimes braggadocio

[TamilNet, Sunday, 23 August 2009, 03:17 GMT]

Debunking Sri Lanka's Foreign Secretary, Palitha Kohona's statement that "no winner of a war has been tried [for war crimes] before a Tribunal," Francis Boyle, Professor of International Law at the Illinois College of Law, said, as legal counsel for the Mothers of Srebrenica and Podrinja, he had convinced the Honorable Carla Del Ponte, the Prosecutor for the International Criminal Tribunal for the Former Yugoslavia (ICTY), to indict Yugoslav President Slobodan Milosevic for every crime in the ICTY Statute, including genocide, war crimes and crimes against humanity.


Palitha T. B. Kohona

Kohona told a Sri Lanka's local paper in an interview Thursday: "If you look at the history of war crimes there isn't one instance where a winner of a war has been tried before a Tribunal. They have always been set up for losers. And if you were to take winners then the start would have to be taken elsewhere. Sri Lanka did not drop atom bombs or destroy entire cities during the war."

Boyle mocked this statement pointing to the fate of Slobodan Milosevic, and added, "Milosevic died on trial before the ICTY for these international crimes, including the genocidal massacre at Srebrenica.

"Today, Milosevic's henchman Radovan Karadzic—self-styled President of the self-styled Republika Srpska—is on trial before the ICTY for every crime in the ICTY Statute, including the genocidal massacre at Srebrenica," Prof. Boyle said.

Boyle warned, "someday we shall hold to account the GoSL genocidaires as well, especially the Rajapaksa brothers and Fonseka, for their international crimes, including the genocidal massacre of Tamils on the Wanni Beach."

"Colombo bringing the war-crimes issue to public scrutiny reflects the nervousness the Sri Lanka's ruling administration feels on the potential fate of some high-level officials when the international legal spotlight turns on them. The evidence being collected from Satellite-witnessed massacres of Tamil civilians, and the eye-witness accounts that will soon be available from massacre escapees, will be haunting these officials," spokesperson of a US-based activist group TAG told TamilNet.

Boyle, Fein charge Sri Lanka with Genocide during Chennai seminar

[TamilNet, Tuesday, 09 June 2009, 02:20 GMT]

Francis Boyle, Professor of International Law at the University of Illinois College of Law, and Bruce Fein, a Washington D.C. Attorney, speaking at a seminar in Chennai organized by the International Tamil Center Monday, reiterated charges of Genocide against the Sri Lanka Government alleging massacre of more than 50,000 Tamil civilians, sources attending the event said. While Prof. Boyle urged India to file charges in International Court against Sri Lanka for violating the Genocide Convention, and to order Colombo "to cease and desist from all acts of genocide against Tamils," Fein stressed the urgent need for the Tamils to reach a "consensus on their political aspirations." The event was organized by Dr. Panchadcharam, a consultant physician from New York.

Full text of draft of Prof. Boyle's talk at the seminar follows:

THE RIGHTS OF THE TAMILS LIVING ON THE ISLAND OF SRI LANKA UNDER INTERNATIONAL LAW AND PRACTICE

Introduction

There are two basic points I want to make: First, the Tamils living on Sri Lanka have been the victims of genocide. Second, the Tamils living on Sri Lanka have the right to self-determination under international law and practice, including the right to establish their own independent state if they so desire. And the fact that the Tamils living on Sri Lanka have been victims of genocide only strengthens and reinforces their right to self-determination, including establishing their own independent State if that is their desire.

Genocide

Article I of the 1948 Genocide Convention requires all 140 states parties to immediately act in order "to prevent" the ongoing GoSL genocide against the Tamils. One of the most important steps the 140 contracting states parties to the Genocide Convention must take in order to fulfill their obligation under Article I is to sue Sri Lanka at the International Court of Justice in The Hague (the so-called World Court) for violating the 1948 Genocide Convention on the basis of Article IX thereto: "Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of

a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

Any one or more of the 140 states parties to the Genocide Convention (1) must immediately sue Sri Lanka at the International Court of Justice in The Hague; (2) must demand an Emergency Hearing by the World Court; and (3) must request an Order indicating provisional measures of protection against Sri Lanka to cease and desist from committing all acts of genocide against the 300,000 Tamils in Vanni. Such a World Court Order is the international equivalent to a domestic temporary restraining order and permanent injunction.

Once issued by the World Court, this Order would be immediately transmitted to the United Nations Security Council for enforcement under U.N. Charter article 94(2). So far the member states of the United Nations Security Council have failed and refused to act in order to do anything to stop the GoSL's genocide against the Tamils (1) despite the fact that the situation in Vanni constitutes a "threat to the peace" that requires Security Council action under article 39 of the United Nations Charter and (2) despite the fact that they are all obligated "to prevent" Sri Lanka's genocide against the Tamils under article I of the Genocide Convention. This World Court Order will put the matter on the Agenda of the Security Council and force the Security Council to take action in order "to prevent" the ongoing genocide against the Tamils by Sri Lanka.

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 Sri Lanka and its legal predecessor Ceylon have committed genocide against the Hindu/Christian Tamils that actually started on or about 1948 and has continued apace until today and is now accelerating in Vanni in violation of Genocide Convention Articles II(a), (b), and (c).

For the past six decades, the Sinhala-Buddhist Ceylon/Sri Lanka has 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 Hindu/Christian Tamils. This Sinhala-Buddhist Ceylon/Sri Lanka campaign has consisted of killing members of the Hindu/Christian 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 Hindu/Christian Tamils in violation of Genocide Convention Article II(b). This Sinhala-Buddhist Ceylon/Sri Lanka campaign has also deliberately inflicted on the Hindu/Christian Tamils conditions of life calculated to bring about their physical destruction in substantial part in violation of Article II(c) of the Genocide Convention.

Since 1983 the Sinhala-Buddhist Sri Lanka have exterminated approximately 100,000 Hindu/Christian Tamils. The Sinhala-Buddhist Sri Lanka have now added another 300,000 Hindu/Christian Tamils in Vanni to their genocidal death list. Humanity needs one state party to the Genocide Convention to fulfill its obligation under article I thereof to immediately sue Sri Lanka at the World Court in order to save the 300,000 Tamils in Vanni from further extermination. Time is of the essence!

Self-determination

This gets into the second point that I want to make concerning the Tamils as a group of people living on the Island of Sri Lanka—their right to self-determination under international law and practice. And here I wanted to quote from an international treaty to which the government of Sri Lanka is a party, thus explicitly recognizing that the Tamils living on the Island of Sri Lanka have a right of self-determination. This is from the International Covenant on Civil and Political Rights, to which the government of Sri Lanka is a party. They are bound by their own treaty, which says quite clearly in Article One: “All peoples have the right of self-determination.”

And clearly, the Tamils living on the Island of Sri Lanka are a “people.” The Tamils on Sri Lanka have a separate language, race, ethnicity, and religions, from the GoSL. The Tamils see themselves as a separate group of “people” and they are perceived to be such by the GoSL. For that precise reason the GoSL has attempted to exterminate the Tamils and ethnically cleanse their Homeland. So no better proof is needed than that. Both the objective criteria and the subjective criteria for establishing a “people” with a right of self-determination under international law and practice have been fulfilled by the Tamils living on Sri Lanka.

Let me continue enumerating a few more of the most basic self-determination rights of the Tamils living on Sri Lanka under international law that are recognized by this International Covenant that the GoSL is a party to: “By virtue of that right they freely determine their political status and

freely pursue their economic, social and cultural development." Those are rights that the Tamils living on Sri Lanka have today even as recognized by the government of Sri Lanka. Those are group rights and not just individual rights. And those are group rights that must be protected because the government of Sri Lanka has attacked the Tamils as a group, not just as individuals. So, since Tamils have been victims as a group, they must be protected as a group. And one of the most basic rights of all that the Tamils have to protect themselves is this right of self-determination including determining their political status and pursuing their own economic, social and cultural development, as well as the establishment of an independent state of their own if that is what the Tamils decide is required for them to accomplish these objectives.

Another component of this right of self-determination for the Tamils living on Sri Lanka is set forth in paragraph (2) of this Article One of the International Covenant on Civil and Political Rights, to which the government of Sri Lanka is a party. Notice here I am only using the treaties the GoSL itself is a party to, including the Genocide Convention. I am not citing any principles of international law that the GoSL has not already recognized and indeed violated grievously with respect to the Tamils living on Sri Lanka: "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may the people be deprived of its own means of subsistence."

Yet we all know for a fact that the GoSL has done everything humanly possible to deprive the Tamil people of their own means of subsistence to a level that now constitutes genocide, in violation of that provision I quoted before from the Genocide Convention prohibiting inflicting on a group conditions of life calculated to bring about their physical destruction in whole or in part. Notice these economic and political rights are related to each other. Both elements of the right to self-determination must protect the Tamils since they have been victims of genocide. We must protect their political rights as well as their economic rights, to freely dispose of their natural wealth and resources. The Tamil people, not the GoSL, must control their traditional Homeland in the North and the East of the Island, their farms, their mines, their plantations, their forests, their waters, their beaches etc. This is critical. Yet today we know that the GoSL is currently in the process of stealing, destroying and negating all these economic and political rights of the Tamils in their traditional Homeland in the North and the East of the Island of Sri Lanka. The GoSL is currently inflicting ethnic cleansing on the Tamils living there.

I have already established that the Tamil people living on Sri Lanka have a right of self-determination, even in accordance with the GoSL's own treaties themselves. What are some of the other political consequences of their right of self-determination? These are set forth in what is known as the Declaration on Principles of International Law Concerning Friendly

Relations and Co-operation Among States in Accordance with the Charter of the United Nations (1971). The government of Sri Lanka approved this Declaration in the United Nations General Assembly -- so I am not quoting here any provision of law that the GoSL has not already approved. And from the Declaration let me state what are the political alternatives that are open to the Tamil people, and they are set forth as follows: "[1] The establishment of a sovereign and independent State, [2] the free association or integration with an independent State, or [3] the emergence into any other political status freely determined by a people constitute the modes of implementing the right of self-determination by that people."

So again, it is not for the GoSL to determine what might be the ultimate political outcome here. It is for the Tamil people living on Sri Lanka to determine which of those three options they desire. I also want to make it clear that it is not for me to tell the Tamils on Sri Lanka which of these three options they should choose. Moreover, it is not for the Tamils of India to tell the Tamils on Sri Lanka which of these three options they should choose. This is for them to decide pursuant to their right of self-determination under international law and practice.

However I do want to note that historically the only way a people that has been subjected to genocide like the Tamils on Sri Lanka have been able to protect themselves from further extermination has been the creation of an independent state of their own. Indeed as the world saw for the last several months the government of Sri Lanka wantonly, openly, shamelessly, and gratuitously exterminated over 50,000 Tamils in Vanni; yet not one state in the entire world rose to protect them or defend them or help them as required by Article I of the 1948 Genocide Convention. Hence the need for the Tamils on Sri Lanka to have their own independent state in order to protect themselves from further annihilation by the GoSL. International law and practice establish that an independent state of their own is the only effective remedy as well as the only appropriate reparation for a people who have been the victims of genocide.

Now the Indian government has basically argued that if it were to recognize the right of the Tamils on Sri Lanka to self-determination and an independent state of their own, then the 65 million Tamils in Tamil Nadu would also assert that same right and proceed to secede from India. I submit this is a false dichotomy under international law and practice. It must not be used as an excuse for inaction by the government of India when it comes to protecting the Tamils living on Sri Lanka.

In this regard, let me return to the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States that was approved by both India and Sri Lanka and sets forth rules of customary international law interpreting the terms of the United Nations Charter itself as determined by the International Court of Justice in the *Nicaragua* case (1986). In particular let me draw to your attention the following language: "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or

impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color."

This paragraph of the Declaration sets forth the rules of customary international law when it comes to the right of a people to secede from another state by means of exercising their right of self-determination. As you can see from the above language secession is permitted only when a government does not conduct itself "in compliance with the principle of equal rights and self-determination of peoples" and thus does not represent "the whole people belonging to the territory without distinction as to race, creed or color."

From its very foundation in 1948 the government of Ceylon/Sri Lanka has never conducted itself "in compliance with the principle of equal rights and self-determination of peoples" with respect to the Tamils. Furthermore, the government of Ceylon/Sri Lanka has never represented "the whole people belonging to the territory without distinction as to race, creed or color" with respect to the Tamils. In fact the government of Ceylon/Sri Lanka has always discriminated against and persecuted the Tamils on grounds of race, creed, color, and language. This endemic pattern of criminal behavior by the Sinhala has now culminated in wholesale acts of genocide against the Tamils being inflicted by the government of Sri Lanka. So of course the Tamils have the right to secede from Sri Lanka under international law and practice and especially under the terms of this Declaration.

Conversely, the government of India does conduct itself "in compliance with the principle of equal rights and self-determination of peoples" with respect to the Tamils in Tamil Nadu and is thus "possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour." India just had elections where the Tamils in Tamil Nadu participated on a basis of full equality with everyone else. The Tamils in India have full legal equality with all other peoples in India and indeed have their own state here in Tamil Nadu. Therefore in my opinion, the 65 million Tamils in Tamil Nadu do not have a right of secession under international law and practice according to this Declaration, which sets forth the basic rules of customary international law on this subject.

Conversely, however, the Tamils living on Sri Lanka do have a right of secession under international law and practice including this Declaration for which both India and Sri Lanka voted. So with all due respect to the position of the Indian government, it is a false dichotomy for it to assert that recognition of the right of self-determination with an independent state of their own for the Tamils living on Sri Lanka would lead to the same for the Tamils in Tamil Nadu. There is no basis in international law for this conclusion. Indeed, basic principles of international law including this Declaration would fully support the territorial integrity of India in the event the government of India were to recognize the right of the Tamils living on the Island of Sri Lanka to self-determination including an independent state of their own.

Conclusion

Be that as it may, even if out of an excess of caution the government of India is not prepared to go that far at this time, nevertheless at a minimum, since it is the original homeland for the Tamils, the government of India has the right, the obligation, and the standing under international law and practice to act as *parens patriae* for the Tamils living on Sri Lanka. Therefore, India must immediately sue the GoSL for genocide at the International Court of Justice in The Hague, demand an Emergency Hearing of the Court, and request that the World Court issue a Temporary Restraining Order against the GoSL to cease and desist from committing all acts of genocide against the Tamils living on Sri Lanka. The ghosts of Dachau, Auschwitz, Cambodia, Sabra and Shatilla, Srebrenica, Rwanda, Kosovo, and now Vanni demand no less!

Sinhala "lebensraum" in progress in Vanni, warns Prof. Boyle

[TamilNet, Wednesday, 03 June 2009, 03:15 GMT]

"The Government of Sri Lanka (GoSL) is continuing to inflict Nazi-type crimes and atrocities against the Tamils even after their alleged excuse of fighting a 'war against terrorism' has been exposed as a bogus pretext to annihilate the Tamils and to steal their lands and natural resources. This is what Hitler and the Nazis called 'lebensraum'—'living space' for the Sinhala at the expense of the Tamils. The GoSL's 'ethnic cleansing' of the Tamil Homeland for the benefit of the Sinhala is now underway," warns Francis Boyle, professor of International Law at the University of Illinois College of Law.

"With the UN already under fire for withholding and downplaying the number of civilian casualties in Sri Lanka, another ongoing controversy has opened up concerning the number of internally displaced persons detained in the IDP camps in northern Sri Lanka. Between the May 27 and May 30 reports of the UN's Office for the Coordination of Humanitarian Affairs, over 13,000 IDPs simply disappeared from the camps," reported Inner City Press which is covering the affairs at the United Nations in New York.

"Concerning these missing 13,000+ genocide-survivors from the Safety Zone, Article 7(1)(i) of the Rome Statute for the International Criminal Court provides that the 'enforced disappearance of persons' is a Crime Against Humanity 'when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack,'" Boyle said.

"Clearly the GoSL's enforced disappearances of these Tamils and other Tamils in the past has been both 'widespread' and 'systematic' as documented over the years by numerous human rights NGOs. The GoSL's widespread and systematic enforced disappearances of Tamils over the years constitutes a Crime Against Humanity," Boyle added.

"According to the Nuremberg Charter (1945), the Nuremberg Judgment (1946), and the Nuremberg Principles (1950), the paradigmatic example of a Crime Against Humanity is what Hitler and the Nazis did to the Jews. Historically, this Nuremberg Crime Against Humanity was the legal precursor to the International Crime of Genocide as defined by the 1948 Genocide Convention," Boyle said.

Lebensraum served as a major motivation for Nazi Germany's territorial aggression. Adolf Hitler believed that the German people needed Lebensraum —for a *Großdeutschland*, land, and raw materials—and that it should be taken in the East. It was the stated policy of the Nazis to kill, deport, Germanize or enslave the Polish, and later also Russian and other Slavic populations, and to repopulate the land with *reinrassig* (racially pure) Germanic peoples.

"The Sri Lanka Government's Nazi-type crimes in the Vanni appear motivated by the doctrine of lebensraum, and the future survival of Tamil culture in Sri Lanka is in peril," says Prof. Boyle.

UN Officials complicit in aiding, abetting GoSL's Nazi-type crimes—Prof. Boyle

[TamilNet, Saturday, 30 May 2009, 11:14 GMT]

Pointing to a report in the French paper Le Monde, which quoted Vijay Nambiar, Chief of Staff of UN Secretary General Ban Ki Moon, as telling UN representatives in Sri Lanka that the UN should "keep a low profile" and play a "sustaining role" that was "compatible with the government," Francis Boyle, professor of International Law at the University of Illinois College of Law said Saturday that both the United Nations Organization itself and its highest level officials are guilty of aiding and abetting Nazi-type crimes against the Tamils by the Government of Sri Lanka, in violation of international law. "Unless this Momentum is reversed and all these U.N. Officials fired, the United Nations Organization shall follow the League of Nations into the 'ashcan' of History," Boyle said.

Vijay Nambiar Chief of Staff of Ban Ki Moon

"Nambiar's statement was made while the GoSL inflicted genocide, crimes against humanity, war crimes and ethnic cleansing upon the Tamils in violation of the 1948 Genocide Convention, the Four Geneva Conventions of 1949 and their Two Additional Protocols of 1977, as well as the principles of Customary International Criminal Law set forth in the Nuremberg Charter (1945), the Nuremberg Judgment (1946) and the United Nation's own codification of the Nuremberg Principles (1950) for the trial and prosecution of the Nazis—all of which are now incorporated into the Rome Statute for the International Criminal Court," Boyle said.

"In other words, both the United Nations Organization itself and its highest level officials are guilty of aiding and abetting Nazi-type crimes against the Tamils by the GoSL.

"The United Nations Organization and its Highest Level Officials did the exact same thing to the Bosnians at Srebrenica in July of 1995—days that have lived in infamy and shame for the United Nations ever since then.

"By comparison, today the GoSL's genocidal massacre of the Tamils in Vanni could be about four times Serbia's genocidal massacre of the Bosnians at Srebrenica."

Further, *The Times* of the UK revealed Saturday, that the top aide to the United Nations Secretary-General Nambiar was told more than a week ago that at least 20,000 Tamil civilians were killed in the Sri Lankan Government's final offensive against the Tamil Tiger rebels this month.

"History is repeating itself with a Vengeance for the United Nations. Unless this Momentum is reversed and all these U.N. Officials fired, the United Nations Organization shall follow the League of Nations into the 'ashcan' of History!," Boyle said. Adding further complicity to Vijay Nambiar's role as a special UN envoy to Sri Lanka is the involvement of his brother Satish Nambiar, a former Indian general as a consultant to the Sri Lankan government. Satish Nambiar "was quoted on the Sri Lankan military's web page praising the Army's and its commander's conduct of the war in the north, despite all the civilians killed. It is, the [unnamed Security Council] diplomat said bitterly, all a family affair," a report of 11th May in the Inner City Press, said.

Satish Nambiar

Paid military consultant

Unprincipled, shameless, "Orwellian" UN resolution ever—Prof. Boyle

[TamilNet, Thursday, 28 May 2009, 23:31 GMT]

"This is one of the most unprincipled and shameless resolutions ever adopted by any body of the United Nations in the history of that now benighted Organization. It would be as if the U.N. Human Rights Council had congratulated the Nazi government for the 'liberation' of the Jews in Poland after its illegal and genocidal invasion of that country in 1939," said Francis Boyle, professor of International Law at the University of Illinois College of Law, referring to the resolution passed at the United Nations Human Rights Council on the Sri Lanka war.

"This Resolution simultaneously gives the imprimatur of the U.N. Human Rights Council to the ethnic cleansing, genocide, crimes against humanity and war crimes that the Government of Sri Lanka has already inflicted upon the Tamils in the past, as well as the Council's proverbial 'green light' for the GoSL to perpetrate and escalate more of the same international crimes against the Tamils in the future," Boyle said.

"The U.N. Human Rights Council and those member States that voted in favor of this Resolution have thereby become ACCESSORIES AFTER THE FACT to the GoSL's genocide, crimes against humanity, war crimes and ethnic cleansing against the Tamils in the past, as well as AIDERS AND ABETTORS to future acts of genocide, crimes against humanity, war crimes and ethnic cleansing that the GoSL will undoubtedly inflict upon the Tamils thanks to this Resolution—all in violation of the Genocide Convention, the Four Geneva Conventions of 1949 and their Two Additional Protocols of 1977 as well as the Rome Statute for the International Criminal Court.

"Sri Lanka, together with these other Council States, are contracting parties to some or all of these International Criminal Law Conventions and therefore must be held accountable for their violation and international crimes against the Tamils," Boyle added.

"History shall so judge them all!"

"Orwell stands vindicated by the U.N. Human Rights Council: WAR IS PEACE, FREEDOM IS SLAVERY, IGNORANCE IS FREEDOM, THE U.N. HUMAN RIGHTS COUNCIL LOVES BIG BROTHER," Boyle said, indicating he is deeply disturbed by the U.N. action.

“Glaring hypocrisy, blatant sophistry” Boyle slams Swiss UN Resolution

[TamilNet, Tuesday, 26 May 2009, 17:35 GMT]

Pointing out the twelfth operative paragraph of the Draft Resolution sponsored by Switzerland, that is currently pending before the U.N. Human Rights Council, Professor Boyle, expert in International Law and Professor at the University of Illinois College of Law, says this would be the same “as if the U.N. Human Rights Council had invited the Nazi government to investigate and prosecute itself for genocide, crimes against humanity and war crimes against the Jews instead of supporting the Nuremberg Charter and Tribunal.”

The twelfth operative paragraph says, “12. The Council stresses the importance of combating impunity and calls on the government of Sri Lanka to investigate all allegations and bring to justice, in accordance with international standards, perpetrators of violations of human rights and of international humanitarian law, including hostage taking, torture, enforced disappearances and extrajudicial, summary or arbitrary executions, and to increase its efforts to further prevent such violations;”

Boyle said, “ I am not going to waste my time here going through the hypocrisy and sophistry of the Draft Resolution sponsored by Switzerland that is currently pending before the U.N. Human Rights Council with the support of 25 other U.N. Member States. For operative paragraph 12 of the Swiss Resolution gives their entire Public Relations game away.

“It calls upon the Government of Sri Lanka to investigate and prosecute itself for war crimes and crimes against humanity, including hostage taking, torture, enforced disappearances and extrajudicial, summary or arbitrary executions.

“It would be as if the U.N. Human Rights Council had invited the Nazi government to investigate and prosecute itself for genocide, crimes against humanity and war crimes against the Jews instead of supporting the Nuremberg Charter and Tribunal.

“So in other words the Swiss Resolution is basically a continuation of the international whitewash and cover-up of the GoSL’s genocide, crimes against humanity and war crimes against the Tamils,” Professor Boyle said.

He added, “[t]he glaring hypocrisy and blatant sophistry of the Swiss Resolution is heightened by the fact that Switzerland is the Depositary for the Four Geneva Conventions of 1949 and their Two Additional Protocols of 1977 and therefore bears a special obligation under international law to promote, guarantee and ensure their effective enforcement rather than their negation and nullification, which this Swiss Resolution will do. Obviously, Switzerland knows exactly what it is doing. The same is true for the 25 other state Co-Sponsors of the Swiss Resolution.

"Instead of this meaningless and hypocritical and unprincipled Swiss Resolution, the U.N. Human Rights Council must establish an International Commission of Investigation to inquire into whether the GoSL has inflicted genocide, crimes against humanity and war crimes against the Tamils. Otherwise the U.N. Human Rights Council and its member states will simply and knowingly become part of the GoSL's propaganda campaign and cover-up against the Tamils.

"If adopted, History shall record for all time their cruel crocodile tears shed for the Tamils in this infamous Swiss Resolution," Boyle warned.

“Accessories after the fact to acts of Genocide”

[TamilNet, Saturday, 23 May 2009, 02:00 GMT]

Condemning the sponsorship, by twelve states, of a self-praising resolution submitted to the United Nations by the Government of Sri Lanka, before the scheduled UN Human Rights Council emergency session scheduled for Monday, Professor Boyle, an expert in International Law said Friday that these states have become accessories after the fact to the numerous acts of genocide, crimes against humanity and war crimes that the Government of Sri Lanka has perpetrated upon the Tamils.

Labeled “Assistance to Sri Lanka in the Promotion and Protection of Human Rights,” Sri Lanka’s proposed text is co-signed by Indonesia, China, Saudi Arabia, India, Pakistan, Malaysia, Bahrain, Philippines, Cuba, Egypt, Nicaragua, and Bolivia, reported UN Watch, a non-governmental organization based in Geneva whose mandate is to monitor the performance of the United Nations.

“Their sponsorship of this Resolution means that the above-mentioned states have thereby all become ACCESSORIES AFTER THE FACT to the numerous acts of genocide, crimes against humanity and war crimes that the Government of Sri Lanka has perpetrated upon the Tamils in violation of the 1948 Genocide Convention, the Four Geneva Conventions of 1949 and their Two Additional Protocols of 1977, as well as the rules of customary international criminal law, including humanitarian law and the laws of war,” Prof. Boyle said.

“By definition, violations of international treaties, genocide, crimes against humanity and war crimes cannot possibly fall within the domestic jurisdiction of a State.

“That Principle goes back to the Nuremberg Charter of 1945 and the Nuremberg Judgment of 1946 concerning the prosecution of the Nazis,” Boyle added.

“This Resolution constitutes a total debasement and perversion of everything the United Nations Charter and the U.N. Human Rights Council are intended to stand for,” Boyle said.

By contrast, the upcoming Monday session was initiated by the Council’s European Union members and supported by Argentina, Bosnia, Canada, Chile, Mexico, Mauritius, South Korea, Switzerland, Ukraine and Uruguay, UN Watch said.

“Sri Lanka’s action today constitutes an outrageous abuse and show of contempt for the international human rights process,” said Hillel Neuer, an international lawyer and the executive director of UN Watch, a Geneva-based human rights monitoring group.

300,000 Tamils held in Nazi-style concentration camps, says Prof. Boyle

[TamilNet, Friday, 22 May 2009, 12:30 GMT]

"These Nazi-style concentration camps that the Government of Sri Lanka is now forcibly imposing on at least 300,000 completely innocent Tamil civilians constitute acts of genocide within the meaning of Article II(c) of the 1948 Genocide Convention, to which Sri Lanka is a contracting party," Professor Boyle who is an expert international law and teaches at the University of Illinois College of Law said.

Article II(c) of the 1948 Genocide Convention: "c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."

"All other contracting parties to the Genocide Convention such as the United States, Britain, France and India have an absolute obligation under Article I of the Genocide Convention 'to prevent' these acts of genocide against Tamils perpetrated by the GoSL under the guise of concentration camps," Professor Boyle said.

"Yet so far these other States have done nothing to alleviate the genocidal plight of the Tamils in Vanni.

"Unless these other states act immediately to rectify the genocidal humanitarian situation for the Tamils in Vanni, they will all become 'complicit' in these the GoSL's latest acts of genocide against the Tamils in violation of Genocide Convention Article III(e) that prohibits, condemns and criminalizes: '(e) Complicity in genocide,'" Boyle added.

"These states have already made a mockery out of history's post World War II emphatic injunction that motivated the drafting of the Genocide Convention: Never again!," Boyle said in a note to TamilNet.

Sri Lanka destroys evidence, prevents ICRC, UN access—Prof. Boyle

[TamilNet, Wednesday, 20 May 2009, 04:20 GMT]

Noting that the slow genocide of Tamils in Sri Lanka accelerated to more than 10,000 killed in the last few months, far exceeding the horrors of Srebrenica, Professor Boyle in conversation with Los Angeles KPFK radio host, Michael Slate, Tuesday, accused Sri Lanka Government of bulldozing and destroying evidence of massacres in the Safety Zone while preventing access to the Red Cross and UN agencies. Boyle added that the United States Government with spy satellites would be knowing exactly what Sri Lanka's actions are in the Safe Zone, and stand implicated along with UK, France, and India in allowing the genocide to happen.

"Today ICRC still does not have access when the area should be flooded with food and medicine to urgently attend to the 300,000 Internally Displaced Tamils held in Sri Lanka Army (SLA) supervised camps," Boyle said, adding, survivors from the Safety Zone, from starvation, resembled escapees from Nazi death camps.

The situation was similar to what happened in Gaza, Boyle said, but in Gaza people had access to food via under ground tunnels, whereas the Tamils holed up in the Safety Zone were completely cutoff from the outside and were entirely dependent on food transported by the ICRC ships.

Tracing the history of the conflict, Boyle and Slate agreed that Sri Lanka was an apartheid state from the very beginning of independence, and pointed to the violent elements of the Buddhist clergy, and the India's Dravidian-oriented racism as elements that exacerbated the deterioration of the conflict towards genocide.

Peace processes failed, Boyle argued, because Sri Lankan Governments, instead engaging in good faith negotiation, "wanted control, domination, and elimination of the Tamil population."

"We may be at the beginning of a humanitarian catastrophe for the Tamil people in Sri Lanka which would fit the ultimate objective of the Government motivated by chauvinist, violent racism," Boyle said, adding "my experience in working in genocidal situations says once the government and the people are possessed of this genocidal mentality it's very difficult to stop."

Slate added, "Tamil people are a severely oppressed nation. Anyone of conscience must stand up and support their resistance."

"Klerk risks repeating Netherland's criminality on Srebrenica genocide"

[TamilNet, Wednesday, 13 May 2009, 23:06 GMT]

By dismissing the horrendous rights violations of Sri Lanka in the safety zone of Mullaiththeevu as "not applicable" to providing favorable tariff treatment to Sri Lankan textiles under the GSP Plus Program, Pieter de Klerk, Netherland's Acting Permanent Representative to the UN, is in danger of repeating Netherland Government's history of criminality on Srebrenica genocide again on the genocide currently taking place in Vanni, Sri Lanka, a legal scholar in the U.S. pointed out. Inner City Press which carried the Dutch Representative's statement, mused, "[i]f the killing of thousands of civilians, hundreds in the last weekend alone, does not implicate the EU's [European Union] notions of human rights, perhaps these notions are bankrupt."

At a panel discussion Tuesday on the European Union and Human Rights, at the United Nations in New York, Inner City Press asked the Netherlands' acting Permanent Representative, Piet de Klerk, what the EU is doing about following up on its favorable tariff treatment to Sri Lankan textiles under the GSP Plus program, on which the EU purportedly considers human rights. DPR de Klerk said he didn't think that human rights were "applicable to this sort of situation."

"The Dutch Government was criminally responsible for the genocidal massacre of 8000 Bosnian Muslims at Srebrenica in July of 1995 by Serbia. So of course it comes as no surprise that the Dutch Government has no problem with the Srebrenica-style genocidal massacre of 10,000 Tamils in Vanni by Sri Lanka in 2009. History is repeating itself," said University of Illinois law professor, Francis Boyle, who was a key player in bringing indictment against Slobodan Milosevic for committing genocide, crimes against humanity, and war crimes in Bosnia and Herzegovina.

The criminal complaint for the Srebrenica massacre included the Dutch nationals, Joris Voorhoeve, Dutch Minister of Defense, Dutch General Cees Nicolai, in the UN Chain of Command and reporting to Voorhoeve as well, and the Dutch Colonel Thomas Karremans, in charge of Srebrenica at the time of the massacre.

The Dutch government resigned on 16 April 2002, a week after a report on the 1995 fall of Srebrenica held political leaders partly responsible for failing to protect Muslims in a UN "safe haven" in Bosnia.

Full text of the criminal complaint against United Nations' officials follows:

MOTHERS OF SREBRENICA
AND PODRINJA ASSOCIATION

v

.

UNITED NATIONS OFFICIALS AND OTHERS
(CRIMINAL COMPLAINT FOR
THE SREBRENICA MASSACRE)

UNITED NATIONS, THE HAGUE, NETHERLANDS.

The Mothers of Srebrenica and Podrinja Association, headquartered in Vogosca, Bosnia and Herzegovina file a Criminal Complaint with the Prosecutor for the International Criminal Tribunal for the Former Yugoslavia (ICTY), Madame Carla Del Ponte, on Friday, February 4 against the following Officials of the United Nations Organization and others for the role they played in the fall and genocidal massacre at Srebrenica in July of 1995: BOUTROS BOUTROS-GHALI, KOFI ANNAN, YASUSHI AKASHI, BERNARD JANVIER, RUPERT SMITH, HERVÉ GOBILLIARD, JORIS VOORHOEVE, CEES NICOLAI, THOMAS KARREMANS, ROBERT FRANKEN, THORVALD STOLTENBERG, CARL BILDT, DAVID OWEN, MICHAEL ROSE, THEIR SUBORDINATES, SLOBODAN MILOSEVIC, RADOVAN KARADZIC, AND RATKO MLADIC.

Piet de Klerk Netherland's Acting Permanent Representative to the UN

The genocidal massacre at Srebrenica was the single greatest human rights atrocity perpetrated in Europe since the genocidal horrors inflicted by the Nazis during the Second World War. Approximately 10,000 Bosnian Muslim men and boys were systematically exterminated during just a few days by the Bosnian Serb Army under the direct command of Milosevic, Karadzic, and Mladic. During this time, the above-named United Nations Officials and their subordinates deliberately and maliciously refused to do anything to stop this genocidal massacre at the U.N.-declared "safe area" of Srebrenica despite having the legal obligation, the legal and political authority, and the military power to do so.

The Complaint accuses the above-named United Nations Officials and their subordinates of planning, preparing, conspiring, instigating, complicity, and otherwise aiding and abetting, in the planning, preparation, conspiracy, complicity, and execution of crimes referred to in articles 2 to 5 of the ICTY Statute: Article 2—Grave Breaches of the Geneva Conventions of 1949; Article 3—Violations of the Laws or Customs of War; Article 4—Genocide; and Article 5—Crimes against Humanity.

Under ICTY Statute article 18(1), this Complaint establishes a "sufficient basis to proceed" toward the investigation and indictment of the above-named United Nations Officials and their subordinates by the Prosecutor. Pursuant to article 18(4) of the Statute, the Complaint requests that the Prosecutor prepare the appropriate indictments against the above-named United Nations Officials and their subordinates, and transmit these indictments to a Judge of the ICTY Trial Chamber for confirmation. If confirmed by the Judge, the Complaint requests that pursuant to Statute article 19(2), the Prosecutor request the Judge to issue international warrants calling for the arrest, detention, surrender and transfer to the Tribunal of the above-named United Nations Officials and their subordinates. The Complaint also requests that the Prosecutor ask the confirming Judge to freeze the worldwide financial assets of the above-named United Nations Officials and their subordinates so that the Mothers of Srebrenica and Podrinja Association might receive some small degree of reparations for the terrible harm that the above-named United Nations Officials and their subordinates deliberately and maliciously inflicted upon them and their deceased next-of-kin at Srebrenica and its environs during July of 1995.

WE WILL NOT REST UNTIL JUSTICE IS DONE!

Mothers of Srebrenica & Podrinja
Sakiba ðere 9
Vogosca
Bosnia & Herzegovina
Professor Francis A. Boyle
Attorney for the
Mothers of Srebrenica & Podrinja

Prof. Boyle: Hold Emergency Meeting of UNSC to stop Tamil genocide

[TamilNet, Tuesday, 12 May 2009, 23:20 GMT]

Pointing out that, under the current circumstances, the Provisional Rules of Procedure of the United Nation's Security Council (UNSC) provide at least three ways to convene a formal meeting of the Security Council in order to terminate the Genocide against Tamils by the Government of Sri Lanka (GoSL), Prof. Francis A. Boyle, professor of International Law at the Illinois University College of Law, says, failure of the Secretary General, Governments of the United States, U.K, France, and India to hold a UNSC Emergency meeting indicates that they are all quietly supporting the GoSL genocide against the Tamils from behind the scenes, despite their crocodile tears in public.

Professor Boyle provides the legal framework for the possible three ways to convene a UN Security Council Emergency meeting:

First, Rule 2 provides: "The President {of the Security Council} shall call a meeting of the Security Council at the request of any member of the Security Council." So in other words, any member of the Security Council can convene a meeting of the Security Council despite the opposition of Russia and China. Why have not the United States, Britain or France so far convened a meeting of the Security Council to terminate the GoSL's genocide against the Tamils? Clearly, any one of these states can do so immediately if they really cared about the Tamils in Vanni. The fact that they have not indicates that they are quietly supporting the GoSL genocide against the Tamils from behind the scenes despite their crocodile tears in public.

Second, Rule 3 provides in relevant part: "The President {of the Security Council} shall call a meeting of the Security Council...if the Secretary-General brings to the attention of the Security Council any matter under Article 99." Article 99 of the U.N. Charter provides that: "The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security." 10,000 Tamils exterminated by the GoSL during the past 3 months certainly threatens international peace and security in relations between India--which serves as *parens patriae* for these Tamils under international law-- and Sri Lanka as well as the peace and security of the northern Indian Ocean. Why has the U.N. Secretary-General refused to exercise his powers under U.N. Charter Article 99 and Rule 3 to convene an Emergency Meeting of the Security Council in order to terminate the GoSL's genocide against the Tamils? Is Ban Ki-Moon going to wait until the GoSL exterminates another 10,000 Tamils in the so-called No Fire Zone, which is really a

Genocide Zone for the Tamils in Vanni? The fact that he has not exercised his powers under Article 99 indicates that he is quietly supporting the GoSL genocide against the Tamils from behind the scenes despite his crocodile tears in public and those shed by other officials in the U.N. Secretariat.

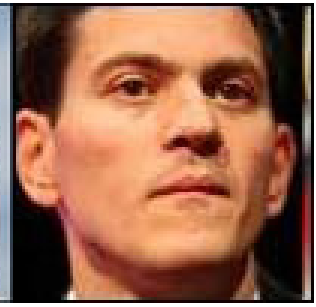
Third, Rule 3 also provides in relevant part: "The President {of the Security Council} shall call a meeting of the Security Council if a dispute or situation is brought to the attention of the Security Council under Article 35..." Article 35(1) of the U.N. Charter provides in relevant part: " Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council..." Article 34 of the U.N. Charter provides in relevant part: "The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute..." For some reason, the Government of India does not consider the recent extermination of 10,000 Tamils--for whom India is the *parens patriae* under international law--by the GoSL to constitute a "dispute" between India and Sri Lanka. Why not?

Boyle adds, "but certainly the GoSL's recent extermination of 10,000 Tamils, for whom India serves as *parens patriae* under international law 'might lead to international friction or give rise to a dispute' between India and Sri Lanka. Indeed according to the statements by the Prime Minister and other government officials of India and numerous trips by the latter to Sri Lanka and by GoSL officials to India, the GoSL's recent extermination of 10,000 Tamils has created 'international friction' between India and Sri Lanka. Therefore India has an obligation to bring this matter to the attention of the Security Council under U.N. Charter Article 35 and to demand an immediate, emergency meeting of the Security Council under its Rule of Procedure No. 3 in order to terminate the GoSL's genocide against the Tamils in Vanni. Failure by the Government of India to do so would only render India guilty of 'complicity' in the GoSL's genocide against the Tamils under Article III(e) of the 1948 Genocide Convention.

"Shall India—the Home of Gandhi—turn and look away from the Tamils in Sri Lanka as they are being exterminated by the GoSL without doing all in its power at both the Security Council and the International Court of Justice (as previously explained by this author) to save these Tamils for whom it serves as *parens patriae* under international law? Today the Tamils in Sri Lanka have now become Gandhi's Harijans. Yet so far the Government of India has treated the Tamils of Sri Lanka as if they were 'untouchables,'" Boyle says.

Ba Ki Moon
UN Secretary General

Dr. Susan Rice
US Ambassador to the UN



David Miliband
British Foreign Secretary

Bernard Kouchner
French Minister of Foreign and European Affairs

Manmohan Singh
India's Prime Minister

US violates the Genocide Convention by permitting Sri Lanka to commit slow-motion genocide—Prof. Boyle

[TamilNet, Tuesday, 12 May 2009, 04:26 GMT]

Pointing to the statement issued by the U.S. Department of State that after an informal meeting at the United Nations that "[t]he United States is deeply concerned by the continued unacceptably high levels of civilian casualties," expert in International Law, Professor Francis A. Boyle said, the Obama administration is violating the 1948 convention for continuing to give "green light" to the Government of Sri Lanka to destroy the LTTE no matter what the cost to innocent Tamil civilians. Lawrence Christy, the head of Tamils Rehabilitation Organization (TRO) Field Office on Monday put the death toll of civilians at more than 3,200 killed during the weekend.

Boyle explains: "[t]he implication of this official Statement by the United States Government is that there exists an acceptable level of civilian casualties to be inflicted by the Government of Sri Lanka upon completely innocent Tamils in Vanni.

"Yet under international humanitarian law civilians can never be made the object of a military attack--as just happened in the GoSL 'massacre on the beach' of Tamils over the weekend. So 2000 murdered Tamil civilians in one operation is 'unacceptably high' in the opinion of the Obama administration.

"The conclusion is obvious that the Obama administration continues to give the proverbial 'green light' to the GoSL to destroy the LTTE no matter what the cost to innocent Tamil civilians so long as their death and destruction and genocide transpire in increments of somewhat fewer than 2000 Tamil civilians at a time.

"Slow- motion genocide indeed here being advocated by the United States government in violation of the 1948 Genocide Convention, to which it is a contracting party," warns Prof. Boyle.

India should sue Sri Lanka in ICJ for massacre of 2000 Tamils—Prof. Boyle

[TamilNet, Sunday, 10 May 2009, 14:00 GMT]

"In light of the latest atrocity by the Government of Sri Lanka that overnight exterminated 2000 Tamils, at a minimum the Government of India must sue Sri Lanka for violating the 1948 Genocide Convention before the International Court of Justice in The Hague, request an Emergency Hearing by the World Court, and win an Order of Provisional Measures of Protection --the international equivalent of a temporary restraining order-- against the GoSL to cease and desist from committing all acts of genocide against the Tamils," said Professor Boyle, professor of International Law at the University of Illinois College of Law, in a note sent to TamilNet Sunday. "I stand ready to file this World Court Lawsuit immediately upon receipt of the appropriate authorization from the Government of India," Boyle further said.

"This ICJ Order would be immediately transmitted to the United Nations Security Council for enforcement under the terms of the United Nations Charter and thus would place the GoSL genocide against the Tamils on the formal agenda of the Security Council for action despite the wishes of some of its Permanent Members such as Russia and China," Boyle said.

"In the event these two Permanent Members were to veto enforcement measures by the Security Council against the GoSL under U.N. Charter Chapter VII, then the entire matter can be turned over to the U.N. General Assembly for action pursuant to the terms of the Uniting for Peace Resolution (1950) in order to terminate the ongoing GoSL genocide against the Tamils," Boyle added.

"I stand ready to file this World Court Lawsuit immediately upon receipt of the appropriate authorization from the Government of India.

"The GoSL genocide against the Tamils has now exceeded the horrors of Srebrenica. India must act now before Vanni becomes another Rwanda," Professor Boyle warned the International Community.

UN violating Charter obligation to promote, encourage human rights—Prof. Boyle

[TamilNet, Friday, 08 May 2009, 00:45 GMT]

Dithering in the halls of the human rights apex body, the United Nations, culminating in the recent uncharacteristic pronouncement that the Secretary General Ban Ki-moon is "too-busy" to visit Sri Lanka, has prompted a legal scholar to point out that "where an individual such as the U.N. Secretary General has an obligation to act to prevent criminal activity and either refuses or fails to do so, that would render him 'complicit' with the underlying criminal activity—in this case genocide." Prof. Francis Boyle said Thursday that "[t]he U.N. Secretary General must immediately travel to Sri Lanka and do all in his power 'to prevent' the Government's genocide against the Tamils."

In a Thursday story, Inner City Press (ICP), which covers the developments within the United Nations, said that while there was earlier speculation that the Secretary General "will definitely consider" visiting Sri Lanka if he "feels that it can save lives," the ICP has learnt that "such a trip, for now, is unlikely."

Prof. Boyle of University of Illinois College of Law and an expert in International Law, pointed out that "[u]nder Chapter XV of the United Nations Charter, the U.N. Secretariat, headed-up by the U.N. Secretary General, is one of six independent Organs of the United Nations Organization itself. As such the U.N. Secretary General is obligated to implement the "Purposes of the United Nations" set forth in Article 1 of the Charter.

"Article 1(3) of the Charter provides that one of these "Purposes of the United Nations" is: "To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

Boyle added, "[i]n other words, the U.N. Secretary General has a U.N. Charter obligation 'in promoting and encouraging respect for human rights and for fundamental freedoms for' the Tamils in Sri Lanka. Consequently, the U.N. Secretary General has a Charter obligation to immediately visit Sri Lanka and do all in his power 'to prevent' the Government's on-going genocide against the Tamils as required by the peremptory norm of international law set forth in Article I of the 1948 Genocide Convention.

"Not to visit Sri Lanka immediately for this Purpose would constitute a violation of the United Nations Charter by the U.N. Secretary General himself.

"In addition, where an individual such as the U.N. Secretary General has an obligation to act to prevent criminal activity and either refuses or fails to do so, that would render him 'complicit' with the underlying criminal

activity—in this case genocide. Article III(e) of the 1948 Genocide Convention prohibits, criminalizes and calls for the punishment of: 'Complicity in genocide.'

"The U.N. Secretary General must immediately travel to Sri Lanka and do all in his power 'to prevent' the Government's genocide against the Tamils. For the U.N. Secretary General to fail or to refuse to discharge this U.N. Charter obligation would render him complicit in the Government of Sri Lanka's genocide against the Tamils," Prof. Boyle said.

Matthew Lee
of Inner City Press

Ban Ki Moon
UN Secretary General

Green light to rid Tigers while 50,000 lives at risk, Boyle faults US, UK

[TamilNet, Thursday, 07 May 2009, 04:33 GMT]

"US. UK, France and India appear to have given green light to Sri Lanka to get rid of the Tigers no matter what the cost is to the 50,000 lives of innocent Tamils at risk now. Let's get back to the need to change that green light to a red light, and let's solve the humanitarian crisis first, and then talk about some sort of solution," said Francis Boyle, professor of International Law at the University of Illinois College of Law, during an interview with Aljazeera network Wednesday. Eric Solheim, key architect of the 2002 peace process in Sri Lanka, and Nirj Deva, a Member of European Parliament and of Sri Lankan origin also participated in the discussions.

Dismissing talks of who holds the military upper hand as "petty and insulting," Boyle stressed the need for immediate humanitarian intervention.

"50,000 people are bombarded, killed and are starving to death. We need to act immediately to remedy the situation. Immediate ceasefire, and massive humanitarian help via air, sea and land, is what's needed," Boyle said.

Mr Solheim said both sides must act to resolve the crisis, the Tigers should allow the civilians to leave the area, and Colombo to allow humanitarian aid to go in and permit UN relief agencies to engage in relief effort.

Mr Deva took the official line of the Sri Lanka Government, describing the unfolding humanitarian crisis as one of "largest ever evacuation of hostages."

Slow-motion genocide to exceed horrors of Srebrenica, warns Prof. Boyle

[TamilNet, Tuesday, 05 May 2009, 18:52 GMT]

Professor Boyle of University of Illinois College of Law, an international expert on Bosnia and crimes of Genocide said Tuesday, "[s]ince the outset of this latest crisis in January, the GoSL has exterminated about 7000 Tamils in Vanni, certainly a 'substantial part' of the Tamil population in Vanni and Sri Lanka. If not stopped now, the GoSL's toll of genocide against the Tamils could far exceed the recent horrors of Srebrenica." Prof. Boyle's call for urgent food drop to the civilians close to starvation in the Safe Zone, has gathered momentum, and international media are seeking his comment on the urgency of humanitarian support.

In a note sent to TamilNet, Prof. Boyle says, "[t]he slow-motion genocide by the Government of Sri Lanka against the Tamils in Vanni is now accelerating to the point of outright extermination in violation of Genocide Convention Articles I, II(a), II(b) II(c), inter alia.

"Every state in the world has the obligation 'to prevent' this GoSL genocide against the Tamils as required by the jus cogens, erga omnes rule of customary international law set forth in Article I of the Genocide Convention. These peremptory norms of international law apply to every state in the world, including the Member States of the United Nations Security Council, and especially its Permanent Members such as the United States, Britain and France, as well as to India. They must all exert maximum political, economic and diplomatic pressure upon the GoSL for an immediate cease-fire in conjunction with the massive provision of food, water, medicine and other humanitarian relief supplies by land, sea and air to the dying Tamils in Vanni.

"A generation ago the world turned away from the Nazi genocide against the Jews—and lived to regret it. Humanity is at a similar crossroads today. A generation ago the world designed the Genocide Convention to prevent a repetition of what Hitler and the Nazis had done to the Jews even 'in part,' according to Article II of the Genocide Convention. In the Bosnian case I convinced the World Court that the proper interpretation of this term taken from Article II of the Genocide Convention meant a 'substantial part.' The World Court later found that the Serbian extermination of 8000 Bosnian Muslim men and boys at Srebrenica was genocide in violation of the Genocide Convention.

"Since the outset of this latest crisis in January, the GoSL has exterminated about 7000 Tamils in Vanni, certainly a 'substantial part' of the Tamil population in Vanni and Sri Lanka. If not stopped now, the GoSL's toll of genocide against the Tamils could far exceed the recent horrors of Srebrenica," Boyle warns.

India obligated to bring Sri Lanka's genocide to UN Security Council—Prof. Boyle

[TamilNet, Monday, 04 May 2009, 21:36 GMT]

Pointing to India's Prime Minister, Manmohan Singh's statement that the lack of peace and stability in Sri Lanka can also "affect security situation in our country [India]," as reported in the Press Trust of India Monday, Francis Boyle, professor of International Law at University of Illinois College of Law said that "[i]n light of this latest statement by the Prime Minister of India, the Government of India must immediately bring the Government of Sri Lanka's genocide against the Tamils to the attention of the United Nations Security Council for remedial action," as allowed by the Article 35(1) of the UN Charter.

PTI in a report published Monday said: "The Prime Minister expressed concern over the developments in the neighboring nations including Pakistan, Nepal and Sri Lanka and said it could affect the security situation in the country. 'Today, there is lack of peace and stability in our neighboring nations, be it Nepal, Pakistan and Sri Lanka. It (the developments) can also affect security situation in our country,' he said, claiming that only Congress was capable of dealing with such critical issues."

Professor Boyle added, "Article 35(1) of the United Nations Charter clearly states: 'Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.'

"Article 34 refers in relevant part to: 'any situation which might lead to international friction or give rise to a dispute.'

"Clearly, according to the Indian Prime Minister's own statement, the GoSL genocide against the Tamils has already 'lead to international friction' between India and Sri Lanka, and it very well could and should 'give rise to a dispute' between the two countries.

"India must lead the way at the United Nations Security Council to assemble the requisite number of member states to take action against Sri Lanka under Chapter VI and/or Chapter VII of the U.N. Charter," Boyle said.

Prof. Boyle calls for humanitarian airdrop to starving civilians in "safety zone"

[TamilNet, Thursday, 30 April 2009, 19:10 GMT]

Francis Boyle, professor of International Law at the University of Illinois College of Law, on Thursday called on India, the United States, Britain and France to fulfill their obligations under the Geneva Conventions and Protocol, and under the Genocide Convention by launching an immediate humanitarian air-drop relief operation for the starving Tamil civilians within the so-called safety zone, who are suffering without adequate humanitarian supplies for weeks. In a note sent to TamilNet, Prof. Boyle said starvation of civilians, as a method of warfare, can also constitute an act of genocide as defined by Article II (c) of the 1948 Genocide Convention.

"Article 54(1) of Additional Protocol I to the Four Geneva Conventions of 1949 sets forth a rule of customary international humanitarian law that obligates every state in the world: 'Starvation of civilians as a method of warfare is prohibited.' Starvation of civilians as a method of warfare is a war crime. Every contracting party to the Geneva Conventions and Protocol has the obligation under Common Article 1 thereof 'to respect' the Conventions and Protocol themselves and 'to ensure respect' for the Conventions and Protocol 'in all circumstances' by other contracting parties such as Sri Lanka.

"Furthermore, starvation of civilians as a method of warfare can also constitute an act of genocide as defined by Article II (c) of the 1948 Genocide Convention: 'Deliberately inflicting on the group {in this case Tamils} conditions of life calculated to bring about its physical destruction in whole or in part.' Every contracting state party to the Genocide Convention has the obligation 'to prevent' genocide by Sri Lanka against the Tamils as required by Article I thereof.

"Therefore, every state party to the Geneva Conventions and Protocols as well as to the Genocide Convention have the solemn obligation to terminate GoSL's starvation of Tamils as a method of warfare. Under the current 'circumstances' one of the most effective means this can be done is for those states with the capability (e.g., India, United States, Britain, France) to immediately undertake an airdrop of food and other humanitarian relief supplies to the starving Tamils in Vanni.

"I hereby call upon these states and in particular India, the United States, Britain and France to fulfil their obligations under the Geneva Conventions and Protocol as well as under the Genocide Convention by launching an immediate humanitarian air-drop relief operation for the benefit of the starving Tamils in Vanni, Sri Lanka."

Miliband's statement obligates UK to take immediate UN action—Prof. Boyle

[TamilNet, Thursday, 30 April 2009, 03:42 GMT]

Pointing to the latest statement during the visit to Sri Lanka by British Foreign Minister, David Miliband that "[t]his is a civil war that does have regional and wider ramifications...," Professor Francis Boyle, professor of International Law at the University of Illinois College of Law, said that Miliband's statement obligates Britain, as a Permanent Member of the Security Council, under U.N. Charter Article 35(1) to bring this "civil war" and genocide in Sri Lanka "to the attention of the Security Council" for the purpose of obtaining remedial action under Chapters VI and/or VII of the Charter.

During a BBC interview when asked whether it is time for a UN Security Council resolution as Sri Lanka is paying no attention to international opinion, Miliband responded: "Well this is the first delegation that's been allowed in, media are not being allowed in to the north east of the country which only adds to the concern.

David Miliband
British Foreign Secretary

"I think that we were right; Britain, France, the US, to raise this issue at the United Nations last Friday this does belong on the United Nations Security Council agenda. This is a civil war that does have regional and wider ramifications and, obviously, a massive civilian emergency as well."

Professor Boyle says, "[u]nder Article 24 of the United Nations Charter, the United Nations Security Council has 'primary responsibility for the maintenance of international peace and security.'

"According to U.N. Charter Chapter VII, Article 39: 'The Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.'

Prof Boyle adds, according to this latest statement by British Foreign Minister David Miliband: "This is a civil war that does have regional and wider ramifications...."

In other words, the GoSL "civil war" and genocide against the Tamils constitutes a "threat to the peace" for which the Security Council has "primary responsibility" to rectify.

"Therefore it can no longer be argued by other Security Council Member States such as China and Russia that this is an 'internal matter' or a 'domestic concern' for which the Security Council does not have jurisdiction to act.

“Indeed, in light of this recent statement by their Foreign Minister Miliband, Britain—as a Permanent Member of the Security Council—has an obligation under U.N. Charter Article 35(1) to bring this ‘civil war’ and genocide in Sri Lanka ‘to the attention of the Security Council’ for the purpose of obtaining such remedial action under Chapters VI and/or VII of the Charter,” Boyle said in a note to TamilNet.

Stalling, obfuscation mirror UN's actions before Srebrenica genocide

[TamilNet, Wednesday, 22 April 2009, 16:19 GMT]

"This same type of deliberate stalling, delaying and obfuscation by United Nations Officials preceded and occurred during the course of the genocidal massacre at Srebrenica. Of course these UN Officials were then (and are still today) acting at the behest of the Permanent Members of the Security Council, who supported Serbia taking over the Srebrenica 'safe-haven' as designated by the Security Council, no matter what the cost to the innocent civilians seeking refuge there," said Prof. Francis Boyle, professor of International Law at the University of Illinois College of Law, in a note sent to TamilNet, commenting on the denial at the United Nations to have Security Council hearings on the humanitarian situation in Sri Lanka.

"Today, they are all guilty of aiding and abetting Sri Lanka's genocide against the Tamils in violation of the 1948 Genocide Convention.

"History will hold them all accountable, including and especially the United Nations and its Highest Level Officials such as Ban Ki-Moon, Nambiar and Holmes.

"Under the terms of the United Nations Charter Chapter XV, the UN Secretariat and thus these UN Officials are legally independent of the United Nations Security Council. These UN Officials have a separate and independent obligation to uphold the Purposes and Principles of the UN Charter no matter what the U.N. Security Council Members might tell them to do.

"Article 1(3) of the UN Charter provides in relevant part that one of the 'Purposes of the United Nations' is 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.'

"Within Chapter XV of the Charter, article 99 expressly provides:'The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.'

"UN Secretary-General Ban Ki-Moon must immediately convene an Emergency Meeting of the Security Council in order 'to prevent' the ongoing genocide against the Tamils by Sri Lanka as required by the 1948 Genocide Convention," Prof. Boyle said.

US should intervene directly with GoSL, LTTE to protect civilians—Professor Boyle

[TamilNet, Tuesday, 14 April 2009, 16:42 GMT]

With Norway's ouster as a third-party engaging with the Liberation Tigers of Tamil Eelam (LTTE), the role of the United States in having direct access with the Liberation Tigers has become critical to negotiating a ceasefire and bring relief to the more than 250,000 Tamil civilians caught in the war. Ambassador Lunstead points out that legal restrictions imposed by US domestic laws do not prevent the U.S. taking that role, and Professor Boyle further asserts that Geneva Conventions of 1949 makes it an obligation for the U.S. to intervene directly with both the Government of Sri Lanka (GoSL) and the LTTE in order to protect these innocent Tamil civilians.

Professor Boyle, professor of International Law at the University of Illinois College of Law, in a note sent to TamilNet said: "Both the United States and Sri Lanka are contracting parties to the Four Geneva Conventions of 1949. Common article 1 thereof provides: 'The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.' The United States government has an absolute obligation 'to ensure respect' for the Geneva Conventions 'in all circumstances.' With respect to the current situation in Vanni where the lives and well-being of 250,000 Tamils are at risk and in grave danger, the United States government has an absolute obligation to intervene directly with both the Government of Sri Lanka (GoSL) and the LTTE in order to protect these innocent Tamil civilians and to terminate the massive war crimes that are currently being inflicted upon them by the GoSL in violation of the Geneva Conventions. The same arguments apply to every state that is a contracting party to the Geneva Conventions, which includes almost every state in the world. In other words, almost every state in the world has both the right, the standing, and the obligation to intervene directly with both the GoSL and the LTTE in order to terminate war crimes from being inflicted upon the completely innocent Tamil civilians currently living in Vanni."

Jeffrey Lunstead, former US Ambassador to Sri Lanka, had earlier traced the legal and policy implications of the U.S. officials engaging directly with the LTTE. He makes the following point, "the legal restrictions were clear: the U.S. government could not provide material assistance to the LTTE, and had to block LTTE funds. LTTE officials could not obtain visas to visit the U.S. unless a waiver was granted by the Attorney General based on a recommendation by the Secretary of State. It should be noted that there is no legal proscription against meeting with LTTE officials. A decision not to meet with LTTE officials

is a policy decision, not a legal one," indicating that the US's domestic laws do not bar the US officials from engaging directly with the LTTE.

On the question if "direct U.S. contact with the LTTE have made this [U.S.] position clearer and perhaps induced a change in behavior [of the LTTE]," Ambassador responds: "This question is of course unanswerable. As many participants have noted, direct U.S. contact with the LTTE, a designated Foreign Terrorist Organization (FTO), was difficult in the aftermath of September 11, 2001. One potential advantage of direct U.S. communication with the LTTE, had it occurred, would have been the ability of the U.S. to hear LTTE."

US support to IMF's Sri Lanka loan illegal—Prof. Boyle

[TamilNet, Thursday, 19 March 2009, 00:17 GMT]

"Concerning the proposed loan to Sri Lanka by the International Monetary Fund, United States domestic law makes it quite clear that the Obama Administration is obligated to oppose the loan. And given the weighted voting system for the IMF Board of Directors, a United States vote against the loan would be tantamount to a veto," said Prof. Boyle, Professor at Illinois College of Law, adding, "for the Obama Administration to violate the Statute [22 USC 262d] and vote in favor of the proposed IMF loan to support the GoSL's 'policy goals' would render the United States government 'complicit' with Sri Lanka's genocide."

Meg Lundsager who spent several years with the Treasury department in various capacities and also served as a member of the National Security Council staff, was confirmed by the US Senate in April 2007, and is now the official US Executive Director at the IMF. In the weighted voting arrangement of the IMF, US holds 16.77% of votes.

Title 22 of the United States Code, Chapter 7, Section 262d, "Human Rights and United States Assistance policies with international financial institutions" says quite clearly in relevant part:

> (a) Policy goals
>
> The United States government, in connection with its voice and vote in...the International Monetary Fund shall advance the cause of human rights, including by seeking to channel assistance towards countries other than those whose governments engage in—
>
> (1) a pattern of gross violations of internationally recognized human rights, such as torture or cruel, inhumane, or degrading treatment or punishment, or prolonged detention without charges, or other flagrant denial to life, liberty, and the security of person....

"Most Human Rights Organizations, including and especially Human Rights Watch and Amnesty International, have determined that the Government of Sri Lanka (GoSL) has historically perpetrated 'a

pattern of gross violations of internationally recognized human rights' against the Tamil population living there, including and especially the 300, 000 Tamils now besieged and subjected to genocide, crimes against humanity and war crimes by the GoSL Army in Vanni," Prof. Boyle asserts.

Furthermore, subsection (f) of the above statute mandates:

> "(f) Opposition by United States Executive Directors of institutions to financial or technical assistance to violating countries
>
> The United States Executive Directors of the institutions listed in subsection (a) of this section {which includes the IMF} are authorized **AND INSTRUCTED** to oppose any loan, any extension of financial assistance, or any technical assistance to any country described in subsection (a)(1) or (2) of this section, unless such assistance is directed specifically to programs which serve the basic human needs of the citizens of such country." [Emphasis added.]

"It is also clear from the IMF's own statement that the proposed IMF loan to GoSL will NOT be used to 'serve the basic human needs of the citizens of such country,' but in fact will be used to support 'the government's policy goals': 'IMF spokesman David Hawley said the loan funds would be used for "the government's policy goals."'

"Of course the GoSL 'policy goals' currently include waging warfare, war crimes, crimes against humanity and genocide against the Tamils, including and especially the 300,000 Tamil Civilians now besieged by the GoSL Army in Vanni," says Prof. Boyle.

UN Rights chief, Navi Pillay recently said that "[c]ertain actions being undertaken by the Sri Lankan military and by the LTTE [Tigers] may constitute violations of international human rights and humanitarian law," and RSF and HRW reports allege that Sri Lanka has committed war crimes.

Prof. Boyle adds: "Consequently the Obama Administration is **MANDATED** by this law to vote against the proposed IMF loan to Sri Lanka. Indeed, for the Obama Administration to violate this Statute and vote in favor of the proposed IMF loan to support the GoSL's 'policy goals' would render the United States government 'complicit' with Sri Lanka's genocide, crimes against humanity, and war crimes against the Tamils, including and especially the 300,000 Tamils currently besieged by the GoSL Army in Vanni, in violation of Genocide Convention Article III (e) and the Four Geneva Conventions of 1949, as well as the U.S. Genocide Convention Implementation Act and the U.S. War Crimes Act.

"Therefore we must prevent this from happening by mobilizing as much public pressure as possible upon the Obama Administration to vote

against this proposed IMF loan to the GoSL, which would be tantamount to a veto. In addition, for similar legal reasons, all people of good faith and good will around the world must pressure their governments to vote against the proposed IMF loan to Sri Lanka," appeals Prof. Boyle.

AFP in a report Wednesday on Sri Lanka's bailout talks with IMF said: "The island turned to the International Monetary Fund after pouring an unprecedented 1.6 billion dollars into financing the military drive against Tamil Tiger rebels that the government says it is close to winning. Economists say the economic woes caused by the high defence spending have been compounded by the global economic meltdown and the government's policy of halting privatisation of state-run enterprises," further clarifying that the reason for loan request is the expenditure due to the "genocidal" war against the Tamils.

Boyle warns UN repeating Srebrenica debacle in Vanni

[TamilNet, Monday, 16 March 2009, 03:41 GMT]

Pointing out that "in 1995 the United Nations Organization as a whole was fully complicit in Serbia's genocidal massacre of 8000 Bosnian Muslim men and boys at Srebrenica in violation of Article III (e) of the 1948 Genocide Convention that prohibited, criminalized and required the punishment of: 'Complicity in genocide'," Professor Francis Boyle, an expert in international law and a professor at Illinois College of Law, said that it looks as if "the United Nations is now repeating one of the most shameless and disgraceful debacles in its entire history in today's Vanni Pocket by becoming complicit in Sri Lanka's genocide against the Tamils there."

"Indeed, at the time Srebrenica was designated a United Nations 'safe area' supposedly under the protection of the United Nations Security Council, whose member states refused to lift even one finger to save these Bosnians from Serbian genocide," says Prof. Boyle who 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 the rump Yugoslavia to cease and desist from committing all acts of genocide against the Bosnians.

Professor Boyle pointed to the Inner City Press (ICP) report which stated that "[t]he UN on Monday acknowledged that it is funding camps in Sri Lanka from which people cannot leave."

ICP has been asking for two weeks at the UN whether international aid funds will be used for detention camps in which those fleeing the conflict zone in Sri Lanka will be detained, until the end of 2009 or longer. Holmes confirmed that the UN has "offered to assist transit camps" or "semi-permanent camps," and as to funding as so far "make no links between the two."

U.N. human rights chief warned Friday that "civilian casualties could reach "catastrophic" proportions if the two sides do not suspend their fighting," and that the Sri Lankan military and the Tamil rebels may have committed war crimes.

Pillay also said the "army has repeatedly shelled inside safe 'no-fire' zones set up for the civilians, and that 'a range of credible sources' showed that more than 2,800 civilians had been killed and more than 7,000 wounded since January 20."

Stopping Sri Lanka's genocide at ICJ, UN— Prof. Boyle

[TamilNet, Wednesday, 11 March 2009, 12:14 GMT]

"Any one or more of the 140 states parties to the Genocide Convention (1) must immediately sue Sri Lanka at the International Court of Justice in The Hague; (2) must demand an Emergency Hearing by the World Court; and (3) must request an Order indicating provisional measures of protection against Sri Lanka to cease and desist from committing all acts of genocide against the 350,000 Tamils in Vanni," says Professor Francis Boyle, an expert in international law and a professor at University of Illinois College of Law, outlining the steps for the Tamil diaspora to take to bring Sri Lanka to International Court of Justice (ICJ).

How to Stop Genocide by Sri Lanka Against the Tamils at the International Court of Justice and the U.N. Security Council

*On 8 April 1993 and 13 September 1993 the author single-handedly 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 the rump Yugoslavia to cease and desist from committing all acts of genocide against the Bosnians.**

Today the Government of Sri Lanka (GoSL) has trapped three hundred and fifty thousand Tamils in a forty square mile area of the Vanni region where it is mercilessly, deliberately, and systematically exterminating them by means of artillery shells, cluster bombs, rockets, jet fighters, tanks, and other weapons of mass and indiscriminate slaughter. The GoSL Defense Minister Rajapaksa has determined that this entire area now inhabited by 350,000 Tamils is nothing more than a free fire-zone in violation of the most fundamental requirements of International Humanitarian Law. The GoSL defense minister has ordered all doctors and medical personnel out of Vanni on pain of being murdered by the GoSL army, including the International Committee of the Red Cross. The GoSL defense minister has also compiled a death list of Tamil civilians to be massacred in Vanni. If the states of the world do not act immediately and effectively to stop GoSL, they will soon be witnessing serial massacres of Tamils along the lines of Srebrenica, Sabra and Shatilla, Rwanda, and Kosovo.

Article I of the 1948 Genocide Convention requires all 140 states parties to immediately act in order "to prevent" this ongoing GoSL genocide against the Tamils. One of the most important steps the 140 contracting states parties to the Genocide Convention must take in order to fulfill their obligation under Article I is to sue Sri Lanka at the International Court of Justice in The Hague (the so-called World Court) for

* See Appendix I below.

violating the 1948 Genocide Convention on the basis of Article IX thereto: "Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

Any one or more of the 140 states parties to the Genocide Convention:

1. must immediately sue Sri Lanka at the International Court of Justice in The Hague;

2. must demand an Emergency Hearing by the World Court; and

3. must request an Order indicating provisional measures of protection against Sri Lanka to cease and desist from committing all acts of genocide against the 350,000 Tamils in Vanni.

Such a World Court Order is the international equivalent to a domestic temporary restraining order and injunction. Once issued by the World Court, this Order would be immediately transmitted to the United Nations Security Council for enforcement under U.N. Charter article 94(2). So far the member states of the United Nations Security Council have failed and refuse to act in order to do anything to stop the GoSL's genocide against the Tamils

1. despite the fact that the situation in Vanni constitutes a "threat to the peace" that requires Security Council action under article 39 of the United Nations Charter and

2. despite the fact that they are all obligated "to prevent" Sri Lanka's genocide against the Tamils under article I of the Genocide Convention. This World Court Order will put the matter on the Agenda of the Security Council and force the Security Council to take action in order "to prevent" the ongoing genocide against the Tamils by Sri Lanka.

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 Sri Lanka and its legal predecessor Ceylon have committed genocide against the Hindu/Christian Tamils that actually started on or about 1948 and has continued apace until today and is now accelerating in Vanni in violation of Genocide Convention Articles II(a), (b), and (c).

For at least the past four decades, the Sinhala-Buddhist Ceylon/Sri Lanka has 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 Hindu/Christian Tamils. This Sinhala-Buddhist Ceylon/ Sri Lanka campaign has consisted of killing members of the Hindu/ Christian 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 Hindu/Christian Tamils in violation of Genocide Convention Article II(b). This Sinhala-Buddhist Ceylon/Sri Lanka campaign has also deliberately inflicted on the Hindu/Christian Tamils conditions of life calculated to bring about their physical destruction in substantial part in violation of Article II(c) of the Genocide Convention.

Since 1983 the Sinhala-Buddhist Sri Lanka have exterminated approximately 70,000 Hindu/Christian Tamils. The Sinhala-Buddhist Sri Lanka have now added another 350,000 Hindu/Christian Tamils in Vanni to their genocidal death list. Time is of the essence!

Humanity needs one state party to the Genocide Convention to fulfill its obligation under article I thereof to immediately sue Sri Lanka at the World Court in order to save the 350,000 Tamils in Vanni from extermination. The ghosts of Dachau, Auschwitz, Cambodia, Sabra and Shatilla, Srebrenica, Rwanda, and Kosovo demand no less.

Evacuation would constitute U.S. "complicity in genocide"—Prof Boyle

[TamilNet, Tuesday, 10 March 2009, 05:59 GMT]

"For the United States government to 'evacuate' Tamils from Vanni and then turn them over to the genocidal Government of Sri Lanka would constitute 'Complicity in genocide' by the United States to the genocide that GoSL is currently inflicting on the Tamils in violation of Genocide Convention Article III (e) and the United States's own Genocide Convention Implementation Act as amended. Such a turn-over could very well create personal criminal responsibility for United States government officials involved in this process under both international criminal law and United States domestic criminal law," warns Prof. Boyle, an expert in international law and a professor at University of Illinois College of Law.

In a note sent to TamilNet, Prof Boyle adds: "The United States government is a party to the 1948 Genocide Convention, which has been implemented as internal United States domestic criminal law by means of the Genocide Convention Implementation Act as currently amended. Article III (e) of the Genocide Convention prohibited, criminalized and requires the punishment of 'Complicity in genocide.'"

Note that the 2007 Genocide Accountability Act (GAA) amended the Genocide Convention Implementation Act of 1987 signed by President Ronald Reagan.

An article that appeared in *Telegraph* edition of 8th March said that "[t]he Obama administration will sound out foreign secretary Shiv Shankar Menon on Monday on India's support for a US-led invasion of Sri Lanka to evacuate nearly 200,000 Tamil civilians trapped inside territory controlled by the Liberation Tigers of Tamil Eelam with precariously declining stocks of food or medicine.

"'We had some people there to look at the situation to identify what the possibilities might be. We would do whatever we can to help these people,' assistant secretary of state for South and Central Asian affairs Richard Boucher told a group of South Asian journalists yesterday," the *Telegraph* report added.

Forced starvation constitutes an act of Genocide—Prof. Boyle

[TamilNet, Friday, 06 March 2009, 04:53 GMT]

Commenting on recent reports that Colombo is withholding food supplies forcing into starvation the more than 300,000 Tamil civilians trapped in the war-zone, Prof. Boyle, an expert in international law and a professor at University of Illinois College of Law, in a note sent to TamilNet said, "[I]n the context of longstanding Sri Lankan genocide against the Tamils, this recent GoSL atrocity also constitutes an act of genocide as defined, prohibited and criminalized by Genocide Convention Article II (c):'Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.'

"The United States government has an obligation to prosecute U.S. Citizen Defense Minister Rajapaksa and U.S. Resident General Fonseka for violating the Genocide Convention Implementation Act and the U.S. War Crimes Act," Prof. Boyle added.

Boyle quoted sections of the 1949 Geneva Conventions to substantiate his claim, saying: "Additional Protocol I of 1977 to the Four Geneva Conventions of 1949 provides in relevant part as follows: Article 54.-Protection of objects indispensable to the survival of the civilian population:

1. Starvation of civilians as a method of warfare is prohibited.

2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.....

"This basic rule of International Humanitarian Law constitutes customary international law, the violation of which is a war crime," Boyle added.

Britain trying to dodge obligations to prevent Genocide of Tamils—Prof. Boyle

[TamilNet, Monday, 02 March 2009, 04:05 GMT]

Commenting on British Foreign Secretary David Miliband's statement in the British Parliament that "a failed [UN] resolution—one that faces a veto—is worse than no resolution at all," Prof Boyle, an expert in international law and a professor at University of Illinois College of Law, said that "Uniting for Peace Resolution of 1950" allows a vetoed resolution to be turned over to United Nations General Assembly for action. "The General Assembly can and must do the same with respect to the genocidal plight of the Tamils in Sri Lanka [...] Britain is simply trying to dodge its own obligation under Article I of the Genocide Convention 'to prevent' the genocide against the Tamils by Sri Lanka," Prof Boyle added.

The British Foreign Secretary David Miliband was questioned in the British Parliament Wednesday by Liberal Democrat MP Edward Davey as to why Britain's representative in UN earlier failed to support a briefing on Sri Lanka while ministers in London call for ceasefire.

Miliband replied: "I am sorry to hear the Hon. Gentleman talk in that way, because he knows that a failed resolution—one that faces a veto—is worse than no resolution at all, and it would strengthen precisely the forces that he and I oppose. I can assure him that our diplomats, whether in New York or in the region, are all working off the same script, which is one that has been set by the Prime Minister and me."

Professor Boyle said "[w]ith all due respect to the British Foreign Secretary, this statement is double-talk and he must know it. Under the terms of the U.N.'s Uniting for Peace Resolution of 1950, in the event one or more permanent members were to exercise a veto at the United Nations Security Council concerning a matter related to international peace and security, the matter can then be turned over to the United Nations General Assembly for action.

"Thereunder the General Assembly can take effective action by means of a two-thirds vote. The United Nations General Assembly has repeatedly acted under the Uniting for Peace Resolution with respect to the genocidal plight of the Palestinians.*

"The General Assembly can and must do the same with respect to the genocidal plight of the Tamils in Sri Lanka. Invoking the Uniting for Peace Resolution is the well-known way to overcome threatened vetoes by Russia and China. Britain is simply trying to dodge its own obligation under Article I of the Genocide Convention 'to prevent' the genocide against the Tamils by Sri Lanka, Professor Boyle said in a note sent to TamilNet.

---

* *See* Francis A. Boyle, *Breaking All the Rules* 31-32 (2008).

Britain legally obliged to prevent Genocide in Sri Lanka: Prof. Boyle

[TamilNet, Thursday, 26 February 2009, 20:27 GMT]

Since the British Foreign Minister has now publicly admitted on behalf of his Government that Government of Sri Lanka (GoSL) is "quite prepared to go ahead with acts of genocide," then under Article I of the Genocide Convention, the British government has a legal obligation "to prevent" this expected genocide of the Tamils by GoSL, said Professor Boyle, professor of international law at the University of Illinois College of Law, in a note sent to TamilNet.

"Britain also has domestic implementing legislation for the Genocide Convention that leads to the same legal conclusion," Prof. Boyle added.

Reporting from the transcript of the discussion on Sri Lanka in Parliament from Hansard, TamilNet earlier said, "Britain's Foreign Secretary, David Miliband, agreed Tuesday with parliamentarians who said that the Sri Lankan government is 'quite prepared to go ahead with acts of genocide.'

"Responding to Mr. Elfyn Llwyd, MP, Mr. Miliband said 'the resolution of [a] terrorist problem cannot be achieved at the expense of the rights of minority communities in Sri Lanka, and that is what we are trying to work on.' Britain was encouraging Sri Lanka's government to work with London's newly appointed Special Envoy to Sri Lanka, former defence minister and Secretary of State for Scotland, Des Browne, the Foreign Secretary said."

India legally obliged to prevent GoSL's genocide against Tamils—Prof. Boyle

[TamilNet, Thursday, 05 February 2009, 05:02 GMT]

Emphasizing that under Common Article 1 to the Four Geneva Conventions of 1949, India has the obligation "to respect and to ensure respect" for these Conventions "in all circumstances," Professor Francis Boyle, professor of international law at the University of Illinois College of Law, in a communiqué sent to TamilNet says, "India must demand that the United States government prosecute Rajapaksa immediately for violating the U.S. Genocide Convention Implementation Act as well as the U.S. War Crimes Act," and appeals to the Tamils worldwide and people of good faith and goodwill to mobilize behind the legal agenda set forth above [in the communique] and to pressure the Governments of India and the United States to fulfill their solemn obligations under the Genocide Convention and the Four Geneva Conventions of 1949.

Full text of the communiqué follows:

> The Government of Sri Lanka (GoSL) is currently inflicting acts of genocide against the Tamils in violation of the 1948 Genocide Convention, and war crimes against them in violation of the Four Geneva Conventions of 1949. India is a party to all five of these Conventions. Therefore, under Article 1 of the Genocide Convention India has an obligation to do everything in its power "to prevent" GoSL's genocide against the Tamils.
>
> Furthermore, under Common Article 1 to the Four Geneva Conventions of 1949, India has the obligation "to respect and to ensure respect" for these Conventions "in all circumstances." This requirement means that India has an obligation to prevent the GoSL from inflicting war crimes against the Tamils. Similar principles of analysis likewise apply to all 140 states that are parties to the Genocide Convention and to all states that are parties to the Four Geneva Conventions, which is almost every state in the world.
>
> In addition, as the original homeland for the Tamils, India has the right, the obligation, and the standing under international law to act as *parens patriae* for the Tamils in Sri Lanka. Therefore, India must immediately sue the GoSL for

genocide at the International Court of Justice in The Hague, demand an Emergency Hearing of the Court, and request that the World Court issue a Temporary Restraining Order against the GoSL to cease and desist from committing all acts of genocide against the Tamils. Time is of the essence!

GoSL Defense Minister Rajapaksa has determined that a quarter-million Tamils are nothing more than a free-fire zone, which constitutes an act of genocide as well as a war crime. Since he is a United States Citizen, India must demand that the United States government prosecute Rajapaksa immediately for violating the U.S. Genocide Convention Implementation Act as well as the U.S. War Crimes Act. Under Article 1 of the Genocide Convention the United States government has an obligation "to prevent and to punish" genocide. This treaty obligation requires the United States government to institute criminal proceedings against U.S. Citizen Rajapaksa in order "to punish" his genocide against the Tamils.

India must use its newly founded special relationship with the United States government to do just that. Both the United States and India have a joint and several obligation "to prevent" the GoSL from committing genocide against the Tamils and "to punish" U.S. Citizen Rajapaksa for committing genocide against the Tamils. The Four Geneva Conventions also require that India demand that the United States government prosecute U.S. Citizen Rajapaksa for violating the U.S. War Crimes Act, which the United States government is obligated to do under both the Geneva Conventions and that Act.

I call upon all Tamils around the World and all people of good faith and good will to mobilize behind the legal agenda set forth above and to pressure the Governments of India and the United States (as well as your own Governments) to fulfill their solemn obligations under the Genocide Convention and the Four Geneva Conventions of 1949.

As an internationally recognized expert, Professor Boyle serves as counsel to Bosnia and Herzegovina. On 8 April 1993 and 13 September 1993 the author single-handedly won two World Court Orders overwhelmingly in favor of the Republic of Bosnia and Herzegovina against the rump Yugoslavia to cease and desist from committing all acts of genocide against the Bosnians.

A scholar in the areas of international law and human rights, Professor Boyle received a J.D. degree, and A.M. and Ph.D. degrees in

political science from Harvard University. Prior to joining the faculty at the College of Law, he was a teaching fellow at Harvard and an associate at its Center for International Affairs.

Gotabaya should be prosecuted for Genocide, war crimes—Prof. Boyle

[TamilNet, Tuesday, 03 February 2009, 22:47 GMT]

Commenting on the interview to the BBC and to the Sky TV by Sri Lanka's Defence Secretary, Professor Francis Boyle, professor of international law at the University of Illinois College of Law, told TamilNet that "the deliberate targeting of Hospitals and Civilians by the Government of Sri Lanka (GoSL) violates the Geneva Conventions and is thus a war crime," and that "as a United States Citizen, Defense Secretary Rajapaksa, should be prosecuted by the United States government for violating the US Genocide Convention Implementation Act and the US War Crimes Act."

Full text of the comment by Prof Boyle follows:

> The deliberate targeting of Hospitals and Civilians by the Government of Sri Lanka (GoSL) violates the Geneva Conventions and is thus a war crime.
>
> The GoSL Defense Secretary Rajapaksa has publicly admitted that they have turned the Tamil North of the country into a so-called free-fire zone, which is clearly illegal and criminal under International Humanitarian Law.
>
> It is the culmination of the long-standing GoSL policy to inflict genocide upon the Tamils in violation of the 1948 Genocide Convention, to which Sri Lanka is a contracting party. As a United States Citizen Defense Secretary Rajapaksa should be prosecuted by the United States government for violating the US Genocide Convention Implementation Act and the US War Crimes Act.

As an internationally recognized expert, Professor Boyle serves as counsel to Bosnia and Herzegovina. He also represents two associations of citizens within Bosnia and has been instrumental in developing the indictment against Slobodan Milosevic for committing genocide, crimes against humanity, and war crimes in Bosnia and Herzegovina. A scholar in the areas of international law and human rights, Professor Boyle received a J.D. degree, and A.M. and Ph.D. degrees in political science from Harvard University. Prior to joining the faculty at the College of Law, he was a teaching fellow at Harvard and an associate at its Center for International Affairs.

Francis Boyle took the case of Bosnia to the International Court of Justice in The Hague in 1993, winning two Orders for provisional measures of protection against the rump Yugoslavia in favor of Bosnia and Herzegovina.

APPENDIX I

TRYING TO STOP AGGRESSIVE WAR AND GENOCIDE AGAINST THE PEOPLE AND THE REPUBLIC OF BOSNIA AND HERZEGOVINA

by

Francis A. Boyle

Professor of International Law

4 April 1997

There are numerous accounts of the aggression and genocide perpetrated by the rump Yugoslavia and its Bosnian Serb surrogates against the People and the Republic of Bosnia and Herzegovina that have been written by journalists, historians, ambassadors, political scientists, and others. This paper tries to tell the story of Bosnia from the perspective of international law. The aggression and genocide against Bosnia and the refusal of the international community to stop it will prove to be one of the pivotal events of the post World War II era. This paper will try to explain what happened, why it happened, and, most importantly, what was wrong with what happened.

It is hoped that this analysis will prove useful to the People of Bosnia and Herzegovina as they struggle to reconstruct their lives and their State. Hopefully, a record of what happened in the past will provide the Bosnian People with a guide for the direction of their future. Concerning the utility of this study for the rest of the world, as George Santayana has said: "Those who cannot remember the past are condemned to repeat it."

On March 19, 1993, this author was appointed General Agent with Extraordinary and Plenipotentiary Powers "to institute, conduct and defend against any and all legal proceedings" for the Republic of Bosnia and Herzegovina before the International Court of Justice by His Excellency President Alija Izetbegovic while attending the so-called Vance-Owen negotiations in New York. The very next day the author instituted legal proceedings on behalf of the Republic of Bosnia and Herzegovina before the International Court of Justice in The Hague against the rump Yugoslavia for violating the 1948 Genocide Convention. On April 8, 1993, the author won an Order for provisional measures of protection from the World Court against the rump Yugoslavia that was overwhelmingly in favor of Bosnia and Herzegovina.

Generally put, the World Court ordered the rump Yugoslavia immediately to cease and desist from committing all acts of genocide in the Republic of Bosnia and Herzegovina, whether directly or indirectly by means of its

surrogate Bosnian Serb military, paramilitary, and irregular armed units:

52. For these reasons,

The COURT,

Indicates, pending its final decision in the proceedings instituted on 20 March 1993 by the Republic of Bosnia and Herzegovina against the Federal Republic of Yugoslavia (Serbia and Montenegro), the following provisional measures:

A. (1) Unanimously,

The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide;

(2) By 13 votes to 1,

The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should in particular ensure that any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, do not commit any acts of genocide, of conspiracy to commit genocide, of direct and public incitement to commit genocide, or of complicity in genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethnical, racial or religious group;

IN FAVOUR: President Sir Robert Jennings; Vice-President Oda; Judges Ago, Schwebel, Bedjaoui, Ni, Evensen, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Ajibola;
AGAINST: Judge Tarassov;

B. Unanimously,

The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Government of the Republic of Bosnia and Herzegovina should not take any action and should ensure that no action is taken which

> may aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide, or render it more difficult of solution.

In his Declaration attached to the World Court's Order of 8 April 1993, the late Judge Tarassov from Russia provided a most authoritative interpretation of Paragraph 52A(2) of the Court's Order:

> ...In my view, these passages of the Order are open to the interpretation that the Court believes that the Government of the Federal Republic of Yugoslavia is indeed involved in such genocidal acts, or at least that it may very well be so involved. Thus, on my view, these provisions are very close to a pre-judgment of the merits, despite the Court's recognition that, in an Order indicating provisional measures, it is not entitled to reach determinations of fact or law...

As I told the world's news media from the floor of the Great Courtroom of the Peace Palace in The Hague immediately after the close of the World Court's proceedings wherein this Order was handed down, I fully agreed with Judge Tarassov in the following sense: This Order was indeed a pre-judgment on the merits that genocide had been inflicted by the rump Yugoslavia against the People and the Republic of Bosnia and Herzegovina, both directly and indirectly by means of its surrogates in the Bosnian Serb military, paramilitary, and irregular armed units.

The unanimous ruling in Paragraph 52A(1) indicated that the World Court believed there was more than enough evidence to conclude that the rump Yugoslavia itself had inflicted genocide against the People and the Republic of Bosnia and Herzegovina. The 13 to 1 ruling in Paragraph 52A(2) indicated that the World Court believed there was more than enough evidence to conclude that the rump Yugoslavia was legally responsible for the atrocities inflicted by the Bosnian Serb military, paramilitary, and irregular armed forces against the People and the Republic of Bosnia and Herzegovina. The 13 to 1 ruling in Paragraph 52A(2) also indicated that the World Court believed that there was more than enough evidence to conclude that these surrogate Bosnian Serb military, paramilitary, and irregular armed forces had inflicted acts of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and complicity in genocide, against the People and the Republic of Bosnia and Herzegovina.

As the Lawyer for the entire Republic of Bosnia and Herzegovina and for all of its People, I had expressly asked the World Court to protect all of the national, ethnical, racial and religious groups in Bosnia from acts of genocide perpetrated by the rump Yugoslavia and by its surrogate Bosnian Serb military, paramilitary, and irregular armed forces, which the World Court did do in Paragraph 52A(2) of this Order. Of course, the first

and foremost victims of this genocide were the Bosnian Muslims, but also came those Bosnian Croats, those Bosnian Serbs and those Bosnian Jews who supported the Republic of Bosnia and Herzegovina. However, most of the evidence of genocide that I submitted to the World Court concerned acts of genocide against Bosnia's Muslim population, to which the Bosnian Parliament awarded the name "Bosniaks." So the World Court went out of its way to protect by name "the Muslim population of Bosnia and Herzegovina" from acts of genocide by the surrogate Bosnian Serb military, paramilitary, and irregular armed forces in Paragraph 52A(2) of this 8 April 1993 Order.

Only the late Judge Tarassov from Russia objected to this express protection of Bosnian Muslims by name in his separate Declaration: "The lack of balance in these provisions is the clearer in view of the way in which the Court has singled out one element of the population of Bosnia and Herzegovina." Once again, I agree with Judge Tarassov in the sense that the overwhelming weight of the evidence did indeed call for the World Court to protect the Bosnian Muslims from genocide expressly by name. This entire World Court Order of 8 April 1993 was so completely unbalanced against the rump Yugoslavia and its surrogate Bosnian Serb military, paramilitary, and irregular armed forces because the evidence of their genocide against the People and the Republic of Bosnia and Herzegovina and, in particular, against the Bosnian Muslims, was so overwhelming.

The unanimous World Court ruling in Paragraph 52B was also a victory for the People and the Republic of Bosnia and Herzegovina. I had expressly asked the World Court to impose this protective measure upon both Bosnia and the rump Yugoslavia, which the Court did indeed do. My calculation was that the rump Yugoslavia would definitely violate this measure, whereas Bosnia would obey it. I felt it would be difficult to imagine how the victim of genocide could aggravate or extend the dispute over genocide with the perpetrator of genocide, or render that dispute more difficult of solution.

By voluntarily asking for the imposition of this measure upon both Bosnia and the rump Yugoslavia, I intended to entangle the rump Yugoslavia into a full-scale breach and open defiance of the most comprehensive World Court Order that I could obtain. This is exactly what happened. The rump Yugoslavia paid absolutely no attention whatsoever to the entirety of this 8 April 1993 Order. Whereas, by comparison, Bosnia obeyed this self-imposed requirement of Paragraph 52B not to aggravate or extend the dispute over genocide, or render it more difficult of a solution.

By means of obtaining the measure set forth in Paragraph 52B, *inter alia*, I intended to prepare the groundwork for harsher Security Council sanctions against the rump Yugoslavia. I also hoped to pave the way for a then already anticipated second round of provisional measures at the World Court in which I intended to expand the basis of my original Application/complaint against the rump Yugoslavia beyond the fixed parameters of the 1948 Genocide Convention. I needed to do that in order to break the genocidal arms embargo against Bosnia and also to stop the proposed

racist carve-up of the Republic pursuant to the so-called Vance-Owen Plan, and then later, its successor, the genocidal Owen-Stoltenberg Plan.

By issuing this Order on 8 April 1993 the World Court necessarily and overwhelmingly rejected the bald-faced lies put forward by the rump Yugoslavia's Lawyer Shabtai Rosenne from Israel, that the bloodshed in Bosnia was the result of a civil war for which the rump Yugoslavia was in no way responsible. The World Court also overwhelmingly rejected Rosenne's argument that President Izetbegovic was not the lawful President of the Republic and therefore could not lawfully institute this lawsuit against the rump Yugoslavia and appoint me as Bosnia's Lawyer to argue this genocide case before the World Court. The World Court also overwhelmingly rejected Rosenne's request that provisional measures along the lines of those found in Paragraphs 52A(1) and (2) be imposed upon Bosnia because there was no evidence that the Government of the Republic of Bosnia and Herzegovina had committed genocide against anyone. Many of these so-called issues are still misrepresented by the rump Yugoslavia and its supporters around the world today despite the fact that they were decisively resolved by the World Court as long ago as 8 April 1993.

The World Court's Order of 8 April 1993 was an overwhelming and crushing defeat of the rump Yugoslavia by Bosnia on all counts save one: The World Court said nothing at all about the arms embargo, apparently because the Genocide Convention itself says nothing at all about the use of force to prevent genocide. Nevertheless, in this regard, the World Court did state quite clearly in Paragraph 45 of its 8 April 1993 Order that in accordance with the requirements of Article I of the Genocide Convention "...all parties to the Convention have thus undertaken 'to prevent and to punish' the crime of genocide..." The implication was quite clear that in the opinion of the World Court all 100+ states that were parties to the Genocide Convention had an absolute obligation "to prevent" the ongoing genocide against Bosnia. Therefore, although technically the World Court directed its 8 April 1993 Order against the rump Yugoslavia, the Court was telling every other state in the world community that each had an obligation "to prevent" the ongoing genocide against the People and the Republic of Bosnia and Herzegovina.

The World Court continued in Paragraph 45 with the following language: "...whereas in the view of the Court, in the circumstances brought to its attention and outlined above in which there is a *grave risk* of acts of genocide being committed..." (Emphasis added.) In other words, the World Court went as far as it could consistent with its Rules of Procedure toward definitively ruling that acts of genocide were actually being committed by the rump Yugoslavia and its surrogate Bosnian Serb armed forces against the People and the Republic of Bosnia and Herzegovina. At the time, this "grave risk of acts of genocide" language set forth in Paragraph 45 of the 8 April 1993 Order was as close as the World Court could go to rendering a pre-judgment on the merits of the dispute, as pointed out by the late Judge Tarassov in his Declaration.

Several hours after I had won this World Court Order for Bosnia, on 8 April 1993 the Clinton administration announced the imposition by NATO of a complete air interdiction zone above the Republic of Bosnia and Herzegovina whereby NATO jet fighters would shoot down any Serb jets, planes, and helicopters. The Serbs were no longer able to kill the Bosnians from the sky! Late that evening Hague time I was interviewed live by the BBC and asked to give my opinion on this so-called "no-fly zone" over Bosnia that was announced earlier in the day from Washington, D.C.: "...I certainly hope that the NATO pilots do not fly over Bosnia, watch the genocide, rape, murder, torture and killing go on, take pictures, send them back to NATO Headquarters, Washington, London and Paris, and then do nothing to stop it!" Yet, most tragically of all, that is exactly what happened until the Fall of 1995.

In accordance with its own terms, an original copy of this 8 April 1993 Order was transmitted "to the Secretary-General of the United Nations for transmission to the Security Council." In other words, the World Court officially informed the member states of the U.N. Security Council (1) that genocide was currently being inflicted by the rump Yugoslavia and its surrogate Bosnian Serb armed forces against the People and the Republic of Bosnia and Herzegovina; and also (2) that the member states of the Security Council had an absolute obligation under the Genocide Convention "to prevent" this ongoing genocide against Bosnia. According to Article 94(2) of the United Nations Charter, the Security Council is supposed to enforce such World Court Orders.

As I had anticipated, the rump Yugoslavia paid absolutely no attention whatsoever to the World Court's 8 April 1993 Order, and immediately proceeded to violate each and every one of its three provisional measures. But instead of punishing the rump Yugoslavia, the Security Council's Permanent Members—the United States, Britain, France, Russia, and China—decided to punish Bosnia, the victim, by imposing upon it the so-called Owen-Stoltenberg Plan as the successor to the Vance-Owen Plan, which had been rejected by the so-called Bosnian Serb Parliament. The Owen-Stoltenberg Plan would have carved-up the Republic of Bosnia and Herzegovina into three ethnically based mini-states, destroyed Bosnia's Statehood, and robbed Bosnia of its Membership in the United Nations Organization. Furthermore, in accordance with an internal study prepared by the United States Department of State, this proposed tripartite partition of Bosnia would have subjected approximately 1.5 to 2 million *more* Bosnians to "ethnic cleansing," which I had already argued to the World Court was a form of genocide.

Therefore, soon after my return from The Hague, the author set out to break the genocidal arms embargo against Bosnia and to stop this genocidal carve-up of the Republic of Bosnia and Herzegovina by drafting a Second Request for Provisional Measures of Protection to the International Court of Justice on behalf of Bosnia. Pursuant thereto, on July 26, 1993, the author spent the day at United Nations Headquarters in New York with

Ambassador Muhamed Sacirbey of the Republic of Bosnia and Herzegovina, publicly briefing large numbers of Ambassadors, as well as privately briefing the Non-Aligned member states of the Security Council and the then President of the Council Ambassador Diego Arias from Venezuela, about this Second Request to the International Court of Justice for an Interim Order of Protection on behalf of the Republic of Bosnia and Herzegovina. In that location and on that day, as Bosnia's Lawyer I publicly threatened to sue the Permanent Members of the Security Council over the arms embargo, with Ambassador Sacirbey sitting at my side. As I said at that time and place, the Security Council's arms embargo against the Republic of Bosnia and Herzegovina had aided and abetted genocide against the Bosnian People.

The five Permanent Members of the Security Council--United States, United Kingdom, Russia, France, China--bear special responsibility for aiding and abetting genocide against the People and the Republic of Bosnia and Herzegovina in violation of the 1948 Genocide Convention. I would have been happy to have sued the Permanent Members of the Security Council for Bosnia, and had offered to do so on more than one occasion to the Bosnian Presidency. The same condemnation can be applied as well to all those U.N. member states that had served on the Security Council from 1992 through 1995 and had routinely supported the continuation of this genocidal arms embargo against Bosnia.

That evening, the author flew to The Hague and filed this Second Request for Interim Protection at the World Court on 27 July 1993. The very next day, 28 July 1993, the author flew to Geneva in order to serve as the Legal Adviser to President Alija Izetbegovic, then Foreign Minister (later Prime Minister) Haris Silajdic,* and all of the Members of the collective Presidency of the Republic of Bosnia and Herzegovina during the so-called Owen-Stoltenberg negotiations. There I personally disrupted the Owen-Stoltenberg Plan to carve-up the Republic into three pieces, to destroy Bosnia's Statehood, and to rob Bosnia of its Membership in the United Nations Organization. In addition, President Izetbegovic had also instructed me to negotiate in good faith over the so-called "package" of proposed documents with David Owen and his lawyer Paul Szasz. The author served in that capacity until August 10, 1993, when the talks had broken down. The author then returned home in order to prepare for Bosnia's second oral argument before the World Court.

The author then argued the Second Request for provisional measures of protection for Bosnia and Herzegovina before the World Court on 25 and 26 August 1993. The author then won the Second Order of Provisional Protection on behalf of Bosnia from the World Court on 13 September 1993. Generally put, this second World Court Order demanded that the Court's first Order of 8 April 1993 "should be immediately and effectively implemented":

*Now Bosnian President.

61. For these reasons,
THE COURT
(1) By 13 votes to 2,
Reaffirms the provisional measure indicated in paragraph 52 A (1) of the Order made by the Court on 8 April 1993, which should be immediately and effectively implemented;

IN FAVOUR: President Sir Robert Jennings; Vice-President Oda; Judges Schwebel, Bedjaoui, Ni, Evensen, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ajibola, Herczegh; Judge ad hoc Lauterpacht;
AGAINST: Judge Tarassov; Judge ad hoc Kreca;

(2) By 13 votes to 2,
Reaffirms the provisional measure indicated in paragraph 52 A (2) of the Order made by the Court on 8 April 1993, which should be immediately and effectively implemented;

IN FAVOUR: President Sir Robert Jennings; Vice-President Oda; Judges Schwebel, Bedjaoui, Ni, Evensen, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ajibola, Herczegh; Judge ad hoc Lauterpacht;
AGAINST: Judge Tarassov; Judge ad hoc Kreca;

(3) By 14 votes to 1,
Reaffirms the provisional measure indicated in paragraph 52 B of the Order made by the Court on 8 April 1993, which should be immediately and effectively implemented.

IN FAVOUR: President Sir Robert Jennings; Vice-President Oda; Judges Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ajibola, Herczegh; Judge ad hoc Lauterpacht;
AGAINST: Judge ad hoc Kreca.

In his Dissenting Opinion attached to this second World Court Order of 13 September 1993, the late Judge Tarassov from Russia once again provided a most authoritative interpretation of its meaning and significance:

....

> Given that requests for the indication of provisional measures have been submitted by both Parties in new proceedings and given the numerous communications on which those requests are based, regarding acts which allegedly relate to the crime of genocide and which have purportedly been committed in this inter-ethnic, civil conflict in Bosnia and Herzegovina by all ethnic groups against each other, the Court's decision to make an order ascribing the lion's share of responsibility for the prevention of acts of genocide in Bosnia and Herzegovina to Yugoslavia is a one-sided approach based on preconceived ideas, which borders on a pre-judgment of the merits of the case and implies an unequal treatment of the different ethnic groups in Bosnia and Herzegovina who have all suffered inexpressibly in this fratricidal war. I, as a judge, cannot support this approach. ...
>
> ....
>
> ...While the one-sided, unbalanced Order of the Court might not necessarily be 'an obstacle to a negotiated settlement,' it will obviously not facilitate its successful completion. ...

Once again, I fully agreed with the late Judge Tarassov's characterization of this second World Court Order of 13 September 1993 in the following sense:

It was indeed completely "one-sided" and "unbalanced" in favor of Bosnia and against the rump Yugoslavia and its surrogate Bosnian Serb armed forces. This second World Court Order clearly did ascribe "the lion's share of responsibility" for the atrocities in Bosnia to the rump Yugoslavia and its surrogate Bosnian Serb military, paramilitary, and irregular armed forces. This second Order clearly represented a "one-sided approach" by the World Court in favor of Bosnia against the rump Yugoslavia and its surrogate Bosnian Serb armed forces. Moreover, this second Order clearly accorded the Bosnian Muslims "unequal treatment" because of the Order's reaffirmation of their express protection by name. The World Court had indeed developed the "preconceived ideas" that the Bosnian Muslims were the primary victims of Serb genocide against the People and the Republic of Bosnia and Herzegovina precisely because of the overwhelming evidence I had submitted to that effect starting on 20 March 1993 when I originally filed the lawsuit. Finally, this second World Court Order of 13 September 1993 was even more of "a pre-judgment on the merits of the case" than was the first Order of 8 April 1993.

Immediately after the receipt of this second World Court Order, the Serb Ambassador sat down dejectedly in the Hall of the Peace Palace just outside the Great Courtroom and was asked by the world news media what

he thought about the new Order: "It is even worse than the first one!" The world news media then asked me what I thought about his comment: "It is the first truthful statement they have ever made here at the World Court." You have to give the devil his due when he is telling the truth.

In order to render this second Order, the World Court once again necessarily and overwhelmingly rejected the bald-faced lies put forward by Rosenne and in addition now by three Serb lawyers who had joined him, that what was happening in Bosnia was a civil war for which the rump Yugoslavia bore no responsibility. Once again, the World Court overwhelmingly rejected Rosenne's argument that President Izetbegovic was not the legitimate President of the Republic of Bosnia and Herzegovina entitled to have me argue these proceedings before the World Court in his name and in the name of the Republic. Finally, the World Court once again overwhelmingly rejected the request by Rosenne to impose a proposed provisional measure against Bosnia along the lines of Paragraph 52A(1) of its 8 April 1993 Order because there was still no evidence that the Republic of Bosnia and Herzegovina had committed genocide against anyone.

This second World Court Order of 13 September 1993 was a crushing and overwhelming victory for Bosnia against the rump Yugoslavia on all counts but one: The World Court once again refused to say anything directly about the arms embargo, apparently because the Genocide Convention itself said nothing about the use of force to prevent genocide. Nevertheless, in Paragraph 50 of this second Order the World Court quoted verbatim Article I of the 1948 Genocide Convention and then expressly held: "...whereas all parties to the Convention have thus undertaken to prevent and to punish the crime of genocide;..." Once again, the World Court was telling all 100+ states parties to the Genocide Convention that each had an obligation "to prevent" the ongoing genocide in Bosnia, and this time by means of the "immediate and effective implementation" of its 8 April 1993 Order as called for by Paragraph 59 of this second Order, inter alia, which will be quoted in full below.

These preliminary conclusions become perfectly clear by means of a detailed examination of the next several paragraphs of this second World Court Order of 13 September 1993:

> 51. Whereas, as the Court recorded in its Order of 8 April 1993, the crime of genocide "shocks the conscience of mankind, results in great losses to humanity ... and is contrary to moral law and to the spirit and aims of the United Nations," in the words of General Assembly resolution 96 (1) of 11 December 1946 on "The Crime of Genocide";
>
> 52. Whereas, since the Order of 8 April 1993 was made, and despite that Order, and despite many resolutions of the Security Council of the United Nations, great suffering

> and loss of life has been sustained by the population of Bosnia-Herzegovina in circumstances which shock the conscience of mankind and flagrantly conflict with moral law and the spirit and aims of the United Nations;...

In accordance with its own Rules of Procedure, during the two provisional measures phases of these proceedings the World Court could not technically render a final Judgment on the merits that the rump Yugoslavia and its surrogate Bosnian Serb armed forces had committed acts of "genocide" against the People and the Republic of Bosnia and Herzegovina expressly by use of that word. But in Paragraphs 51 and 52 of this second Order, the World Court did the next best thing:

The crime of "genocide" is a legal term of art that is based upon the existence of certain factual predicates as set forth in part by the General Assembly in Resolution 96(1) on "The Crime of Genocide." In Paragraphs 51 and 52 of this second Order the World Court found the existence of several facts necessary to constitute "The Crime of Genocide" in accordance with the General Assembly's Resolution even though the Court was prevented at this stage of the proceedings from ruling that "genocide" itself had actually been committed by the rump Yugoslavia by using that precise word. In other words, as far as the World Court was concerned, Bosnia had already won this lawsuit on the merits and had only to continue through the merits stage of the proceedings in order to obtain a pre-ordained final Judgment on the merits in Bosnia's favor against the rump Yugoslavia for genocide.

In Paragraph 51 of the second Order the World Court expressly referred to the crime of genocide as something that "shocks the conscience of mankind, results in great losses to humanity...and is contrary to moral law and to the spirit and aims of the United Nations," quoting from the U.N. General Assembly Resolution 96(1) on "The Crime of Genocide." Then in Paragraph 52 the World Court does expressly make the finding of fact that "...great suffering and loss of life has been sustained by the population of Bosnia-Herzegovina." This language is stronger than "great losses to humanity" found in the General Assembly's Resolution on "The Crime of Genocide" that the Court had quoted in the immediately preceding paragraph. In other words, the World Court rendered a formal finding of fact that the predicate to the crime of genocide—"great losses to humanity"—had been exceeded by the "great suffering and loss of life" sustained by the Bosnian People.

Paragraph 52 then continued: "...great suffering and loss of life has been sustained by the population of Bosnia-Herzegovina in circumstances which shock the conscience of mankind..." Notice that the World Court used the precise language taken directly from the General Assembly's Resolution on "The Crime of Genocide" that the Court had quoted in Paragraph 51, and employed that language with respect to the Bosnian People. In other words, the World Court found the existence of a second factual predicate of the international crime of genocide by the rump Yugoslavia against the People

and the Republic of Bosnia and Herzegovina: "...shock the conscience of mankind..."

Finally, Paragraph 52 concludes: "...great suffering and loss of life has been sustained by the population of Bosnia-Herzegovina in circumstances which shock the conscience of mankind and flagrantly conflict with moral law and the spirit and aims of the United Nations..." By comparison, the General Assembly's Resolution on "The Crime of Genocide" quoted in Paragraph 51 only requires acts of genocide to be "contrary to moral law and to the spirit and aims of the United Nations." Notice that the World Court found that the circumstances in Bosnia "flagrantly conflict with moral law," which language is much stronger than the General Assembly's "contrary to moral law." Certainly, the word "conflict" is stronger than "contrary" even without the modifying adverb "flagrantly," which was not even required by the General Assembly's Resolution on "The Crime of Genocide." In other words, the World Court had found that a third factual predicate necessary to establish the crime of genocide had been far exceeded with respect to the People and the Republic of Bosnia and Herzegovina.

The conclusion is ineluctable that in Paragraphs 51 and 52 of this second World Court Order of 13 September 1993 the World Court found that several factual predicates necessary to constitute the crime of genocide had been committed by the rump Yugoslavia and its surrogate Bosnian Serb armed forces against the People and the Republic of Bosnia and Herzegovina, and that the Serb atrocities against the Bosnian People had by far exceeded the threshold level for genocide set forth by the General Assembly in its Resolution 96(1) on "The Crime of Genocide." In other words, as far as the World Court was concerned, Bosnia had already won this lawsuit for genocide against the rump Yugoslavia. The conclusion is inevitable, therefore, that in the opinion of the World Court all that Bosnia must now do is to continue through the merits phase of the proceedings in order to obtain a pre-ordained Judgment on the merits that the rump Yugoslavia has indeed committed acts of genocide against the People and the Republic of Bosnia and Herzegovina, both directly and indirectly by means of its surrogate Bosnian Serb military, paramilitary, and irregular armed forces.

This second Order of 13 September 1993 was purposefully designed by the World Court to be even more of an outright pre-judgment on the merits of the issue of genocide in favor of Bosnia than was the first Order of 8 April 1993. In other words, the World Court was telling the entire world, and especially the member states of the Security Council, that the Court had essentially found that genocide was currently being inflicted by the rump Yugoslavia against the People and the Republic of Bosnia and Herzegovina, both directly and indirectly by means of its Bosnian Serb surrogates. Therefore, the World Court was deliberately saying in this Second Order that all 100+ states parties to the Genocide Convention as well as the member states of the Security Council, and especially its Permanent Members, had an absolute obligation to terminate this ongoing

genocide by means of the immediate and effective implementation of its first Order of 8 April 1993.

Paragraph 53 of the 13 September 1993 World Court Order makes even more findings of fact that are conclusive on the infliction of genocide by the rump Yugoslavia and its Bosnian Serb surrogates against the People and the Republic of Bosnia and Herzegovina:

> 53. Whereas, since the Order of 8 April 1993 was made, the grave risk which the Court then apprehended of action being taken which may aggravate or extend the existing dispute over the prevention and punishment of the crime of genocide, or render it more difficult of solution, has been deepened by the persistence of conflicts on the territory of Bosnia-Herzegovina and the commission of heinous acts in the course of those conflicts;

The "grave risk" language quoted above was taken from Paragraph 45 of the 8 April 1993 Order, which was mentioned by the World Court in Paragraph 49 of the second Order of 13 September 1993 as follows: "49. Whereas in paragraph 45 of its Order of 8 April 1993 the Court concluded that there was a grave risk of acts of genocide being committed..." I have already pointed out why Paragraph 45 of the 8 April 1993 Order was tantamount to a pre-judgement on the merits of the case that the rump Yugoslavia had indeed inflicted genocide against the People and the Republic of Bosnia and Herzegovina, as conceded by the late Judge Tarassov in his Declaration of 8 April 1993.

By means of Paragraph 53 of the second Order, the World Court expressly stated that since 8 April 1993 this "grave risk" of "...the crime of genocide... has been deepened..." Once again the World Court was telling the entire world and especially the Permanent Members of the Security Council that the rump Yugoslavia was currently inflicting even worse genocide against the People and the Republic of Bosnia and Herzegovina than the Serbs had been doing as of 8 April 1993. Also, the World Court's reference to "heinous acts" only strengthened the conclusion that in the opinion of the Court the rump Yugoslavia was indeed committing even worse acts of genocide against the People and the Republic of Bosnia and Herzegovina. Finally, this Paragraph 53 also indicates that in the opinion of the World Court, the rump Yugoslavia had violated the provisional measure set forth in Paragraph 52B of its 8 April 1993 Order, inter alia.

Paragraph 55 of the 13 September 1993 World Court Order provides conclusive proof of the fact that the Owen-Stoltenberg Plan would have destroyed Bosnia's Statehood and robbed the Republic of Bosnia and Herzegovina of its Membership in the United Nations Organization:

> 55. Whereas the Security Council of the United Nations in

> resolution 859 (1993) of 24 August 1993 which, inter alia, affirmed the continuing membership of Bosnia-Herzegovina in the United Nations,...

At the very outset of the Owen-Stoltenberg negotiations in Geneva, on 29 July 1993 around 7:30 p.m. then Foreign Minister (later Prime Minister) Haris Silajdzic asked me to analyze the Owen-Stoltenberg Plan for President Izetbegovic. After working all night to prepare a formal Memorandum on the Plan for the President, and with a heavy heart, I informed Bosnia's Foreign Minister at breakfast around 8 a.m. Geneva time: "Briefly put, ...they will carve you up into three pieces, destroy your Statehood, and rob you of your U.N. Membership." At the end of our lengthy conversation, Foreign Minister Silajdzic instructed me: "You brief the press, I will tell the President!" Pursuant to his instructions, I immediately proceeded to explain to the world news media that the Owen-Stoltenberg Plan called for Bosnia to be carved up into three ethnically based mini-states, for Bosnia's Statehood to be destroyed, and for Bosnia to be robbed of its Membership in the United Nations Organization. I distributed my Memorandum dated 30 July 1993 to the world's news media in support of my conclusions.*

Several hours later, I received an urgent telephone call from Muhamed Sacirbey, Bosnia's Ambassador to the United Nations Headquarters in New York, asking me what he should do: "Convene an emergency meeting of the Security Council! Tell them they are stealing our U.N. Membership! Distribute my Memorandum! Try to stop it!" The net result of Ambassador Sacirbey's prodigious efforts in New York was Security Council Resolution 859 (1993) that guaranteed Bosnia's Membership in the United Nations despite the Machiavellian machinations of Owen and Stoltenberg in Geneva.

At the time everyone in Geneva knew full well that if Bosnia were to lose its U.N. Membership, then the Bosnian People would go the same way that the Jewish People did starting in 1939. Indeed, that was the entire purpose of the exercise in Geneva by Owen, Stoltenberg, and their lawyer Szasz: Implementing the "final solution" to the inconvenient "problem" presented by the gallant resistance to genocide mounted by the People and the Republic of Bosnia and Herzegovina since March of 1992. But in the late summer of 1993 the Bosnians refused to go the same way the Jews did in 1939!

During the course of this second round of provisional measures proceedings before the World Court in July and August of 1993, I had requested the World Court to rule against the legality of the Owen-Stoltenberg carve-up of the Republic of Bosnia and Herzegovina on the grounds that this partition

See Francis A. Boyle, *The Bosnian People Charge Genocide* 233-45 (1996).

would subject 1.5 to 2 million more Bosnians to "ethnic cleansing," which I had already argued to the Court was a form of genocide. In response, the World Court did rule against the legality of the Owen-Stoltenberg Plan in Paragraph 42 of its Second Order by means of the following language:

> ...whereas, on the other hand, in so far as it is the Applicant's contention that such "partition and dismemberment," annexation or incorporation will result from genocide, the Court, in its Order of 8 April 1993 has already indicated that Yugoslavia should "take all measures within its power to prevent commission of the crime of genocide," whatever might be its consequences;...

In other words, by a vote of 13 to 2, the World Court effectively prohibited the Owen-Stoltenberg carve-up of Bosnia because it would result from acts of genocide, which were already prohibited by its 8 April 1993 Order. Nevertheless undeterred, thereafter Owen and Stoltenberg continued to plot their tripartite carve-up of Bosnia under the new rubric of the so-called "Contact Group Plan" with the full support of the United States, Britain, France, Russia, the United Nations, the European Union and its other member states.

In this second Order of 13 September 1993, the World Court then indicated that its first Order of 8 April 1993 was so sweepingly comprehensive that it did not need to be supplemented, but only "should be immediately and effectively implemented":

> 59. Whereas the present perilous situation demands, not an indication of provisional measures additional to those indicated by the Court's Order of 8 April 1993, set out in paragraph 37 above, but immediate and effective implementation of those measures;

Notice here the World Court's express finding of fact that the situation in the Republic of Bosnia and Herzegovina was "perilous." In other words, the rump Yugoslavia was currently perpetrating even worse acts of genocide against the People and the Republic of Bosnia and Herzegovina than the Serbs had been doing as of 8 April 1993. The very existence of the Republic of Bosnia and Herzegovina was in jeopardy.

Furthermore, it becomes crystal clear from reading through this second Order of 13 September 1993 that the World Court was indirectly criticizing the member states of the U.N. Security Council for having refused to fulfill their obligation "to prevent" the ongoing genocide in Bosnia. Pursuant to its own terms the World Court's first Order of 8 April 1993 was transmitted to the Security Council. The World Court noted in Paragraph 54 of the second Order of 13 September 1993 that the Security Council duly

"took note of" its first Order in Resolution 819 (1993) of 16 April 1993. But the Serb acts of genocide against the Bosnians continued apace "...despite many resolutions of the Security Council of the United Nations..." to the great harm of the Bosnian People, as the World Court expressly found in Paragraph 52 of its second Order of 13 September 1993. In other words, in the opinion of the World Court, the Security Council had failed to adopt prompt and effective measures to terminate the ongoing genocide against the People and the Republic of Bosnia and Herzegovina, and especially despite its first Order of 8 April 1993.

In accordance with its own terms, this second World Court Order of 13 September 1993 was also transmitted to the U.N. Secretary General for transmission to the U.N. Security Council. It is obvious from reading through this second Order that the World Court was calling upon the member states of the U.N. Security Council to immediately and effectively implement its first Order of 8 April 1993 against the rump Yugoslavia in order to stop the ongoing genocide against the People and the Republic of Bosnia and Herzegovina. This the member states of the Security Council were required to do under the terms of both the Genocide Convention and the United Nations Charter. But despite this second, even stronger Order by the World Court on 13 September 1993, the Security Council and its Permanent Members refused to do anything to stop the Serb genocide and aggression against the People and the Republic of Bosnia and Herzegovina for the next two years until the Fall of 1995.

Article 31(3) of the Statute of the International Court of Justice provides: "If the Court includes upon the Bench no judge of the nationality of the parties, each of the parties may proceed to choose a judge as provided in paragraph 2 of this article." It was this author's decision to nominate Professor Elihu Lauterpacht of Cambridge University as Bosnia's Judge ad hoc in this case. Professor Lauterpacht is one of the leading Professors of Public International Law in the world today. He is also a man of great experience, integrity, and judgment. Finally, he is a distinguished member of the prominent Jewish community in Britain and thus, in my opinion, bore a special understanding for a race of people currently being victimized by genocide. Professor Lauterpacht had no prior connection with the Republic of Bosnia and Herzegovina.

By comparison, the Serb government nominated Milan Kréca to serve as their Judge ad hoc in this case. In accordance with his submitted resume, Mr. Kréca was a Serb lawyer who had worked for the Serb government. In other words, unlike Professor Lauterpacht, Mr. Kréca was not independent of the Serb government.

For this reason, at the time of Mr. Kréca's nomination by the Serb government to be their Judge ad hoc in this case, I repeatedly argued to the Deputy Registrar of the World Court that the President of the Court (then Judge Robert Jennings of Britain) should disqualify Mr. Kréca on the basis of his resume alone because he obviously was not independent of the Serb government. Eventually I was informed by the Deputy Registrar that

the President of the World Court had taken the position that in the event I insisted upon my objection to Mr. Kréca's qualifications, there would have to be a formal hearing by the full Court on my objections and that this hearing would undoubtedly postpone the then scheduled World Court hearing on my Second Request for provisional measures of protection for Bosnia against the rump Yugoslavia that the Court had already ordered to take place on August 25 and 26, 1993.

Of course, under no circumstances could I risk jeopardizing that World Court hearing on my Second Request for provisional measures. It would be the only chance I had to stop the Owen-Stoltenberg carve-up of Bosnia into three pieces as well as to break the genocidal arms embargo against Bosnia. So I told the Deputy Registrar to inform the President of the Court that under these dire circumstances I had no choice but to accept Mr. Kréca as Serbia's Judge ad hoc, but that I protested his presence on the Court in the strongest terms possible.

It would serve no purpose here for me to analyze Judge ad hoc Lauterpacht's lengthy Separate Opinion attached to the World Court's Order of 13 September 1993. It speaks for itself, and--I might add--quite eloquently so. Nevertheless, within his erudite exposition, I wish to draw to the reader's attention the critical passage found in Paragraph 102 of Judge ad hoc Lauterpacht's Separate Opinion:

> 102. Now, it is not to be contemplated that the Security Council would ever deliberately adopt a resolution clearly and deliberately flouting a rule of *jus cogens* or requiring a violation of human rights. But the possibility that a Security Council resolution might inadvertently or in an unforeseen manner lead to such a situation cannot be excluded. And that, it appears, is what has happened here. On this basis, the inability of Bosnia-Herzegovina sufficiently strongly to fight back against the Serbs and effectively to prevent the implementation of the Serbian policy of ethnic cleansing is at least in part directly attributable to the fact that Bosnia-Herzegovina's access to weapons and equipment has been severely limited by the embargo. Viewed in this light, the Security Council resolution can be seen as having in effect called on members of the United Nations, albeit unknowingly and assuredly unwillingly, to become in some degree supporters of the genocidal activity of the Serbs and in this manner and to that extent to act contrary to a rule of *jus cogens*.

In other words, Judge ad hoc Lauterpacht had pointed out for the entire world to see that the Security Council's arms embargo against the Republic of Bosnia and Herzegovina had aided and abetted genocide

against the Bosnian People! Furthermore, Judge ad hoc Lauterpacht knew full well that his Separate Opinion would be transmitted with the Second Order of 13 September 1993 to the United Nations Security Council. Thus, Judge ad hoc Lauterpacht had purposefully and officially placed on notice the member states of the Security Council that their arms embargo against Bosnia was aiding and abetting genocide against the People and the Republic of Bosnia and Herzegovina.

During the early morning hours of 14 September 1993, the author rose to fly to Geneva for further consultations with President Izetbegovic, Vice President Ejup Ganic, and then Foreign Minister Silajdzic. It was my advice to all three that the next step for Bosnia and Herzegovina at the World Court would be to sue the United Kingdom for aiding and abetting genocide against the Bosnian People in order to break the genocidal Security Council arms embargo of Bosnia and to stop the genocidal carve-up of the Republic pursuant to the proposed so-called Contact Group Plan. This recommendation was taken under advisement.

Pursuant to the authorization of President Izetbegovic, on November 10, 1993 the author was instructed by Ambassador Sacirbey to institute legal proceedings against the United Kingdom for violating the Genocide Convention and the Racial Discrimination Convention in accordance with my previous recommendation. On 15 November 1993, Ambassador Sacirbey convened a press conference at U.N. Headquarters in New York in which he stated Bosnia's solemn intention to institute legal proceedings against the United Kingdom. Later that day, the author filed with the World Court a Communication that I had drafted, which was entitled *Statement of Intention by the Republic of Bosnia and Herzegovina to Institute Legal Proceedings Against the United Kingdom Before the International Court of Justice.** Ambassador Sacirbey had also distributed this *Statement* at his press conference.

In this 15 November 1993 *Statement,* the Republic of Bosnia and Herzegovina formally stated its solemn intention to institute legal proceedings against the United Kingdom before the International Court of Justice for violating the terms of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination; and of the other sources of general international law set forth in Article 38 of the World Court's Statute. This 15 November 1993 *Statement* also indicated that the Republic of Bosnia and Herzegovina had issued instructions to the author to draft an Application and a Request for Provisional Measures of Protection against the United Kingdom, and to file these papers with the Court as soon as physically possible. Ambassador Sacirbey had this *Statement* circulated at United Nations Headquarters in New York as an official document of both the Security Council and the General Assembly.

On 30 November 1993, by telephone the author personally informed

---

**See* Francis A. Boyle, *The Bosnian People Charge Genocide* 365-67 (1996).

Ambassador Sacirbey in Geneva that these documents were ready to be filed with the World Court at any time. But by then it was too late. In immediate reaction to Ambassador Sacirbey's public *Statement* of Bosnia's intention to institute legal proceedings against the United Kingdom on 15 November 1993, a Spokesman for the British Foreign Office said that this announcement "would make it difficult to sustain the morale and commitment of those [British troops and aid workers] in Bosnia in dangerous circumstances." This story continued: "Foreign Office sources said there were no plans to remove the Coldstream Guards, who have just begun a six-month deployment to Bosnia. But Whitehall would take account of whether the Bosnian threat of legal action was in fact taken to the International Court of Justice in The Hague."

In addition to the British government, several European states threatened the Republic of Bosnia and Herzegovina over the continuation of Bosnia's legal proceedings against the United Kingdom before the World Court in accordance with the 15 November 1993 *Statement*. The basic thrust of their collective threat was that all forms of international humanitarian relief supplies to the starving People of the Republic of Bosnia and Herzegovina would be cut-off if my Application and Request for Provisional Measures against the United Kingdom were to be actually filed with the World Court. For these reasons of severe duress and threats perpetrated by the United Kingdom, other European states, and David Owen, the Republic of Bosnia and Herzegovina was forced to withdraw from those proceedings against the United Kingdom by means of concluding with it a coerced "Joint Statement" of 20 December 1993.

Nevertheless, on the afternoon of Monday, 3 January 1994, the author called the Registrar of the International Court of Justice in order to make three basic Points to him for transmission to the Judges of the World Court:

1. The Bosnian decision to withdraw the lawsuit against the United Kingdom was made under duress, threats, and coercion perpetrated by the British government and the governments of several other European states upon the highest level officials of the Bosnian government in Geneva, London, and Sarajevo. Therefore the so-called agreement to withdraw the lawsuit against Britain was void *ab initio*. I reserved the right of the Republic of Bosnia and Herzegovina to denounce this agreement at any time and to institute legal proceedings against the United Kingdom in accordance with the *Statement* of 15 November 1993.

2. The British government demanded that the author be fired as the General Agent for the Republic of Bosnia and Herzegovina before the Court. The British government knew full well that the author was the one responsible for the Bosnian strategy at the World Court, and especially for the recommendation to sue Britain.

3. Toward the end of my conversation with the Registrar on 3 January 1994, the author made an oral Request that the World Court indicate provisional measures, *proprio motu* in order to protect the People and the

Republic of Bosnia and Herzegovina from extermination and annihilation by the rump Yugoslavia and the Republic of Croatia. I pointed out to the Registrar that this oral Request was in accordance with the terms of the written Request for provisional measures, *proprio motu* in advance that was already set forth in Bosnia's Second Request for Provisional Measures of 27 July 1993. The Registrar informed me that the Court was paying close attention to the situation in the Republic of Bosnia and Herzegovina.

Pursuant to Point 2, above, the author was relieved of his responsibilities as General Agent for the Republic of Bosnia and Herzegovina before the World Court on 12 January 1994.

On February 5, 1994, a mortar shell struck the marketplace in the center of Sarajevo, killing 69 people and wounding more than 200. The international outrage over this wanton atrocity inflicted upon innocent people by the Bosnian Serbs was so enormous that the Clinton administration was forced to seize the initiative for the so-called Bosnian peace negotiations from the United Nations and the European Union, and thus to take the matter directly into its own hands. The net result of this American effort was the Washington Agreements of March 1994.

The author analyzed the Washington Agreements in great detail in a *Memorandum of Law to the Parliament of the Republic of Bosnia and Herzegovina on the so-called Washington Agreements of 18 March 1994,* that I prepared and submitted to the Bosnian Parliament on March 24, 1994. This *Memorandum* is a public document that was considered by the Bosnian Parliament during the course of their deliberations over the Washington Agreements. It was originally published on the Bosnian Computer Newsgroup Bosnet (i.e., BIT.LISTSERV.BOSNET), and later elsewhere.

Instead of carving up Bosnia into three *de jure* independent states, the Washington Agreements prepared the way for carving up the Republic of Bosnia and Herzegovina into only two *de facto* independent states. One such *de facto* independent state—consisting of approximately 49 per cent of the Republic's territory—would be designated for the Bosnian Serbs, thus ratifying the results of their ethnic cleansing, genocide, mass rape, war crimes, and torture. The second such *de facto* independent state was actually created by the Washington Agreements and was called a "Federation" between the legitimate Bosnian government and the extreme nationalist Bosnian Croats working for separation at the behest of the ex-Communist apparatchik Croatian President Franjo Tudjman.

In theory, the so-called Federation was supposed to control 51 per cent of the territory of the Republic of Bosnia and Herzegovina. Nevertheless, it was clear from reading through the Washington Agreements that its American State Department drafters contemplated that ultimately this so-called Federation would be absorbed by the Republic of Croatia; and likewise, that the Bosnian Serb state would ultimately be absorbed by the Republic of Serbia. In other words, the Washington Agreements paved

the way for the *de facto* partition of the Republic of Bosnia and Herzegovina between the Republic of Croatia and the Republic of Serbia. That had been the longstanding plan of Tudjman and Serb President Slobodan Milosevic to begin with, going all the way back to their secret agreement to partition Bosnia at Karadjordjevo in March of 1991.

The Washington Agreements of March 1994 became the basis for the drafting and the conclusion of the Dayton Agreement in December of 1995. Indeed, the Dayton Agreement can only be understood and interpreted by reference to the Washington Agreements. In other words, despite its public protestations to the contrary, throughout 1994 and 1995 the Clinton administration actively promoted and consistently pursued the *de facto* carve-up of a United Nations member state into two parts, and then Bosnia's *de facto* absorption by two other U.N. member states.

After imposing the Washington Agreements upon the Bosnian government, the Clinton administration then fruitlessly spent the next year and a half trying to convince Serbia and the Bosnian Serbs to go along with this *de facto* carve-up and absorption of 49 per cent of the Republic of Bosnia and Herzegovina. This would have required the Bosnian Serbs to voluntarily give up about 20 percent of the 70 percent of Bosnian territory that they had stolen and ethnically cleansed. That they proved unwilling to do until the use of military force against them by NATO in the Fall of 1995.

In the meantime, the siege and bombardment of Sarajevo and the other Bosnian cities persisted and the Bosnian Serbs continued to ethnically cleanse Bosnian towns of their Muslim and Croat citizens, with the active support and assistance of Serbia. The entire world watched and did nothing as the slaughter and carnage by the Bosnian Serb army continued relentlessly. This genocide culminated in the Serb massacres of thousands of Bosnian Muslims at the so-called U.N. "safe havens" of Zepa and Srebrenica during the Summer of 1995.

On September 8, 1995, the Clinton Administration imposed a so-called *Agreement on Basic Principles* upon the Bosnian government in Geneva as part of the run-up to Dayton. It was clear to the author that the Geneva Agreement constituted the next stage in the American plan to carve up the Republic of Bosnia and Herzegovina into two *de facto* independent states that had been initiated by the 1994 Washington Agreements. In order to warn the Bosnian Parliament of these machinations, I prepared a formal *Memorandum of Law to the Parliament of the Republic of Bosnia and Herzegovina Concerning the Agreement on Basic Principles in Geneva of September 8, 1995*, dated 11 September 1995. This *Memorandum* was submitted to the Bosnian Parliament and considered during the course of their deliberations. It was published on Bosnet on September 12, 1995.

At about the same time, it also appeared from published reports and from my own sources that the United States government was going to impose the partition of Sarajevo upon the Bosnian government as part of the so-called "final solution" for Bosnia. This is exactly what David Owen had planned to do in Geneva during the summer of 1993. In order

to head off this partition plan, I prepared yet another *Memorandum of Law to the Parliament of the Republic of Bosnia and Herzegovina*, entitled *Saving Sarajevo*, dated September 13, 1995, and published on Bosnet, September 13, 1995. A Bosnian language translation of this *Memorandum* was published on Bosnet, September 24, 1995.

Briefly put, this *Memorandum* on Sarajevo resurrected the proposal that I had originally designed and drafted at the request of President Izetbegovic while serving as Bosnia's Lawyer at the Owen-Stoltenberg negotiations in Geneva during the summer of 1993: Turn Sarajevo into a Capital District like Washington, D.C., instead of partitioning the city. Although I was not at Dayton, as far as I can tell from the published sources, my proposal constituted the opening position for the disposition of Sarajevo that was presented by the Bosnian Government at the Dayton negotiations.

Fortunately, it proved unnecessary to implement my proposal at Dayton. For there the President of Serbia, Slobodan Milosevic, proved willing to concede a unified Sarajevo to the control of the so-called Federation on the grounds that President Izetbegovic "deserved it" for having courageously endured the three and a half year siege and bombardment of that capital city by Milosevic's surrogates. However, my proposal could still serve as a model for the organization of Sarajevo on a multi-ethnic basis as the capital of a reconstituted Republic of Bosnia and Herzegovina at some point in the not-too-distant future.

On 26 September the Clinton administration imposed yet another "Agreement" upon the Bosnian government in New York in order to pave the way for the carve-up of the Republic in Dayton. Once again, in order to alert the Bosnian Parliament to these machinations, I drafted a *Memorandum of Law to the Parliament of the Republic of Bosnia and Herzegovina Concerning the New York Agreement of 26 September 1995*, dated September 28, 1995. This *Memorandum* was submitted to the Bosnian Parliament for their consideration and then published on Bosnet, September 29, 1995.

Next, His Excellency President Alija Izetbegovic asked me to analyze the first draft of the so-called Dayton Peace Agreement that was submitted to him by Richard Holbrooke. For obvious reasons, this *Memorandum of Law* is and shall remain private and confidential. However, several of my basic criticisms were incorporated into the final text of the Dayton Agreement. For example, it is a matter of public record that the first draft of the Holbrooke Plan would have constituted a *de jure* carve-up of the Republic of Bosnia and Herzegovina. That never happened!

After the public initialling of the Dayton Agreement, I was asked by then Bosnian Foreign Minister Muhamed Sacirbey as well as by the Parliament of the Republic of Bosnia and Herzegovina to produce an analysis of the Dayton Agreement for the purpose of their formulating a package of reservations, declarations and understandings (RDUs) to the Agreement. This was done by means of a formal *Memorandum of Law* by me that was submitted to the Parliament of the Republic of Bosnia and

Herzegovina concerning the Dayton Agreement, dated November 30, 1995. This *Memorandum* is in the public domain and was published on Bosnet, December 1, 1995.

Pursuant to this self-styled Dayton Peace Agreement, on 14 December 1995 the Republic of Bosnia and Herzegovina was carved-up *de facto* in Paris by the United Nations, the European Union and its member states, the United States, Russia and the many other states in attendance, despite the United Nations Charter, the Nuremberg Principles, the Genocide Convention, the Four Geneva Conventions and their two Additional Protocols, the Racial Discrimination Convention, the Apartheid Convention, and the Universal Declaration of Human Rights, as well as two overwhelmingly favorable protective Orders issued by the International Court of Justice on behalf of Bosnia on 8 April 1993 and 13 September 1993. This second World Court Order effectively prohibited such a partition of Bosnia by the vote of 13 to 2. This U.N.-sanctioned execution of a U.N. member state violated every known principle of international law that had been formulated by the international community in the post World War II era.

Bosnia was sacrificed on the altar of Great Power politics to the Machiavellian god of expedience. In 1938 the Great Powers of Europe did the exact same thing to Czechoslovakia at Munich. The partition of that nation state did not bring peace to Europe then. Partition of the Republic of Bosnia and Herzegovina will not bring peace to Europe now.

On 11 July 1996—the first anniversary of the Srebrenica massacre of several thousand Bosnian Muslims by the Bosnian Serb army with the assistance of Serbia—the International Court of Justice issued a *Judgment* in which it overwhelmingly rejected all of the spurious jurisdictional and procedural objections made by the rump Yugoslavia against Bosnia's Application/complaint for genocide that the author had filed with the Court on 20 March 1993. The World Court had already rejected these same objections twice before in its Orders of 8 April 1993 and 13 September 1993. But under the Court's Rules of Procedure, the rump Yugoslavia was entitled to a separate hearing and decision on these preliminary issues alone. Nevertheless, despite the overwhelming merits of Bosnia's claims for genocide against the rump Yugoslavia, enormous pressure has been brought to bear upon the Bosnian government by the United States, the United Nations, the European Union and its member states, Carl Bildt, and Richard Holbrooke, *inter alia,* to drop this World Court lawsuit in order to placate Slobodan Milosevic. Why?

When I drafted all of the World Court papers for Bosnia and also when I orally argued the two sets of Provisional Measures before the Court in April and August of 1993, I was quite careful and diligent to file and plead as much material as I could that personally implicated Milosevic in ordering, supervising, approving and condoning genocide against both the People and the Republic of Bosnia and Herzegovina. I personally attacked and repeatedly accused him of primary responsibility for the genocide in Bosnia

for the entire world to see and to hear. For this reason, it will prove to be impossible for the United States, the United Nations, and Europe to rehabilitate Milosevic once the World Court renders its final Judgment on the merits of the case in favor of Bosnia, which will inevitably occur unless prevented.

Bosnia has already won what is tantamount to two pre-judgments on the merits of the case in the World Court's Order of 8 April 1993 and the Court's Order of 13 September 1993, as conceded by the late Judge Tarassov in his Declaration attached to the first Order, and in his Dissenting Opinion attached to the second Order. In other words, under the leadership of Slobodan Milosevic, the rump Yugoslavia has indeed committed genocide against the People and the Republic of Bosnia and Herzegovina, both directly and indirectly by means of its surrogate army under the command of two individuals already indicted for international crimes in Bosnia: Radovan Karadzic and Ratko Mladic. Nevertheless, for almost four years the entire international community refused to discharge their solemn obligation under Article I of the Genocide Convention "to prevent" this ongoing genocide against the Bosnian People that was so blatantly taking place in the Republic of Bosnia and Herzegovina.

Hence, except for the Bosnians, everyone mentioned above wants this World Court lawsuit to disappear from the face of the earth. For they are all guilty of complicity in genocide. As this essay goes into print, it does not appear that Bosnia's lawsuit will survive much longer. If and when Bosnia is forced to drop its World Court lawsuit for genocide against the rump Yugoslavia, then the negation of the international legal order will be total and shameless. The so-called Western powers and the United Nations will have confirmed their complete moral bankruptcy and gross legal hypocrisy for the rest of the world to see everyday in the former Republic of Bosnia and Herzegovina.

But there is something that the People of Bosnia and Herzegovina can do about this situation: The Bosnian People must stand up as One and make it absolutely clear to the great powers of the world, and especially to the United States and to Europe, that under no circumstances will they withdraw their lawsuit against the rump Yugoslavia for genocide. This World Court lawsuit is the only justice that the Bosnian People will ever get from anyone in the entire world on this or any other issue!

If this lawsuit is withdrawn, then the rump Yugoslavia and its supporters around the world, together with the United States, the United Nations, the European Union and its member states, will be able to rewrite history by arguing that genocide never occurred against the People and the Republic of Bosnia and Herzegovina. All the great powers and these international institutions will then argue that the reason why Bosnia dropped its lawsuit for genocide against the rump Yugoslavia was because Bosnia was afraid of losing its World Court lawsuit. In this manner these great powers together with the United Nations and the European Union will be able to justify their refusal to prevent the ongoing genocide against the

People and the Republic of Bosnia and Herzegovina for almost four years despite the obvious requirements of the 1948 Genocide Convention, the 1945 United Nations Charter, and the two World Court Orders of 8 April 1993 and 13 September 1993.

As I have established in this paper, Bosnia has already won this World Court lawsuit. All that Bosnia must do now is to see this lawsuit through to its ultimate and successful conclusion. It is inevitable that the World Court will rule that the rump Yugoslavia and its surrogate Bosnian Serb armed forces have committed genocide against the People and the Republic of Bosnia and Herzegovina. At that time, the claims of the Bosnian People for genocide will be vindicated for the entire world to see and for all of history to know. After all that they have suffered, and endured, and accomplished, the Bosnian People owe it to themselves and to their children and to their children's children, as well as to all the other Peoples of the world and to their children and to their children's children, to prosecute this World Court lawsuit through to its successful conclusion.

MAY GOD ALWAYS BE WITH THE PEOPLE AND THE REPUBLIC OF BOSNIA AND HERZEGOVINA!

APPENDIX II

Common Article 3 of the Geneva Conventions

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) 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.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

APPENDIX III

UN GENOCIDE CONVENTION

Convention on the Prevention and Punishment of the Crime of Genocide

Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.

Article 1:

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.

Article 2:

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;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.

Article 3

The following acts shall be punishable:

(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;
(e) Complicity in genocide.

Article 4

Persons committing genocide or any of the other acts enumerated in Article

3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article 5

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article 3.

Article 6

Persons charged with genocide or any of the other acts enumerated in Article 3 shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article 7

Genocide and the other acts enumerated in Article 3 shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article 8

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article 3.

Article 9

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article 10

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article 11

The present Convention shall be open until 31 December 1949 for signature

on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 12

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article 13

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a proces-verbal and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in Article 11.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article 14

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article 15

If, as a result of denunciations, the number of Parties to the present

Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article 16

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article 17

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in Article 11 of the following:

(a) Signatures, ratifications and accessions received in accordance with Article 11;
(b) Notifications received in accordance with Article 12;
(c) The date upon which the present Convention comes into force in accordance with Article 13;
(d) Denunciations received in accordance with Article 14;
(e) The abrogation of the Convention in accordance with Article 15;
(f) Notifications received in accordance with Article 16.

Article 18

The original of the present Convention shall be deposited in the archives of the United Nations

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States contemplated in Article 11.

Article 19

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

APPENDIX IV

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5
Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(a) The crime of genocide;

(b) Crimes against humanity;

(c) War crimes;

(d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6
Genocide

For the purpose of this Statute, "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;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

Article 7
Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine,

calculated to bring about the destruction of part of a population;
(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8
War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel,

installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals

belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected

person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking

direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

APPENDIX V

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

[Only sections related to general humanitarian protections are included]

PART I. GENERAL PROVISIONS

Art 1. General principles and scope of application

1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.

2. In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from dictates of public conscience.

3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.

4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Art 2. Definitions

For the purposes of this Protocol

(a) “First Convention,” “Second Convention,” “Third Convention” and “Fourth Convention” mean, respectively, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Ship-wrecked Members of Armed Forces at Sea of 12 August 1949; the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949; “the Conventions” means the four Geneva Conventions of 12 August 1949 for the protection of war victims;

(b) “Rules of international law applicable in armed conflict” means the rules applicable in armed conflict set forth in international agreements to which

the Parties to the conflict are Parties and the generally recognized principles and rules of international law which are applicable to armed conflict;

(c) "Protecting Power" means a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and this Protocol;

(d) "Substitute" means an organization acting in place of a Protecting Power in accordance with Article 5.

Art 3. Beginning and end of application

Without prejudice to the provisions which are applicable at all times:

(a) the Conventions and this Protocol shall apply from the beginning of any situation referred to in Article 1 of this Protocol.

(b) the application of the Conventions and of this Protocol shall cease, in the territory of Parties to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation, except, in either circumstance, for those persons whose final release, repatriation or re-establishment takes place thereafter. These persons shall continue to benefit from the relevant provisions of the Conventions and of this Protocol until their final release repatriation or re-establishment.

Art 4. Legal status of the Parties to the conflict

The application of the Conventions and of this Protocol, as well as the conclusion of the agreements provided for therein, shall not affect the legal status of the Parties to the conflict. Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question.

Art 5. Appointment of Protecting Powers and of their substitute

1. It is the duty of the Parties to a conflict from the beginning of that conflict to secure the supervision and implementation of the Conventions and of this Protocol by the application of the system of Protecting Powers, including inter alia the designation and acceptance of those Powers, in accordance with the following paragraphs. Protecting Powers shall have the duty of safeguarding the interests of the Parties to the conflict.

2. From the beginning of a situation referred to in Article 1, each Party to the conflict shall without delay designate a Protecting Power for the purpose of applying the Conventions and this Protocol and shall, likewise without delay and for the same purpose, permit the activities of a Protecting Power which has been accepted by it as such after designation by the adverse Party.

3. If a Protecting Power has not been designated or accepted from the beginning of a situation referred to in Article 1, the International Committee of the Red Cross, without prejudice to the right of any other impartial humanitarian organization to do likewise, shall offer its good offices to the Parties to the conflict with a view to the designation without delay of a Protecting Power to which the Parties to the conflict consent. For that purpose it may inter alia ask each Party to provide it with a list of at least five States which that Party considers acceptable to act as Protecting Power on its behalf in relation to an adverse Party and ask each adverse Party to provide a list or at least five States which it would accept as the Protecting Power of the first Party; these lists shall be communicated to the Committee within two weeks after the receipt or the request; it shall compare them and seek the agreement of any proposed State named on both lists.

4. If, despite the foregoing, there is no Protecting Power, the Parties to the conflict shall accept without delay an offer which may be made by the International Committee of the Red Cross or by any other organization which offers all guarantees of impartiality and efficacy, after due consultations with the said Parties and taking into account the result of these consultations, to act as a substitute. The functioning of such a substitute is subject to the consent of the Parties to the conflict; every effort shall be made by the Parties to the conflict to facilitate the operations of the substitute in the performance of its tasks under the Conventions and this Protocol.

5. In accordance with Article 4, the designation and acceptance of Protecting Powers for the purpose of applying the Conventions and this Protocol shall not affect the legal status of the Parties to the conflict or of any territory, including occupied territory.

6. The maintenance of diplomatic relations between Parties to the conflict or the entrusting of the protection of a Party's interests and those of its nationals to a third State in accordance with the rules of international law relating to diplomatic relations is no obstacle to the designation of Protecting Powers for the purpose of applying the Conventions and this Protocol.

7. Any subsequent mention in this Protocol of a Protecting Power includes also a substitute.

Art 6. Qualified persons

1. The High Contracting Parties shall, also in peacetime, endeavour, with the assistance of the national Red Cross (Red Crescent, Red Lion and Sun) Societies, to train qualified personnel to facilitate the application of the Conventions and of this Protocol, and in particular the activities of the Protecting Powers.

2. The recruitment and training of such personnel are within domestic jurisdiction.

3. The International Committee of the Red Cross shall hold at the disposal of the High Contracting Parties the lists of persons so trained which the High Contracting Parties may have established and may have transmitted to it for that purpose.

4. The conditions governing the employment of such personnel outside the national territory shall, in each case, be the subject of special agreements between the Parties concerned.

Article 7. Meetings

The depositary of this Protocol shall convene a meeting of the High Contracting Parties, at the request of one or more of the said Parties and upon the approval of the majority of the said Parties, to consider general problems concerning the application of the Conventions and of the Protocol.

Part. II WOUNDED, SICK AND SHIPWRECKED

Section I : General Protection

Art 8. Terminology

For the purposes of this Protocol:

a) “Wounded” and “sick” mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility;

b) “Shipwrecked” means persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility. These persons, provided that they continue to refrain from any act of hostility, shall continue to be considered shipwrecked during their rescue until they acquire another status under the Conventions or this Protocol;

c) “Medical personnel” means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under sub-paragraph(e) or to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term includes:

i) medical personnel of a Party to the conflict, whether military or civilian,

including those described in the First and Second Conventions, and those assigned to civil defence organizations;

ii) medical personnel of national Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid societies duly recognized and authorized by a Party to the conflict;

iii) medical personnel or medical units or medical transports described in Article 9, paragraph 2.

d) "Religious personnel" means military or civilian persons, such as chaplains, who are exclusively engaged in the work of their ministry and attached:

i) to the armed forces of a Party to the conflict;

ii) to medical units or medical transports of a Party to the conflict;

iii) to medical units or medical transports described in Article 9, Paragraph 2; or

iv) to civil defence organizations of a Party to the conflict.

The attachment of religious personnel may be either permanent or temporary, and the relevant provisions mentioned under sub-paragraph (k) apply to them;

e) "Medical units" means establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment—including first-aid treatment—of the wounded, sick and shipwrecked, or for the prevention of disease. The term includes for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary;

f) "Medical transportation" means the conveyance by land, water or air of the wounded, sick, shipwrecked, medical personnel, religious personnel, medical equipment or medical supplies protected by the Conventions and by this Protocol;

g) "Medical transports" means any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict;

h) "Medical vehicles" means any medical transports by land;

i) "Medical ships and craft" means any medical transports by water;

j) “Medical aircraft” means any medical transports by air;

k) “Permanent medical personnel,” “permanent medical units” and “permanent medical transports” mean those assigned exclusively to medical purposes for an indeterminate period. “Temporary medical personnel” “temporary medical-units” and “temporary medical transports” mean those devoted exclusively to medical purposes for limited periods during the whole of such periods. Unless otherwise specified, the terms “medical personnel,” “medical units” and “medical transports” cover both permanent and temporary categories;

l) “Distinctive emblem” means the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies;

m) “Distinctive signal” means any signal or message specified for the identification exclusively of medical units or transports in Chapter III of Annex I to this Protocol.

Art 9. Field of application

1. This Part, the provisions of which are intended to ameliorate the condition of the wounded, sick and shipwrecked, shall apply to all those affected by a situation referred to in Article 1, without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria.

2. The relevant provisions of Articles 27 and 32 of the First Convention shall apply to permanent medical units and transports (other than hospital ships, to which Article 25 of the Second Convention applies) and their personnel made available to a Party to the conflict for humanitarian purposes:

(a) by a neutral or other State which is not a Party to that conflict;

(b) by a recognized and authorized aid society of such a State;

(c) by an impartial international humanitarian organization.

Art 10. Protection and care

1. All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Article 11. Protection of persons

1. The physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1 shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty.

2. It is, in particular, prohibited to carry out on such persons, even with their consent:

(a) physical mutilations;

(b) medical or scientific experiments;

(c) removal of tissue or organs for transplantation, except where these acts are justified in conformity with the conditions provided for in paragraph 1.

3. Exceptions to the prohibition in paragraph 2 (c) may be made only in the case of donations of blood for transfusion or of skin for grafting, provided that they are given voluntarily and without any coercion or inducement, and then only for therapeutic purposes, under conditions consistent with generally accepted medical standards and controls designed for the benefit of both the donor and the recipient.

4. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person who is in the power of a Party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol.

5. The persons described in paragraph 1 have the right to refuse any surgical operation. In case of refusal, medical personnel shall endeavour to obtain a written statement to that effect, signed or acknowledged by the patient.

6. Each Party to the conflict shall keep a medical record for every donation

of blood for transfusion or skin for grafting by persons referred to in paragraph 1, if that donation is made under the responsibility of that Party. In addition, each Party to the conflict shall endeavour to keep a record of all medical procedures undertaken with respect to any person who is interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1. These records shall be available at all times for inspection by the Protecting Power.

Art 12. Protection of medical units

1. Medical units shall be respected and protected at all times and shall not be the object of attack.

2. Paragraph 1 shall apply to civilian medical units, provided that they:

(a) belong to one of the Parties to the conflict;

(b) are recognized and authorized by the competent authority of one of the Parties to the conflict; or

(c) are authorized in conformity with Article 9, paragraph 2, of this Protocol or Article 27 of the First Convention.

3. The Parties to the conflict are invited to notify each other of the location of their fixed medical units. The absence of such notification shall not exempt any of the Parties from the obligation to comply with the provisions of paragraph 1.

4. Under no circumstances shall medical units be used in an attempt to shield military objectives from attack. Whenever possible, the Parties to the conflict shall ensure that medical units are so sited that attacks against military objectives do not imperil their safety.

Art 15. Protection of civilian medical and religious personnel

1. Civilian medical personnel shall be respected and protected.

2. If needed, all available help shall be afforded to civilian medical personnel in an area where civilian medical services are disrupted by reason of combat activity.

3. The Occupying Power shall afford civilian medical personnel in occupied territories every assistance to enable them to perform, to the best of their ability, their humanitarian functions. The Occupying Power may not require that, in the performance of those functions, such personnel shall give priority to the treatment of any person except on medical grounds. They

shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.

4. Civilian medical personnel shall have access to any place where their services are essential, subject to such supervisory and safety measures as the relevant Party to the conflict may deem necessary.

5. Civilian religious personnel shall be respected and protected. The provisions of the Conventions and of this Protocol concerning the protection and identification of medical personnel shall apply equally to such persons.

Art 20. Prohibition of reprisals

Reprisals against the persons and objects protected by this Part are prohibited.

SECTION II. MEDICAL TRANSPORTATION

Art 21. Medical vehicles

Medical vehicles shall be respected and protected in the same way as mobile medical units under the Conventions and this Protocol.

Section III Missing and Dead Persons

Art 32. General principle

In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives.

Art 33. Missing persons

1. As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches.

2. In order to facilitate the gathering of information pursuant to the preceding paragraph, each Party to the conflict shall, with respect to persons who would not receive more favourable consideration under the Conventions and this Protocol: (a) record the information specified in Article 138 of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of

hostilities or occupation, or who have died during any period of detention; (b) to the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation. 3. Information concerning persons reported missing pursuant to paragraph 1 and requests for such information shall be transmitted either directly or through the Protecting Power or the Central Tracing Agency of the International Committee of the Red Cross or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the International Committee of the Red Cross and its Central Tracing Agency, each Party to the conflict shall ensure that such information is also supplied to the Central Tracing Agency.

4. The Parties to the conflict shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse Party while carrying out these missions in areas controlled by the adverse Party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties.

Art 34. Remains of deceased

1. The remains of persons who have died for reasons related to occupation or in detention resulting from occupation or hostilities and those or persons not nationals of the country in which they have died as a result of hostilities shall be respected, and the gravesites of all such persons shall be respected, maintained and marked as provided for in Article 130 of the Fourth Convention, where their remains or gravesites would not receive more favourable consideration under the Conventions and this Protocol.

2. As soon as circumstances and the relations between the adverse Parties permit, the High Contracting Parties in whose territories graves and, as the case may be, other locations of the remains of persons who have died as a result of hostilities or during occupation or in detention are situated, shall conclude agreements in order:

(a) to facilitate access to the gravesites by relatives of the deceased and by representatives of official graves registration services and to regulate the practical arrangements for such access;

(b) to protect and maintain such gravesites permanently;

(c) to facilitate the return of the remains of the deceased and of personal effects to the home country upon its request or, unless that country objects, upon the request of the next of kin.

3. In the absence of the agreements provided for in paragraph 2 (b) or (c) and if the home country or such deceased is not willing to arrange at its expense for the maintenance of such gravesites, the High Contracting Party in whose territory the gravesites are situated may offer to facilitate the return of the remains of the deceased to the home country. Where such an offer has not been accepted the High Contracting Party may, after the expiry of five years from the date of the offer and upon due notice to the home country, adopt the arrangements laid down in its own laws relating to cemeteries and graves.

4. A High Contracting Party in whose territory the grave sites referred to in this Article are situated shall be permitted to exhume the remains only:

(a) in accordance with paragraphs 2 (c) and 3, or

(b) where exhumation is a matter or overriding public necessity, including cases of medical and investigative necessity, in which case the High Contracting Party shall at all times respect the remains, and shall give notice to the home country or its intention to exhume the remains together with details of the intended place of reinterment.

Part III. Methods and Means of Warfare Combatant and Prisoners-Of-War

Section I. Methods and Means of Warfare

Art 35. Basic rules

1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.

2. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

3. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

Art 37. Prohibition of Perfidy

1. It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy. The following acts are examples of perfidy:

(a) the feigning of an intent to negotiate under a flag of truce or of a surrender;

(b) the feigning of an incapacitation by wounds or sickness;

(c) the feigning of civilian, non-combatant status; and

(d) the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.

2. Ruses of war are not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. The following are examples of such ruses: the use of camouflage, decoys, mock operations and misinformation.

Art 41. Safeguard of an enemy hors de combat

1. A person who is recognized or who, in the circumstances, should be recognized to be hors de combat shall not be made the object of attack.

2. A person is hors de combat if:

(a) he is in the power of an adverse Party;

(b) he clearly expresses an intention to surrender; or

(c) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself;

provided that in any of these cases he abstains from any hostile act and does not attempt to escape.

3. When persons entitled to protection as prisoners of war have fallen into the power of an adverse Party under unusual conditions of combat which prevent their evacuation as provided for in Part III, Section I, of the Third Convention, they shall be released and all feasible precautions shall be taken to ensure their safety.

Section II. Combatants and Prisoners of War

Art 43. Armed forces

1. The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct or its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter

alia, shall enforce compliance with the rules of international law applicable in armed conflict.

2. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.

3. Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

Art 44. Combatants and prisoners of war

1. Any combatant, as defined in Article 43, who falls into the power of an adverse Party shall be a prisoner of war.

2. While all combatants are obliged to comply with the rules of international law applicable in armed conflict, violations of these rules shall not deprive a combatant of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, except as provided in paragraphs 3 and 4.

3. In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:

(a) during each military engagement, and

(b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.

Acts which comply with the requirements of this paragraph shall not be considered as perfidious within the meaning of Article 37, paragraph 1 (c).

4. A combatant who falls into the power of an adverse Party while failing to meet the requirements set forth in the second sentence of paragraph 3 shall forfeit his right to be a prisoner of war, but he shall, nevertheless, be given protections equivalent in all respects to those accorded to prisoners of war by the Third Convention and by this Protocol. This protection includes

protections equivalent to those accorded to prisoners of war by the Third Convention in the case where such a person is tried and punished for any offences he has committed.

5. Any combatant who falls into the power of an adverse Party while not engaged in an attack or in a military operation preparatory to an attack shall not forfeit his rights to be a combatant and a prisoner of war by virtue of his prior activities .

6. This Article is without prejudice to the right of any person to be a prisoner of war pursuant to Article 4 of the Third Convention.

7. This Article is not intended to change the generally accepted practice of States with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict.

8. In addition to the categories of persons mentioned in Article 13 of the First and Second Conventions, all members of the armed forces of a Party to the conflict, as defined in Article 43 of this Protocol, shall be entitled to protection under those Conventions if they are wounded or sick or, in the case of the Second Convention, shipwrecked at sea or in other waters.

Art 45. Protection of persons who have taken part in hostilities

1. A person who takes part in hostilities and falls into the power of an adverse Party shall be presumed to be a prisoner of war, and therefore shall be protected by the Third Convention, if he claims the status of prisoner of war, or if he appears to be entitled to such status, or if the Party on which he depends claims such status on his behalf by notification to the detaining Power or to the Protecting Power. Should any doubt arise as to whether any such person is entitled to the status of prisoner of war, he shall continue to have such status and, therefore, to be protected by the Third Convention and this Protocol until such time as his status has been determined by a competent tribunal.

2. If a person who has fallen into the power of an adverse Party is not held as a prisoner of war and is to be tried by that Party for an offence arising out of the hostilities, he shall have the right to assert his entitlement to prisoner-of-war status before a judicial tribunal and to have that question adjudicated. Whenever possible under the applicable procedure, this adjudication shall occur before the trial for the offence. The representatives of the Protecting Power shall be entitled to attend the proceedings in which that question is adjudicated, unless, exceptionally, the proceedings are held in camera in the interest of State security. In such a case the detaining Power shall advise the Protecting Power accordingly.

3. Any person who has taken part in hostilities, who is not entitled to prisoner-of-war status and who does not benefit from more favourable treatment in accordance with the Fourth Convention shall have the right at all times to the protection of Article 75 of this Protocol. In occupied territory, any such person, unless he is held as a spy, shall also be entitled, notwithstanding Article 5 of the Fourth Convention, to his rights of communication under that Convention.

Part IV. Civilian Population

Section I. General Protection Against Effects of Hostilities

Chapter I. Basic rule and field of application

Art 48. Basic rule

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Art 49. Definition of attacks and scope of application

1. “Attacks” means acts of violence against the adversary, whether in offence or in defence.

2. The provisions of this Protocol with respect to attacks apply to all attacks in whatever territory conducted, including the national territory belonging to a Party to the conflict but under the control of an adverse Party.

3. The provisions of this section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.

4. The provisions of this section are additional to the rules concerning humanitarian protection contained in the Fourth Convention, particularly in part II thereof, and in other international agreements binding upon the High Contracting Parties, as well as to other rules of international law relating to the protection of civilians and civilian objects on land, at sea or in the air against the effects of hostilities.

Chapter II. Civilians and civilian population

Art 50. Definition of civilians and civilian population

1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

2. The civilian population comprises all persons who are civilians.

3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

Art 51. Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.

2. 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.

3. Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

(a) those which are not directed at a specific military objective;

(b) those which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered as indiscriminate:

(a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar

concentration of civilians or civilian objects; and

(b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

6. Attacks against the civilian population or civilians by way of reprisals are prohibited.

7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

8. Any violation of these prohibitions shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians, including the obligation to take the precautionary measures provided for in Article 57.

Chapter III. Civilian objects

Art 52. General Protection of civilian objects

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

Art 53. Protection of cultural objects and of places of worship

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May

1954, and of other relevant international instruments, it is prohibited:

(a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;

(b) to use such objects in support of the military effort;

(c) to make such objects the object of reprisals.

Art 54. Protection of objects indispensable to the survival of the civilian population

1. Starvation of civilians as a method of warfare is prohibited.

2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

3. The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party:

(a) as sustenance solely for the members of its armed forces; or

(b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

4. These objects shall not be made the object of reprisals.

5. In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity.

Chapter IV. Precautionary measures

Art 57. Precautions in attack

1. In the conduct of military operations, constant care shall be

taken to spare the civilian population, civilians and civilian objects.

2. With respect to attacks, the following precautions shall be taken:

(a) those who plan or decide upon an attack shall:

(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;

(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss or civilian life, injury to civilians and damage to civilian objects;

(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.

3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.

4. In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.

5. No provision of this article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects.

Chapter V. Localities and zones under special protection

Art 59. Non-defended localities

1. It is prohibited for the Parties to the conflict to attack, by any means whatsoever, non-defended localities.

2. The appropriate authorities of a Party to the conflict may declare as a non-defended locality any inhabited place near or in a zone where armed forces are in contact which is open for occupation by an adverse Party. Such a locality shall fulfil the following conditions:

(a) all combatants, as well as mobile weapons and mobile military equipment must have been evacuated;

(b) no hostile use shall be made of fixed military installations or establishments;

(c) no acts of hostility shall be committed by the authorities or by the population; and

(d) no activities in support of military operations shall be undertaken.

3. The presence, in this locality, of persons specially protected under the Conventions and this Protocol, and of police forces retained for the sole purpose of maintaining law and order, is not contrary to the conditions laid down in paragraph 2.

4. The declaration made under paragraph 2 shall be addressed to the adverse Party and shall define and describe, as precisely as possible, the limits of the non-defended locality. The Party to the conflict to which the declaration is addressed shall acknowledge its receipt and shall treat the locality as a non-defended locality unless the conditions laid down in paragraph 2 are not in fact fulfilled, in which event it shall immediately so inform the Party making the declaration. Even if the conditions laid down in paragraph 2 are not fulfilled, the locality shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.

5. The Parties to the conflict may agree on the establishment of non-defended localities even if such localities do not fulfil the conditions laid down in paragraph 2. The agreement should define and describe, as precisely as possible, the limits of the non-defended locality; if necessary, it may lay down the methods of supervision.

6. The Party which is in control of a locality governed by such an agreement shall mark it, so far as possible, by such signs as may be agreed upon with the other Party, which shall be displayed where they are clearly visible, especially on its perimeter and limits and on highways.

7. A locality loses its status as a non-defended locality when its ceases to fulfil the conditions laid down in paragraph 2 or in the agreement referred to in paragraph 5. In such an eventuality, the locality shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.

Art 60. Demilitarized zones

1. It is prohibited for the Parties to the conflict to extend their military operations to zones on which they have conferred by agreement the status of demilitarized zone, if such extension is contrary to the terms of this agreement.

2. The agreement shall be an express agreement, may be concluded verbally or in writing, either directly or through a Protecting Power or any impartial humanitarian organization, and may consist of reciprocal and concordant declarations. The agreement may be concluded in peacetime, as well as after the outbreak of hostilities, and should define and describe, as precisely as possible, the limits of the demilitarized zone and, if necessary, lay down the methods of supervision.

3. The subject of such an agreement shall normally be any zone which fulfils the following conditions:

(a) all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;

(b) no hostile use shall be made of fixed military installations or establishments;

(c) no acts of hostility shall be committed by the authorities or by the population; and

(d) any activity linked to the military effort must have ceased.

The Parties to the conflict shall agree upon the interpretation to be given to the condition laid down in subparagraph (d) and upon persons to be admitted to the demilitarized zone other than those mentioned in paragraph 4.

4. The presence, in this zone, of persons specially protected under the Conventions and this Protocol, and of police forces retained for the sole purpose of maintaining law and order, is not contrary to the conditions laid down in paragraph 3.

5. The Party which is in control of such a zone shall mark it, so far as possible, by such signs as may be agreed upon with the other Party, which shall be displayed where they are clearly visible, especially on its perimeter

and limits and on highways.

6. If the fighting draws near to a demilitarized zone, and if the Parties to the conflict have so agreed, none of them may use the zone for purposes related to the conduct of military operations or unilaterally revoke its status.

7. If one of the Parties to the conflict commits a material breach of the provisions of paragraphs 3 or 6, the other Party shall be released from its obligations under the agreement conferring upon the zone the status of demilitarized zone. In such an eventuality, the zone loses its status but shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.

Chapter VI. Civil defence

Art 61. Definitions and scope

For the purpose of this Protocol:

(1) "Civil defence" means the performance of some or all of the undermentioned humanitarian tasks intended to protect the civilian population against the dangers, and to help it to recover from the immediate effects, of hostilities or disasters and also to provide the conditions necessary for its survival. These tasks are:

(a) warning;

(b) evacuation;

(c) management of shelters;

(d) management of blackout measures;

(e) rescue;

(f) medical services, including first aid, and religious assistance;

(g) fire-fighting;

(h) detection and marking of danger areas;

(i) decontamination and similar protective measures;

(j) provision of emergency accommodation and supplies;

(k) emergency assistance in the restoration and maintenance of order in

distressed areas;

(l) emergency repair of indispensable public utilities;

(m) emergency disposal of the dead;

(n) assistance in the preservation of objects essential for survival;

(o) complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to, planning and organization;

(2) "Civil defence organizations" means those establishments and other units which are organized or authorized by the competent authorities of a Party to the conflict to perform any of the tasks mentioned under (1), and which are assigned and devoted exclusively to such tasks;

(3) "Personnel" of civil defence organizations means those persons assigned by a Party to the conflict exclusively to the performance of the tasks mentioned under (1), including personnel assigned by the competent authority of that Party exclusively to the administration of these organizations;

(4) "Matériel" of civil defence organizations means equipment, supplies and transports used by these organizations for the performance of the tasks mentioned under (1).

Art 62. General protection

1. Civilian civil defence organizations and their personnel shall be respected and protected, subject to the provisions of this Protocol, particularly the provisions of this section. They shall be entitled to perform their civil defence tasks except in case of imperative military necessity.

2. The provisions of paragraph 1 shall also apply to civilians who, although not members of civilian civil defence organizations, respond to an appeal from the competent authorities and perform civil defence tasks under their control.

3. Buildings and matériel used for civil defence purposes and shelters provided for the civilian population are covered by Article 52. Objects used for civil defence purposes may not be destroyed or diverted from their proper use except by the Party to which they belong.

Section II. Relief in Favour of the Civilian Population

Art 70. Relief actions

1. If the civilian population of any territory under the control of a Party to the

conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. In the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection.

2. The Parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party.

3. The Parties to the conflict and each High Contracting Party which allow the passage of relief consignments, equipment and personnel in accordance with paragraph 2:

(a) shall have the right to prescribe the technical arrangements, including search, under which such passage is permitted;

(b) may make such permission conditional on the distribution of this assistance being made under the local supervision of a Protecting Power;

(c) shall, in no way whatsoever, divert relief consignments from the purpose for which they are intended nor delay their forwarding, except in cases of urgent necessity in the interest of the civilian population concerned.

4. The Parties to the conflict shall protect relief consignments and facilitate their rapid distribution.

5. The Parties to the conflict and each High Contracting Party concerned shall encourage and facilitate effective international co-ordination of the relief actions referred to in paragraph 1.

Section III. Treatment of Persons in the Power of a Party to the Conflict

Chapter I. Field of application and protection of persons and objects

Art 72. Field of application

The provisions of this Section are additional to the rules concerning humanitarian protection of civilians and civilian objects in the power of a Party to the conflict contained in the Fourth Convention, particularly Parts I and III thereof, as well

as to other applicable rules of international law relating to the protection of fundamental human rights during international armed conflict.

Art 73. Refugees and stateless persons

Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction.

Art 74. Reunion of dispersed families

The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflicts and shall encourage in particular the work of the humanitarian organizations engaged in this task in accordance with the provisions of the Conventions and of this Protocol and in conformity with their respective security regulations.

Art 75. Fundamental guarantees

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(a) violence to the life, health, or physical or mental well-being of persons, in particular:

(i) murder;

(ii) torture of all kinds, whether physical or mental;

(iii) corporal punishment; and

(iv) mutilation;

(b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(c) the taking of hostages;

(d) collective punishments; and

(e) threats to commit any of the foregoing acts.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) no one shall be accused or convicted of a criminal offence on account or any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) anyone charged with an offence shall have the right to be tried in his presence;

(f) no one shall be compelled to testify against himself or to confess guilt;

(g) anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(h) no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;

(i) anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and

(j) a convicted person shall be advised on conviction or his judicial and other remedies and of the time-limits within which they may be exercised.

5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.

6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this Article until their final release, repatriation or re-establishment, even after the end of the armed conflict.

7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

(a) persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and

(b) any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

8. No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1

Chapter II. Measures in favour of women and children

Art 76. Protection of women

1. Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.

2. Pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority.

3. To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.

Art 77. Protection of children

1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest.

3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.

4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.

5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.

Art 78. Evacuation of children

1. No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require. Where the parents or legal guardians can be found, their written consent

to such evacuation is required. If these persons cannot be found, the written consent to such evacuation of the persons who by law or custom are primarily responsible for the care of the children is required. Any such evacuation shall be supervised by the Protecting Power in agreement with the Parties concerned, namely, the Party arranging for the evacuation, the Party receiving the children and any Parties whose nationals are being evacuated. In each case, all Parties to the conflict shall take all feasible precautions to avoid endangering the evacuation.

2. Whenever an evacuation occurs pursuant to paragraph 1, each child's education, including his religious and moral education as his parents desire, shall be provided while he is away with the greatest possible continuity.

3. With a view to facilitating the return to their families and country of children evacuated pursuant to this Article, the authorities of the Party arranging for the evacuation and, as appropriate, the authorities of the receiving country shall establish for each child a card with photographs, which they shall send to the Central Tracing Agency of the International Committee of the Red Cross. Each card shall bear, whenever possible, and whenever it involves no risk of harm to the child, the following information:

(a) surname(s) of the child;

(b) the child's first name(s);

(c) the child's sex;

(d) the place and date of birth (or, if that date is not known, the approximate age);

(e) the father's full name;

(f) the mother's full name and her maiden name;

(g) the child's next-of-kin;

(h) the child's nationality;

(i) the child's native language, and any other languages he speaks;

(j) the address of the child's family;

(k) any identification number for the child;

(l) the child's state of health;

(m) the child's blood group;

(n) any distinguishing features;

(o) the date on which and the place where the child was found;

(p) the date on which and the place from which the child left the country;

(q) the child's religion, if any;

(r) the child's present address in the receiving country;

(s) should the child die before his return, the date, place and circumstances of death and place of interment

Chapter III. Journalists

Art 79. Measures or protection for journalists

1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.

2. They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 (A) (4) of the Third Convention.

3. They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the Journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.