



Tamil Information Centre

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BRIEFING PAPER

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The International Criminal Court and Child Soldiers

Developments in international law

The Tamil Information Centre (TIC) has been involved for the last 25 years in information work, particularly directed for the purpose of lobbying the international community about the rights and aspirations of the Tamil people. Recent developments in international law and the emphasis of the international community on child soldiers are of concern to the Tamil people. In the last five years, almost all statements on Sri Lanka by governments, the United Nations, the European Union and other international agencies, have included the issue of child soldiers. The UN has shown increasing concern regarding child soldiers and has taken several measures for the protection of children.

UN report on child soldiers

The UN Secretary General released a report on child soldiers on 9 February 2005.¹ The report calls for targeted measures against those who recruited children into armed forces. Such measures should include travel restrictions on leaders and their exclusion from any governance structures and amnesty provisions, arms embargos, ban on military assistance and restriction on the flow of financial assistance. The Secretary General has suggested that the Security Council should establish a committee to review any sanctions imposed to protect children exposed to conflict.

The UN Security Council discussed the Secretary General's report on 23 February 2005. The Security Council said it was working on a resolution to take forward the implementation of other resolutions to complete the establishment of a systematic and comprehensive monitoring and reporting mechanism.

The Liberation Tigers of Tamil Eelam (LTTE) is one of the groups listed in the Secretary General's report. According to the report, the LTTE has carried out recruitment by force, abducting children on their way to school or during religious festivals, and beating families and teachers who resisted the seizure of children. Some 4,700 children have been recruited by the LTTE since 2001, some of them as young as 11 years of age. Of these, 2,900 have been released. More than 1,660 went back to their homes after the Karuna conflict in April 2004. The report also says that 550 children deserted the LTTE since 2001.

In a statement before the Security Council on 23 February 2005, the Secretary General's Special Representative for Children and Armed Conflict, Olara Otunnu, said that he had received a letter from LTTE's S P Thamilselvan. The letter said that the LTTE is taking note of their inclusion on the lists of the Secretary General's report and expressed readiness to enter into dialogue using the framework of the suggested monitoring mechanism. Mr Otunnu said: "*While I welcome this message from the LTTE, I call upon their leadership to embark immediately on tangible actions, leading to a time-bound action plan to end, once and for all, the practices of recruitment, abductions and the use of children as soldiers.*"

¹ General Assembly Fifty-ninth session Agenda item 101 - Promotion and protection of the rights of children; Security Council - Children and armed conflict - Report of the Secretary-General [A/59/695-S/2005/72 of 9 February 2005] submitted pursuant to Security Council resolution 1539 (2004)

EU on child soldiers

In its statement to the Security Council on 23 February 2005, the European Union (EU) said it has identified three focus countries – Sri Lanka, Uganda and Sierra Leone – for pilot projects for a Plan of Action regarding child soldiers. The Plan envisages the implementation of the EU Guidelines on Children and Armed Conflict through political and practical EU involvement. The EU called on UN agencies, in particular UNICEF, as well as NGOs to persist in their coordinating effort to ensure both for systematic monitoring and reporting of violations and preventive and rehabilitating actions for child victims of armed conflict. The EU urged the Security Council to take appropriate measures against those parties listed in the Secretary General's report who are guilty of persistent violations and have not taken action to end these violations.

The EU has stated that it fully subscribes to the recommendation of the UN Secretary General with respect to the role of the International Criminal Court (ICC), both for its deterrence effect and the prospect of prosecution of war crimes against children.

The Rome Statute

The Rome Statute of the ICC¹ was voted on 17 July 1998 by 120 states and entered into force on 1 July 2002². The Court has a Prosecutor who investigates crimes and prosecutes the people charged before the Court.³ The Court has jurisdiction only with respect to crimes committed after the date of entry into force⁴. If a State becomes a party to the Statute after 1 July 2002, the Court will have jurisdiction only with respect to crimes committed after the date such State became a party.⁵ But a State which is not a party, may make a declaration to the Registrar of the Court accepting the jurisdiction of the Court with respect to any crime.⁶ A State party or the UN Security Council may refer crimes to the Prosecutor.⁷ The Prosecutor may also initiate investigations on the basis of information received⁸.

The Court has jurisdiction over natural persons⁹ and has no jurisdiction over any person who was under 18 years of age at the time of the alleged commission of a crime.¹⁰ A person who commits a crime within the jurisdiction of the Court is individually responsible and liable for punishment.¹¹

Attempt, abetment or inducement of a crime is also punishable under the Statute.¹² [See Annex 3 for details]. Official capacity, such as head of State or government, member of government or parliament, elected representative or government official, will not exempt anyone from criminal responsibility or constitute a ground for reduction of sentence.¹³ Immunities or special procedural rules, which may attach to the official capacity of a person, whether under national or international law, will not prevent such a person from being charged.¹⁴ Under the Sri Lankan Constitution, the President enjoys immunity while in office, from any legal action in any court or tribunal in respect of anything done or omitted in his/her official or private capacity.¹⁵ The President will be liable under the Statute despite the provision in the Constitution.

The ICC Statute provides that crimes within its jurisdiction will not be subject to any law that limits the time within which a criminal charge may be brought.¹⁶ A military commander or person effectively acting as a

¹ Article 5 (1)

² Ratification by 60 countries was needed for entry into force. In February 2003, the Assembly of States Parties appointed 18 international judges (3 from Africa, 3 from Asia, 1 from Eastern Europe, 4 from Latin America and Caribbean and 7 from Western Europe – 7 women and 11 men).

³ Article 42 (Argentinian judge Luis Moreno-Ocampo was elected Prosecutor and took office on 16 June 2003)

⁴ Article 11 (1)

⁵ Article 11 (2)

⁶ Article 12

⁷ Articles 13 and 14

⁸ Articles 13 and 15

⁹ Article 25 (1)

¹⁰ Article 26

¹¹ Article 25 (2)

¹² Article 25 (3)

¹³ Article 27 (1)

¹⁴ Article 27 (2)

¹⁵ Article 35 of the Sri Lankan Constitution

¹⁶ Article 29

military commander is also criminally responsible for crimes committed by forces under his or her effective command and control, or effective authority and control. Criminal liability lies in such a case where the military commander should have known that the forces were committing or about to commit such crimes, and failed to take all necessary and reasonable measures to prevent or repress their commission.¹

Defence for crimes

Mental disease, intoxication or duress at the time of commission of the crime may be a defence before the Court.² If a person acts reasonably to defend himself/herself or another person or, in the case of war crimes, property which is essential for survival or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force, then such action may also be defence. In this case, the person's acts must be proportionate to the degree of danger. The fact that the person was involved in a defensive operation conducted by forces will not in itself constitute a ground for excluding criminal responsibility.³

If a person was under a legal obligation to obey orders of the government or a superior officer, whether military or civilian, and did not know that the order was unlawful and if the order was not manifestly unlawful, then criminal responsibility may not lie.⁴ The Statute provides that orders to commit genocide or crimes against humanity are manifestly unlawful.⁵

Penalties by Court

The Court may sentence a person to imprisonment up to a maximum of 30 years or life imprisonment.⁶ In addition to imprisonment, the Court may order a fine under the criteria provided for in the Rules of Procedure and Evidence or a forfeiture of proceeds, property and assets derived directly or indirectly from the crime.⁷

Crimes defined in the Rome Statute

According to the Statute, the ICC has jurisdiction in respect of (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes and (d) The crime of aggression⁸.

Genocide

“Genocide” is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:⁹

- (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.*

Crimes against humanity

In the Statute, “Crimes 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:¹⁰

¹ Article 28

² Article 31 (1) (a), (b) and (d)

³ Article 31 (1) (c)

⁴ Article 33 (1) (a), (b) and (c)

⁵ Article 33 (2)

⁶ Article 77 (1) (a) and (b)

⁷ Article 77 (2) (a) and (b)

⁸ Under Article 5 (2) [The Court will have 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].

⁹ Article 6 [The definition is the same as in the International Convention on the Prevention and Punishment of the Crime of Genocide.]

¹⁰ Article 7 (1)

- (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.

Article 7 (2) further clarifies the definition [See Annex 1].

War crimes

The definition of “War Crimes” includes serious violations of the law and custom applicable in armed conflict not of an international character. The Sri Lanka conflict has been recognized as an armed conflict not of an international character. The definition also includes ‘conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities’¹ [See Annex 2].

Suppression of the financing of terrorism

The UN adopted the International Convention for the Suppression of the Financing of Terrorism² on 10 January 2000 and it entered into force on 10 January 2002. The Convention states that if a person provides or collects funds directly or indirectly, unlawfully and willfully with the intention of using or with the knowledge that they will be used for the following:³

“(a) An act which constitutes an offence within the scope of the treaties listed (See Annex 5).

(b) Any other act intended to cause death or serious bodily harm to a civilian or other not taking an active part in hostilities in an armed conflict situation, when the purpose of the act is to intimidate the population, or to compel a government or an international organization to do or abstain from doing any act.”

Sri Lanka signed the Convention on 12 January 2000. The Sri Lankan Parliament passed the Convention on the Suppression of Terrorist Financing Act on 7 July 2005. The Act is intended to prevent flow of funds and illicit arms and facilitate prosecution or extradition of individuals suspected of financing terrorism.

The Sri Lankan Parliament is also expected to introduce legislation in October 2005 to punish those involved in recruitment of children for any armed force. Amendments to the Criminal Procedure Code and the Penal Code are expected.

UN definition of a child

The UN Convention on the Rights of the Child defines a child in the following terms:

“For the purposes of the present Convention, a child means every human being below the age of eighteen

¹ Article 8 (e) (vii)

² UN General Assembly Resolution 50/6 of 24 October 1995; Resolution 49/60 of 9 December 1994 and its annex on the Declaration on Measures to Eliminate International Terrorism; Resolution 51/210 of 17 December 1996; Resolution 52/165 of 15 December 1997; Resolution 53/108 of 8 December 1998

³ Article 2 (1)

years unless under the law applicable to the child, majority is attained earlier.”¹

After the adoption of the Convention, the international community became increasingly concerned over compulsory recruitment and the use of children in hostilities. In 1995, the International Conference of the Red Cross and Red Crescent observed that **a growing number of children were being induced to join in combat at a very young age and that these children can easily be manipulated and led to commit acts whose seriousness they cannot judge, causing the children unspeakable suffering and deprivation, including injuries, captivity or death. The Conference declared that it was indispensable to raise the minimum age limit from which children can be enrolled and take part in hostilities, and recommended parties to conflict take every feasible step to ensure that children below the age of 18 do not take part in hostilities.**²

In June 1999, the International Labour Organization (ILO) adopted the Worst Forms of Child Labour Convention calling on Member States to take immediate and effective measures to secure the prohibition of forced or compulsory recruitment of persons under the age of 18 for use in armed conflict.³ In view of the concerns of international agencies over child recruitment, the UN adopted an Optional Protocol in 2000. The Protocol prohibited children below the age of 18 taking direct part in hostilities. It also prohibited the compulsory recruitment of children below 18 years.⁴ The Convention further says that “Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years” and urges States to “take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices”.⁵

In other words, the Convention and the Protocol prohibit recruitment of a person below 15 years of age to any armed force. A person between 15 years and 18 years of age can be recruited but this cannot be by compulsion. But a person between 15 years and 18 years of age cannot take direct part in hostilities.

LTTE and child soldiers

LTTE leaders Anton Balasingham and SP Thamilselvan met Olara Otunnu in the Vanni on 7 May 1998 and undertook to observe provisions of the UN Convention on the Rights of the Child and refrain from recruiting children or engage them in combat. Mr Thamilselvan announced in June 2002 that the LTTE had made the policy decision following the adoption by the UN of a treaty on recruitment of children earlier in the year and set the minimum age for recruitment at 18.

The LTTE handed over 15 children to the UNICEF in Kilinochchi on 12 February 2004 and 35 children on 21 March 2004 at Sampur in Trincomalee district. The LTTE announced that it handed over 269 of its cadre, including 168 children, to their parents on 13 April 2004 in Batticaloa-Amparai. The LTTE said that these were from the Karuna faction who rejoined the LTTE. Another 40 under-age children were released to UNICEF at Sampur on 17 April 2004.

The LTTE was party to the decisions made regarding child soldiers at peace talks with the Sri Lankan government in 2002 and 2003. The following decision was made at the Third Session of the peace talks in Oslo (2-5 December 2002):

“The parties agreed that the situation of children affected by the armed conflict should be improved. The LTTE will engage in a partnership with the UNICEF to draw up an action plan for restoring normalcy to the lives of children.”

¹ Article 1 – Convention on the Rights of the Child adopted by UN General Assembly resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990

² Recommendation of the 26th International Conference of the Red Cross and Red Crescent, 3-7 December 1995, Geneva

³ Articles 1, 2 and 3 (a) of the ILO Convention of the Worst Forms of Child Labour 1999; adopted 17 June 1999

⁴ Articles 1 and 2 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, adopted by UN General Assembly resolution A/RES/54/263 of 25 May 2000 and entered into force on 12 February 2002

⁵ Article 4 of the Optional Protocol to the Convention on the Rights of the Child

The Fifth Session (7-8 February 2003) in Berlin reiterated the Oslo decision:

“3. The LTTE will work with UNICEF to draw up an action plan for children affected by the armed conflict in the north-east, including rehabilitation assistance, provisions for schooling, Vocational training, employment facilitation and health and psychological care, with the active support of the government.

4. The LTTE agreed to complete cessation of recruitment of and campaigns aimed at, persons under 18 years of age.”

A further decision was taken at the Sixth Session (18-21 March 2003) at Hakone in Japan:

“The parties requested Ian Martin to develop three aspects of the proposed roadmap on human rights for adoption at the Seventh Sessions: Planning a programme of human rights training for government officers and LTTE cadre, which would include specialized training offered by UNICEF on the rights of the child, UNHCR on the rights of internally displaced people and refugees, and ICRC on international humanitarian law. The Office of the UN High Commissioner for Human Rights (UNHCHR) would be invited to co-ordinate the programme.”

Meanwhile, on 4 March 2003, SP Thamilchelvan, head of LTTE’s political wing and Ted Chaiban, representative of UNICEF signed an agreement in Kilinochchi on the development of an Action Plan regarding children affected by war in the north-east. An Action Plan was agreed by the LTTE, the Sri Lankan government and international agencies at a meeting in Kilinochchi on 10 and 11 April 2003.

The Action Plan envisaged child rights training for LTTE and government forces, awareness campaigns on child rights, a monitoring mechanism administered by the UNICEF, vocational training, provision of education, essential healthcare, nutrition and psychosocial care. The Action Plan also provided for transit centres in the north-east to receive and rehabilitate underage recruits released by the LTTE and children seeking recruitment. It was envisaged that these centres will be co-managed by international and national agencies, including the Tamils Rehabilitation Organization (TRO) and the UNICEF, with periodic access to the local Probation and Childcare Services (See Annex 6 for main features of the Action Plan). Action Plan partners include the International Labour Organization (ILO), Sri Lankan Ministry of Social Welfare, Save the Children Sri Lanka, TRO, UNDP and UNHCR.¹

A Transit Centre was opened in Kilinochchi on 6 October 2003 for rehabilitation of the children released. UNICEF announced that 49 former child soldiers (27 girls and 22 boys) had been placed in the transit centre. Two other centres, in Batticaloa and Trincomalee, were expected to be opened.

A UNICEF report says that for the Action Plan to be a success and to address the rights of children affected by war, the following must happen in 2004:²

- The LTTE must cease all recruitment of children.
- The LTTE must release all child soldiers.
- The GOSL must continue its efforts to ensure that the significant shortages in education, health and social welfare staff are urgently addressed and that the basic infrastructure is rehabilitated.
- The UN agencies and NGOs must accelerate implementation of their programmes to support all components of the Action Plan and reach all children affected by war and increase advocacy on child rights.
- Donors support needs to continue and expand, both in terms of advocacy with the GOSL and LTTE and with financial contributions to the implementing partners.

According to UNICEF, the LTTE released 202 children in 2003, but recruited 709 during the same year. On 21 April 2004, the LTTE again pledged to end the use of children in military activity.

¹ Stalled peace negotiations in Sri Lanka harm children, UNICEF press release 9 September 2004

² Action Plan for children affected by war – Progress Report, January-June 2004, UNICEF – www.unicef.org

Need for action

The Oslo Declaration of December 2002 states that the 'parties agreed to explore a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking peoples, based on a federal structure within a united Sri Lanka'.¹ The international community has given overwhelming support to the Oslo principles and has continually stated that a solution to the Sri Lankan conflict should be based on these principles. But the community has insisted that human rights protection should be part of the whole process of peace negotiations, as agreed in Oslo and the subsequent peace sessions, particularly the Sixth Session in Japan in March 2003. It appears that recognition of important principles such as self-determination may depend on the Tamil community's ability to protect and promote human rights.

The international community has continually accused the LTTE of child recruitment and other crimes defined in the Rome Statute and other UN Conventions. The international community has demonstrated that it would take appropriate action when necessary. An example would be the announcement of the EU on 26 September 2005. In the wake of the assassination of the Sri Lankan Foreign Minister Lakshman Kadirgamar, the EU condemned the LTTE stating that the pursuit of political goals by the use of violence would only serve to damage the LTTE's standing and credibility as a negotiating partner. The EU imposed a ban on LTTE delegations visiting member states and has threatened to list the LTTE as a terrorist organization (Annex 7). Coalition to Stop the Use of Child Soldiers (CSUCS) has welcomed the EU decision and has called on the LTTE to halt all recruitment of under 18s and to demobilize all children in its ranks.²

In the light of the seriousness of the accusations against the LTTE, the TIC believes that such charges will have a damaging impact on the Tamil struggle for international legitimacy, justice and self-determination. The TIC urges the LTTE to study these developments in international law seriously and without delay and take appropriate measures.

Annex 1

Explanation of the definition of "Crime Against Humanity" – Article 7 (2) of the Rome Statute of the International Criminal Court

- (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;

¹ The term 'areas of historical habitation' refers to the Northern and Eastern provinces, claimed by the Tamils as the Tamil homeland. The term 'Tamil-speaking peoples' includes Tamils and Muslims. In 1985, the Tamils put forward demands, known as the 'Thimpu Principles' (at a peace conference arranged by India and held in Thimpu, Bhutan). The Thimpu principles demand the recognition of the Tamil right to self-determination, that Tamils are a nation, the Tamil homeland and human rights for all Tamil people.

² The CSUCS is based in London and includes Amnesty International and Human Rights Watch.

(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.

Annex 2

Definition of "War Crimes" – Article 8 of the Rome Statute of the International Criminal Court

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.

Annex 3

Article 25 of the Rome Statute of the ICC on individual criminal responsibility

Article 25

Individual criminal responsibility

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

- (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
- (ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

Article 28 of the Rome Statute of the ICC on the responsibility of commanders

Annex 4

Article 28

Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

- (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
- (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- (i) The superior either knew, or consciously disregarded information which clearly indicated that the subordinates were committing or about to commit such crimes;
- (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prevention.

Annex 5

International treaties listed under Article 2 (1) of the International Convention for the Suppression of the Financing of Terrorism

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

3. Convention of the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

Annex 6

Agreement between the Liberation Tigers of Tamil Eelam (LTTE) and the United Nations Children Fund (UNICEF)

4 March 2003

The Liberation Tigers of Tamil Eelam (LTTE) and the United Nations Children's Fund (UNICEF) agreed to the following in the development of the Action Plan on children affected by war in the North East including children involved in child labour, civilian or military.

- The LTTE will share a draft Action Plan with UNICEF on Monday 10 March 2003.
- A Working Group of the LTTE, Tamils Rehabilitation Organization (TRO) and UNICEF will meet on 14 and 15 March to review the technical and operational aspects of the draft Action Plan.
- A Planning Workshop will be held at the end of March 2003. The Workshop to finalise the Action Plan will include representatives from the LTTE, Government, TRO, UNICEF and other international agencies. The Action Plan Workshop will be followed by district level workshops to work out implementation in each district.
- Child rights training for members of the LTTE and Heads of District Political Sections will take place during the second week of April 2003.

It was agreed that the transit centres for children affected by war will be temporary and in the best interests of the child. These centres will be co-managed by international and national agencies including TRO and UNICEF. The centres will give an opportunity to assess children and make appropriate plans for their future.

Main features of the Action Plan on children agreed by the LTTE, the Sri Lankan government and international agencies in Kilinochchi on 10 and 11 April 2003

Child rights training - includes the provision of child rights training for the LTTE, government armed forces and communities. The training is intended to commence in late April 2003.

Awareness campaigns on child rights at community level - increasing parental and community awareness of ways they can prevent abuses of child rights.

A monitoring mechanism - administered by UNICEF to monitor the rights of children affected by war in the North East.

A mechanism for the release and reintegration of underage recruits and children seeking recruitment - will be redressed through transit centres co-managed by the Tamils Rehabilitation Organization (TRO) and UNICEF. Local Probation and Child Care Services officials will have periodic access to the transit centres.

Micro credit facilities and income generation activities - support to vocational training and other skill creation activities through revolving loan funds and micro-credit facilities.

Vocational training - the development of vocational training opportunities through mobile units, apprenticeships and centre-based skills development.

Education - All vulnerable children most affected by war should have access to learning opportunities through non-formal education and literacy centres. The strengthening of the School Development Societies, including awareness among parents and communities.

Health and nutrition - the provision of essential health care and nutrition services for children affected by war, while they are in the transit centres and other facilities caring for vulnerable children and when they are back in their families and communities.

Provision of psychosocial care - reinforcement of social work infrastructure and alternative care for children unable to return to families.

Monitoring of the implementation of the Action Plan will be undertaken by a Steering Committee comprising of the TRO and the Department of Probation and Child Care Services, and facilitated by UNICEF. The Steering Committee will provide formal updates on the progress of the Action Plan on a quarterly basis to the Sub-Committee on Immediate Humanitarian and Rehabilitation Needs (SIHRN).

The Action Plan will be ready for presentation at the next round of peace talks on the 29th of April 2003.

Annex 7

The European Union Declaration condemning terrorism in Sri Lanka

26 September 2005

The European Union hereby declares its condemnation of the continuing use of violence and terrorism by the Liberation Tigers of Tamil Eelam (LTTE). The pursuit of political goals by such totally unacceptable methods only serves to damage the LTTE's standing and credibility as a negotiating partner and gravely endangers the Peace Process so much desired by the people of Sri Lanka.

The European Union repeats its condemnation of the shocking murder of Foreign Minister Lakshman Kadirgamar and of so many others in Sri Lanka in recent weeks.

The European Union is actively considering the formal Listing of the LTTE as a terrorist organisation. In the meantime, the European Union has agreed that with immediate effect, delegations from the LTTE will no longer be received in any of the EU Member States until further notice.

The European Union has also agreed that each Member State will, where necessary, take additional national measures to check and curb illegal or undesirable activities (including issues of funding and propaganda) of the LTTE, its related organisations and known individual supporters.

The European Union furthermore repeats its serious concern at the continuing recruitment and retention of child soldier cadres by the LTTE and reminds them that there can be no excuse whatsoever for this abhorrent practice to continue.

The European Union takes this opportunity to underline the Statement of 19 September by the Co-Chairs of the Tokyo Donor Conference calling on the LTTE not least to take immediate public steps to demonstrate their commitment to the peace process and their willingness to change.

The European Union calls upon all parties in Sri Lanka to show commitment and responsibility towards the peace process during the coming period of elections and to refrain from actions that could endanger a peaceful resolution and political settlement of the conflict.