

*Bodies of the United Nations:
clarity in their analysis but completely ineffectual in the face of de facto barbarism*

Mullivaikal - Sri Lanka - ten years later

The 18th of May was the 10th birthday of the broadcasting of news on international media that the Sri Lankan government, with the support of other states, had defeated the terrorist organization named 'Liberation Tigers of Tamil Eelam'.

In reality, the 18th of May 2009 was the end to the most bloody chapter of an extermination process, still being carried out, of an ancestral ethnic group in Sri Lanka, the Tamil ethnicity, as old and as settled culturally and territorially as the ethnicity in power: the Sinhalese, on this island formally known as 'Ceylon' and colonised successively by the Portuguese, Dutch and British, but recognised as an independent state in 1948, when the British (the last colonial power) political program of creating an only state, dominated by the Sinhalese of Buddhist religion, was put into action by fire and sword, progressively negating and suppressing the rights of other ancestral inhabitants, specially the Tamils, whose ancestral attachment to this territory is unquestionable.

In 1949 the rights of a million Tamils who had been brought over from India (from the state of Tamil Nadu) by British colonisers were already negated when they were not allowed to work the tea plantations in the centre of the country. In 1956 Sinhalese was declared the only national language, which led to discrimination in access to education and political participation. Faced with the pacific protests of the Tamil, the Sinhalese began running programmed slaughters, on the 6th of June 1956 they murdered 150 Tamils in a sugar plantation and from that date until 2008 there have been 157 counted massacres of Tamils, some of which with thousands of victims. Notable was that of July 1983 "Black July" in which an estimated 3000 Tamils were murdered and 200000 were displaced, looking for refuge in other countries. The new constitution of 197 declared Buddhism the state religion, consolidating a Buddhist-Sinhalese central power. On the 1st of June 1981, members of this Sinhalese-Buddhist state set fire to the Jaffna library, sanctuary of Tamil ancestral culture with 97000 volumes, some of which being ancient manuscripts of Tamil patrimony.

The continuous unilateral non-fulfilment of the agreements by Sinhalese institutions, the violent repression of non-violent protests, military and police harassment against Tamil civilians in the North and East of the country, and the detention of Tamil leaders, all lead to the growth of the Tamil political consciousness and the following Convention of Vaddukkodai in 1977, supported by all the Tamil groups and political parties, demanded the recognition of their right to self-determination: *"in virtue of their great language, their religions, their specific culture and heritage, the history of their independent existence as a separate state in a recognised territory over various centuries until they were conquered by the armed power of invading Europeans, and above all, due to their decision to exist as a separate entity that governs itself in its own territory, there are a different nation from the Sinhalese"*. In these times, the Tamil United Liberation Front (TULF), spark of the Liberation Tigers of Tamil Eelam (LTTE) as an insurgent armed structure, was still very small. In the 80's the LTTE strengthened as an armed insurgency due to the progressive violation of the Tamil people's rights and ended up conforming a de facto state with widespread popular backing in the Tamil ancestral territory.

In 1985, with the mediation of India, dialogues took place between Sinhalese and Tamils in Thimbu and there 4 fundamental demands of the Tamil people were put forward: *recognition of the Tamil people as a nation; of their territory; of their rights of autodetermination and Tamil citizenship of all Tamil speaking people, including the Tamil-Nadu brought over from India for the tea plantations.*

The failure of the dialogues incentivised the armed conflict, which developed extreme forms of violence from both parts. With Norwegian mediation a bilateral ceasefire was accomplished for peace negotiations to be held in 2002, backed by various countries that offered a possible route of understanding through federalist proposals, but the intervention of the United States and Great Britain lead to a boycott of the negotiations, leading the Sri Lankan government to look for a military solution, which was implemented with more force from 2006 onwards, using prohibited methods by international human rights. The strategy aimed to not only confront the military structure of the Tigers, but to make serious advances in the extermination of the Tamil people, established in their North-Eastern ancestral territory, continuing and intensifying the chain of murders, destruction and usurpations started in 1956, the objective of which was the extermination of the Tamil nation.

Between 2006 and 2009 the military attacks on the Tamil territory followed a strategy of the progressively tighter military confinements, confining the population through armed with an armed siege that prevented escape and forced the population to concentrate in ever more restricted spaces to attack them with lethal weapons, pushing them towards the East sea. The population, as a result of this attack and confinement, grew to 300.000 and the Tamil exodus of people that could leave the country passed a million. Before the final attacks (from October 2008 to May 2009), the Sri Lankan government forced all humanitarian organizations in the area to evacuate in order to avoid witnesses of the barbaric violence, although a few volunteers stayed and documented the crimes, while the government transmitted false information on mass media.

To ensure trapping their victims, the government declared “Fire-free Zones” where the population congregated desperately to protect themselves from the bombings, but once the “Protected Zones” were occupied, they were also bombed. The provision of foods and medicine was progressively impeded; war hospitals were improvised to attend to the wounded, but when the wounded were transported there, the improvised hospitals were also bombed. A catholic priest that accompanied the victimized masses, wrote to Pope Benedict XVI on the 10th of May 2009 (8 days before the final slaughter):

“The balance of last night is of 3.318 dead and over 4.000 wounded. We suffered an artillery bombing, mortar shells, automatic weapons of aggression and cluster bombs, weapons that the Sri Lankan government denies using against civilians in the protection zones. The agonizing cries of babies and mothers, women and elders, filled the sky contaminated with poisonous gases and filled the hearts of mothers and fathers, of the elderly, of the old farmers, of men and women of all walks of life...Let it be known that under the pretence of eradicating terrorism, the Sri Lankan government has launched an offensive to exterminate the Tamil nation. This is a genocidal war.

In this same letter to the Pope, Father G.A. Francis Joseph, cites a paragraph from another letter by the Bishop of Jaffna (Sri Lanka) to Pope John Paul II, written on June 5th 1983, in which he explains the development of armed conflict in the Tamil region: “A group of dedicated youths that are convinced that their fight for the land of Eelam is just, that consider themselves ‘fighters for liberty’ and not criminals and who believe

that the state is in itself violent and can only face it with violence (...) I declare that state terrorism is feeding the terrorism and is progressively making the movement for the liberation of Eelam a popular movement, as the government, daily, excludes more and more people in the North".

The author of this letter, who had been Rector of the San Patrick School in Jaffna, accompanied in this moment a multitude of 350.000 Tamil civilians subdued to the most barbaric siege of death, was arrested by security organisms when passing a military outpost in Omanthai and was taken in for interrogation, never again knowing of his whereabouts.

United Nations documents calculate that 70.000 Tamils were assassinated in the last days in the narrow straight of MULLIVAİKAL (of 1.5 square kilometres) where the last survivors were confined; the Mannar Diocesis counted 140.000 dead and disappeared in the final onset.

Few people in the world believe that this barbarity is possible in our world in the 21st Century. The Permanent People's Tribunal, after examining numerous documents and testimonies, condemned the Sri Lankan government for the crime of Genocide, in a session in Bremen, Germany, carried out from the 7th to the 10th of December 2013. Even before, it had been condemned for war crimes and crimes against humanity in another session carried out in Dublin, Ireland, from the 14th to the 16th of January 2010. The tribunal, following the logic of the intellectual author of the concept of genocide in the scope of international rights, Polish Rafael Lemkin, understanding genocide in two inseparable phases: the negation of the identity of a people or a group of humans with common features, and imposing the identity of their oppressors on those people. There are possibly few more evident examples of genocide as that carried out by the Sri Lankan government against the Tamil people.

The false information offered by the Sri Lankan government managed to co-opt the majority of member states of the Human Rights Council of the U.N., who abided and praised the false presentation of facts made by the genocidal government and abstained from designating an independent and impartial commission to investigate what happened (Resolution A/HRC/S-11/1/ 27th of May 2019). Nevertheless, on the 22nd of July 2010 the General Secretary of the U.N. appointed a Commission of Experts to examine those responsible of these terrible massacres. The expert's report, consigned on the 31st of March 2011,

gathered and systematised abundant information about the perpetrated atrocities, even with the access of this commission to the country being denied. Between the acts of this last period of the attack, they documented the murders of tens of thousands of civilians with widespread bombing, the aerial attack on hospitals; the deprivation of humanitarian aid and the generalised violation of human rights of the victims and survivors.

The Commission also examined the obligations of the Sri Lankan state towards the International Community: Sri Lanka is a part of the 1949 Geneva Convention and therefore is obligated to respect article 3; it is a part of the International Pact on Civil and Political Rights and therefore is obligated to respect all rights associated with human dignity; although it isn't a part of the Statute of Rome in the International Penal Court, However, the definition of war crimes and crimes against humanity contained therein is identified with the norms of the International Humanitarian Law, systematized by the International Committee of the Red Cross in 2005, which have a universal imperative nature without being subject to conventional pacts.

In examining Sri Lanka's domestic legislation, the Commission highlighted the institutional mechanisms of impunity and verified the total lack of political will on the part of the Sri Lankan government to recognize responsibilities and to do justice. In response to the various requirements of the United Nations, the government of Sri Lanka has taken refuge in the creation of a "*Commission of Lessons Learned and Reconciliation*", presented as a model of transitional justice, focused on forgetting the past, processing and rehabilitating insurgents and investigation of the political responsibilities of governments in the non-protection of citizens against terrorism.

The Committee of Experts made it clear that such an instrument is not an acceptable option of transitional justice and that it is a clear violation of the international obligations of the government of Sri Lanka, noting that no Truth Commission, in any country, has shirked responsibility of those who perpetrated crimes under international law. (No. 284-285), but also pointing out the methodological and ideological flaws of said commission, in its biased, slanted and non-accessible work for the victims of State crimes, even without taking into account that its members were not impartial or independent. For its part, the national judicial system, according to the Committee of Experts, has

structural flaws that prevent it from facing what happened with the genocide and persecution of the Tamils: it offers full immunity to the President for official and personal acts and omissions; it incorporates a regime of emergency measures the application of which exempts the executors from any legal liability and authorizes prolonged arbitrary detention, monitoring, control of meetings, publications, weapons and property damage, all under the pretext of security and terrorism prevention. Nor does it contemplate a legal mechanism to establish responsibility for forced disappearances, even though Sri Lanka has held the world record for this crime in some periods.

The Committee of Experts states: *"By denying that tens of thousands of lives were taken in the Vani area, the government sends the message that the lives of those Sri Lankan inhabitants killed there, most of them Tamils, had no value for society. By denying that their military actions caused tens of thousands of civilian deaths and intimidating and threatening those who opposed this, the government effectively closes the opportunity to open a serious national dialogue on the recent past and on future needs. While it is recognized that extremism and triumphalism are strong constraints, it is clear to the Committee of Experts that in the future Sri Lanka needs to break down these barriers and initiate a sincere examination of the past. (...) Political, social and economic exclusion based on ethnicity, supposed or real, is at the heart of the conflict in Sri Lanka. Reconciliation in Sri Lanka requires the recognition of the rights as full citizens of all communities, including the Tamils and Muslims. Future policies must be inclusive to prevent the potential resurgence of violence as a way of making protests explicit."* (No. 403 – 404).

In its recommendations, the Committee of Experts formulated urgent measures to alleviate the situation of the victims but insisted that the *"international steps to ensure responsibility are not caught in the slow, useless and ineffective national efforts, as stated by the Secretary General in his Report on the Protection of Civilians in Armed Conflicts. Thus, although the Sri Lankan authorities immediately embarked on an authentic investigation of the violations denounced in this report, the Commission considers that **an independent and complementary international approach is imperative** (...) The normal approach of the government to the responsibility of these acts does not correspond with the fundamental international standards that emphasize truth, justice and reparations to victims"* (No. 441 - 442).

The Committee of Experts, in its latest recommendation and in a subsequent memorandum to the Secretary-General, suggests that the United Nations

review its behavior, in light of its mandates, with regards to the events in Sri Lanka, implying that its agencies and Member States were unaware of fundamental principles of human rights and gave the impression of striving to avoid confrontations with the Sri Lankan government. For this reason, the Secretary General appointed another Internal Review Panel of the UN Action in Sri Lanka, a commission that worked between April and November 2012 and pointed out serious flaws in the United Nations' approach to Sri Lankan genocide.

Perhaps for this reason, the UN Human Rights Council, in its Resolution 25/1 of March 2014, requested the Office of the UN High Commissioner for Human Rights to carry out a broad investigation of the allegations of human rights violations in Sri Lanka. Its report, recorded on September 16, 2015, gathered extensive information on the crimes, thoroughly examined the standards of justice and impunity at an internal level and in its recommendations points out the need to promote numerous institutional reforms in Sri Lanka to adapt to the concepts of international human rights law, adopting the definitions of war crimes and crimes against humanity and welcoming the presence and collaboration of various UN bodies. Its main proposal is to establish a **special ad hoc tribunal with a hybrid nature, comprising of judges, prosecutors, lawyers and international investigators, whose mandate is the prosecution of war crimes and crimes against humanity, including crimes of sexual abuse and against children, with independent investigative and sanctioning bodies, defense offices and programs for the protection of witnesses and victims, so that those responsible can be prosecuted** (No. 1278 - synthetic version No. 88).

In recent years, several United Nations Commissions have managed to enter Sri Lanka, dialogue with official institutions and make recommendations, most of which are received with promises of change that are not met. However, the reports of these visits clearly reveal that the criminal structures continue in place. The report of the Special Rapporteur on Human Rights and Antiterrorism (July 14, 2017) shows that systematic torture continues to be supported by an institutional framework that is difficult to change; The same conclusion is drawn from the Report of the Rapporteur on Torture (December 22, 2016) and that of the Special Rapporteur on Minorities (January 31, 2017).

The reality that surrounds the 10th anniversary of the genocidal deployment of Mullivaikal (May 18, 2009) is that of a Tamil territory militarily occupied by an enemy army that has perpetrated horrendous crimes against the Tamil ethnic group and that has not been prosecuted by those who have received the universal mission to protect humans from barbarism. The lands of the Tamils continue to be usurped by the military and Sinhalese-Buddhists; torture, forced disappearance and sexual abuse continue to be institutionally protected as means of brutal repression against the Tamil civilian population, which is stopped and prosecuted under "terrorism prevention" laws that do not withstand a minimum legitimacy examination; the military and police control of the Tamil population in their ancestral usurped territory is suffocating and exasperating; there is no single measure that favors the return of exiles. There is no doubt that the extermination of the Tamil population, its habitat, its territory, its culture, its autonomy, progresses in many ways, gradually, with the dissimulated tolerance of the United Nations, its Member States and its specialized bodies, secretariats, rapporteurs and expert groups. There are no efforts to subject the perpetrators to investigation, trial and punishment and to achieve clarification and truth, justice, reparation and guarantees of non-repetition. If this does not happen, the consolidated power of the genocide will continue to prolong its crimes and its effects. An international right constructed over so many decades as protection of the human species is reduced to nothing as a result of lack of action of the created organs. Everything collapses in a paralysis of inefficiency, even though the experts' analyzes compete in legal and humanitarian erudition.

A former Tamil minister was right in his plaintive cry, when speaking out in front of participants of the ninth anniversary of Mullivaikal (May 18, 2018), in the impressive sandy esplanade that covers tens of thousands of corpses of Tamils: JUSTICE DELAYED IS CLEARLY DENIED JUSTICE.

I wish a universal clamour would force the UN Security Council to create the ad hoc tribunal; to return their territories to the Tamil population and to protect them by means of blue helmets relieving the genocidal army of that task; to organize a mass return of the exiles and to ensure their protection and dignified life in their millenary homeland; to build a gigantic monument on the tombs of the tens of thousands of Tamils sacrificed so barbarously, so that the humanity of the future understands that these crimes can not be repeated NEVER AGAIN.

From Colombia

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¹The author, Jesuit priest and coordinator of the Human Rights and Political Violence Data Bank of the Popular Research and Education Center / Peace Program of the Society of Jesus in Colombia, between 1988 and 2019, visited Sri Lanka in May 2019, participated in the 10th anniversary of the 2009 genocidal massacre, he spoke with various groups of investigators and victims and attended a meeting with representatives of all religions, a few days after the explosive attacks on Christian churches in Colombo and Negombo, a dangerous attempt to create the myth of an inter-religious war that makes forget the horrendous genocide of the Tamils.