



A Study of the Allegation of Denial of Humanitarian Assistance - An Analysis of the Charge against Sri Lanka in the OISL Report¹

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Abstract

In 2009, Government of Sri Lanka militarily defeated the three decades old separatist armed conflict spearheaded by Liberation Tigers of Tamil Eelam. In 2015, Office of High Commissioner for Human Rights conducted an investigation as requested by the Council of Human Rights. High Commissioner for Human Rights made 11 allegations in its final report and one of them is the denial of humanitarian assistance to civilians. The objective of this paper is to analyze this allegation. The research question is; did the Government of Sri Lanka deny humanitarian assistance to civilians during the last phase of operations in 2009? The qualitative methodology combined with doctrinal legal research methods were used for this purpose. Accordingly, the OISL Report, local and international sources such as local Acts, government reports, international treaties, resolutions of the relevant international bodies were used as primary and secondary sources. The main finding shows that parties to armed conflicts are legally bound to provide unhindered access to humanitarian assistance to civilians. The allegation against the Government of Sri Lanka is

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¹ This article analyzes one of the eleven allegations made against the Government of Sri Lanka in the OISL Report. I verbally presented a research paper dealing with boarder perspectives of this theme under title of 'The Legality of the Provision of Humanitarian Aid in Times of Armed Conflict under International Humanitarian Law- A Lesson from the Sri Lankan Experience' at the *Asia- Pacific Peace Research Association Conference (APPRAC 2024)* held at Vauniya University in 2024. In that conference paper, this particular OISL allegation too was discussed. It is only a verbal conference presentation and the full paper remains unpublished up-to-date here or overseas. Also, I was an editor of a Report entitled 'A Factual Appraisal of the OISL Report: A Rebuttal to the Allegations against the Armed Forces' (n 36). This Report deals with those allegations. However, this article analyzes the allegation on 'the denial of humanitarian assistance' from a totally different approach addressing the gaps in the above report.

observed to be untenable in the absence of credible evidence. On the contrary, it is observed that the Government of Sri Lanka has provided relatively reasonable humanitarian assistance to civilians entrapped in the conflict zone.

Keywords: *Humanitarian, Assistance, armed conflict, Sri Lanka.*

Introduction

The human species began to evolve gradually from ape into a more complex species called *Homo sapiens sapiens* some 4.5 million years ago.² Warlike interactions are believed to have taken place among the early hominines as far back as late Mesolithic period. Since then up-to-date, the evolutionary history of human civilization is full of war episodes.³ The first and second World Wars are the most devastating wars in the human history.⁴ At the moment of writing this paper, Russia-Ukraine and Israel-Palestine are at war.⁵

The main objective of this study is to analyze the allegation of denial of humanitarian assistance to civilians by the Government of Sri Lanka (GOSL) during the last phase of the military operations against the separatist Tamil Tiger militants in 2009. The Office of High Commissioner of Human Rights (OHCHR) in its Report known as OISL leveled this charge against the GOSL.⁶

² Geoffrey Parker (ed), *The Times Compact History of the World* (3rd edn., Times Book 2001) 9 –177.

³ Joshua J Mark, 'Warfare' (*World History Encyclopedia* September 2009) <<https://www.worldhistory.org/warfare/>> accessed 6 February 2023, Montgomery of Alamein, *A History of Warfare* (1st edn., George Rainbird Ltd 1968).

⁴ Oleksandra Mamchii, 'In Depth Comparison of World War 1 & World War 2' (*Best Diplomats* 26 December 2023) <<https://bestdiplomats.org/ww1-vs-ww2/>>.

⁵ Center for Preventive Action, 'Israeli-Palestinian Conflict' (*Global Conflict Tracker* 4 December 2023) <<https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict>> accessed 6 February 2023.

⁶ Office of the High Commissioner of Human Rights, 'Report of the OHCHR Investigation on Sri Lanka' (UN Human Rights Council 2015).

Accordingly, the aim of the study is to examine the following aspects;

- a. Historical development of the concept of wartime humanitarian assistance.
- b. Whether the provision of humanitarian assistance to the affected parties during war times is a mandatory legal obligation of the belligerent parties under International Humanitarian Law (IHL)?
- c. Whether denial or blocking humanitarian aid in time of war amounts to war crime under IHL?
- d. As alleged in the OISL Report, has Sri Lanka denied humanitarian assistance to the civilians trapped in the conflict zone in 2009?⁷

Literature Review

On perusal of the existing literature relating to the areas referred to in (a) to (d) above, it is observed that there are substantial amount of literature dealing with those aspects except the point in (d). There is only one major work which exclusively deals with a critical analysis of charges in the OISL Report.⁸ Although in this work the allegations of OISL Report have been critically analyzed in the light of credible evidence, certain gaps and missing points can be identified in relation to the analysis of the allegation of denial of humanitarian assistance. So, my intention in this article is to address that gap. Accordingly, I used certain specific data and statements in the nature of admissions contained in the OISL Report itself to support my arguments which are further corroborated by the primary and secondary evidentiary sources.

In a series of UN Secretary General's reports, the provision of humanitarian assistance to civilian has been recognized as one of the

⁷ I verbally presented a research paper on broader perspectives including this matter as well under the title 'The Legality of the Provision of Humanitarian Aid in Times of Armed Conflict under International Humanitarian Law- A Lesson from the Sri Lankan Experience' at the *Asia- Pacific Peace Research Association Conference (APPRAC 2024)*.

⁸ Dharshana Weerasekera, *A Factual Appraisal of the OISL Report* (Sarasavi Publishers 2023).

mandatory obligations of the parties to conflict.⁹

Although, more literature exists on the legality of the provision of humanitarian assistance in international armed conflicts, there is dearth of discussion regarding non-international armed conflicts. However, the rules relating to the provision of humanitarian assistance in both types of conflict are similar.¹⁰ Accordingly, the parties in whose control the civilians are living; are bound to provide humanitarian needs to the civilians. However, states have primary responsibility to meet the needs of civilians within their territory or effective control.¹¹

Sri Lanka experienced many armed conflicts both of international and non-international nature in the past. The first international conflict appears to be the south Indian horse traders *Sēna-Guttika*'s invasive conflict which took place during the period from 177-155 BCE.¹² The most historically significant international armed conflict that took place in Sri Lanka appears to be the conflict popularly known as *Vijitapura* or *Dutugamunu-Elāra* (c 101 BCE) battle.¹³ It is observed that the Sri Lankan monarchs through those battles had developed strong customary rules of war. Those rules were based on respecting humanity. As a result, prisoners of war (both live and dead) and civilians were treated humanely

⁹ Secretary General of UNO, 'Report of the Secretary-General on the Protection of Civilians in Armed Conflict' (2010) <<https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20S2010%20579.pdf>> accessed 19 March 2024.

¹⁰ Dapo Akande and Emanuela-Chiara Gillard, 'Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict' (2016) 92 International Law Studies 15.

¹¹ UN Refugee Agency, 'Protection of Internally Displaced Persons in Georgia: A Gap Analysis' (2024) <<https://www.unhcr.org/sites/default/files/legacy-pdf/4ad827f59.pdf>> accessed 19 March 2024.

¹² Mahānāma and Wilhelm Geiger, *The Mahāvamsa, Edited by Wilhelm Geiger*. (London Published For The Pali Text Society by Luzac 1958).

¹³ According to Common Article 2(1) of Geneva Conventions 1949, an international armed conflict means and includes 'all cases of declared war or of any other armed conflict which may arise between two or more states. It includes occupation and invasion as well. In this modern sense of international armed conflict, *Dutugamunu- Elara* war can be reasonably interpreted as an international armed conflict.. Sylvain Vité, 'Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations' (2009) 91 International Review of the Red Cross 69, accessed 30 June 2024

in compatible with the modern principles of IHL.¹⁴

Methodology

This study adopted traditional doctrinal legal research methodology combined with qualitative approach based on literature survey. Two types of primary sources were perused for this study, i.e. international and municipal sources. International conventions, treaties, judicial decisions, and customary international legal principles were used as international primary sources. For local sources, Sri Lankan government reports, official communications, circulars, and meeting-minutes relating to the provision of humanitarian assistance were used. Secondary sources include the relevant scholarly works such as textbooks, journal articles and other relevant materials. The main research problem is; did the Government of Sri Lanka deny humanitarian assistance to civilians during the last phase of her military operations against separatist Tamil Tiger militants that ended in 2009? And therefore, whether the charge of denial of humanitarian assistance to civilians by the GOSL as alleged by the Office of the High Commissioner of Human Rights are based on credible evidence?

IHL and the Legality on the Provision of Humanitarian Assistance

The constant armed conflicts in the world gave rise to a new branch of Public International Law known as International Humanitarian Law (IHL). The main focus of IHL is not to proscribe war but to prescribe limitations on the means of war and mitigate violence. For this purpose, IHL lays down certain mandatory rules and procedures to save life, property and limit violence.¹⁵

¹⁴ Raja Goonaratne, 'An Analysis of the War between King Dutugamunu and Elara from the Perspectives of International Humanitarian Law' <<https://conf.kln.ac.lk/iprc/media/attachments/2023/11/21/tentative-program-book.pdf>> accessed 20 March 2024., Raja Goonaratne, 'A Comparative Study of the Legal Theory and Practice in Ancient Sri Lanka as Evinced by Epigraphic Records' (PhD Thesis) 509.

¹⁵ Marco Sassoli and Others, *How Does Law Protect in War? : Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law* (Icr 2011)

Two cardinal principles of IHL are (a) humanity and (b) the military necessity. The essence of the first principle is that at every stage of war parties must take all possible precautions to minimize the suffering to combatants and civilians.¹⁶ Second principle is based on the archaic concept of *jus ad bellum*. It means that states have a right to wage war but it is accepted now in self-defense situations only. However, there exists substantial amount of ambiguity as to the real meaning of “self-defense situations.”¹⁷

The notion of “humanitarian aid” is a multidimensional concept. In common parlance, it means the provision of assistance or aid in the nature of food, shelter, medical and other facilities in times of war to the affected parties. Similar notions are ‘humanitarian interventions,’ “humanitarian action,” “war aid” etc. The legality on the provision of “humanitarian assistance or aid” can be traced to multiple legal instruments such as Common Article 3 of the Four Geneva Conventions and other specific IHL treaties as given below;

- a) Articles 23 and 59 of the Fourth Geneva Convention of 1949.
- b) Customary International Humanitarian Law Rule 53- prohibits starvation as a method of warfare.¹⁸
- c) Article 14 and 69-71 of the Additional Protocol I -state the duty to ensure medical and other needs to the civilian population.¹⁹
- d) Article 54(1) of the Additional Protocol I- prohibits starving,

¹⁶ Ibid

¹⁷ Shunyao Ye, ‘Research on the Right of Self-Defense from the Perspective of International Law’ (2023) 5 Lecture Notes in Education Psychology and Public Media 844 <https://www.researchgate.net/publication/371403445_Research_on_the_Right_of_Self-Defence_from_the_Perspective_of_International_Law> accessed 16 March 2024., Christine Chinkin and Mary Kaldor, ‘Self-Defense as a Justification for War: The Geo-Political and War on Terror Models’ [2017] International Law and New Wars 129 <<https://www.cambridge.org/core/books/international-law-and-new-wars/selfdefence-as-a-justification-for-war-the-geopolitical-and-war-on-terror-models/9338749E5B4FB77BDB17E4CE68D4239A>> accessed 17 March 2024.

¹⁸ Jean-Marie Henckaerts and others, *Customary International Humanitarian Law. Volume I, Rules* (Cambridge University Press 2009).

¹⁹ ‘Limitations on Requisition of Civilian Medical Units’ (*Icrc.org* 2023) <<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-14>>.

- destruction of agricultural and other similar products and the infrastructure required for civilian survival.²⁰
- e) Article 70 of the Additional Protocol I- states that parties to the conflict are obliged to provide unhindered access to the humanitarian reliefs.²¹
 - f) Articles 55 and 81 of the Fourth Geneva Convention - declare that states should provide humanitarian aid to the civilian population under their control.
 - g) Article 18 of Additional Protocol II - declares the right to humanitarian assistance for the survival of population in non - international armed conflict.
 - h) UN Security Council Resolution 2417 (2018) - condemn starving of civilians and denying humanitarian access as warfare tactics.²²

The legal provisions relating to non-international conflicts are contained in Common Article 3(2) of the Geneva Conventions of 1949 and Article 18 of Additional Protocol II of 1977.

Some critics argue that humanitarian aid in times of war may prolong the conflict²³ and it can be used as weapons of war as well.²⁴ Another dimension of wartime humanitarian aid is that it may be used as

²⁰ 'Article 54 - Protection of Objects Indispensable to the Survival of Civilian Population' (*Icrc.org* 2024) <<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-54#:~:text=It%20is%20prohibited%20to%20attack>> accessed 14 February 2024.

²¹ Anita Nwotite, 'Unimpeded Access to Humanitarian Assistance as a Panacea for Civilian Protection: A Legal Perspective' (2022) 3 *International Journal of Law and Clinical Legal Education* 121 <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/itljolw3&div=21&id=&page=>>> accessed 14 February 2024.

²² 'Adopting Resolution 2417 (2018), Security Council Strongly Condemns Starving of Civilians, Unlawfully Denying Humanitarian Access as Warfare Tactics | UN Press' (*press.un.org* 24 May 2018) <<https://press.un.org/en/2018/sc13354.doc.htm>> accessed 14 February 2024.

²³ Neil Narang, 'Assisting Uncertainty: How Humanitarian Aid Can Inadvertently Prolong Civil War' (2014) 59 *International Studies Quarterly* 184.

²⁴ Philippe Lazzarini, 'We Must Prevent Humanitarian Aid from Being Used as an Instrument of War' (*Los Angeles Times* 9 December 2023) <<https://www.latimes.com/opinion/story/2023-12-09/israel-gaza-hamas-united-nations-humanitarian-relief>> accessed 12 December 2023.

a political strategy.²⁵ For example, dropping of 25 tons of food parcels to the northern Sri Lanka in 1987 by the Indian forces is viewed as political a strategy.²⁶

Is Offering Humanitarian Assistance A Mandatory Obligation?

It is evident from the above discussion that the provisions of humanitarian assistance during armed conflicts is expressly provided in some key international IHL treaties. Although, some critics argue that those provisions do not cast mandatory obligations on the parties to conflicts, it is now widely accepted that the commitment of States to ensure respect for IHL is mandatory on the following grounds.²⁷

- (a) International Human Rights law and IHL are applicable to both international and non-international conflicts.
- (b) State commitments to oblige are derived from the conventional and customary laws including customary international rules.
- (c) States that are directly affected and other States are bound under the factors in (a) and (b) above to provide humanitarian assistance to the affected parties including the civilians.
- (d) States are bound to be liable in relation to grave breaches and other violations. Denial of humanitarian assistance is considered as grave breach.²⁸

²⁵ Devon Curtis, 'Politics and Humanitarian Aid: Debates, Dilemmas and Dissension HPG Report' (2001) <<https://www.files.ethz.ch/isn/36070/hpgreport10.pdf>>.

²⁶ Nilova Roy, 'Indian Air Force Drops Supplies to Sri Lankan Tamils' (*Washington Post* 5 June 1987) <<https://www.washingtonpost.com/archive/politics/1987/06/05/indian-air-force-drops-supplies-to-sri-lankan-tamils/d7bbdbe0-0103-42c9-9b7f-689b7a2fab3e/>> accessed 14 February 2024.

²⁷ Ruth Abril Stoffels, 'Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps' (2004) 86 *Revue Internationale de la Croix-Rouge/International Review of the Red Cross* 515 <https://www.icrc.org/en/doc/assets/files/other/irrc_855_stoffels.pdf>.

²⁸ Jean Ziegler, 'Report by the Special Rapporteur on the Right to Food, Submitted in Accordance with Commission on Human Rights Resolution 2001/25' (2002) <<http://www.righttofood.org/wp-content/uploads/2012/09/ECN.4200258.pdf>>.

Also, International Court of Justice has upheld in a number of judgements that those provisions enshrine the principle of non-violability and are considered as *erga omens* under international law.²⁹

Denial of Humanitarian Aid Amounts to War Crime under IHL

The word ‘denial’ means *inter alias* **refusal to grant something asked for**.³⁰ The denial of food, water, shelter, medical facilities and other essentials of life in times of war is not a new phenomenon.³¹ Ethiopia’s Trigray conflict, Yemens and Siriya conflicts are some recent instances where allegations were levelled against the then existing governments that humanitarian assistance was either denied or blocked as war tactics.³²

On the other hand, the history of the notion of ‘war crime’ can be traced to the trials held against the perpetrators of World War II. Since then the scope and applicability of war crime jurisprudence has broadened significantly.³³ Today, a number of key international treaties explicitly specify what amounts to war crimes. Accordingly the following crimes are generally considered as war crimes;

- (a) Willful killing or murder.
- (b) Torture, inhuman treatment, willfully causing great suffering or serious injury to body or health.
- (c) Starvation.
- (d) Collective punishments.
- (e) Crimes against humanity.

²⁹ *Barcelona Traction Belgium v Spain* (1970) 1 [1970] I.C.J. Rep.3 (International Court of Justice).

³⁰ Merriam Webster, ‘Definition of DENIAL’ (*Merriam-webster.com* 7 March 2024) <<https://www.merriam-webster.com/dictionary/denial>> accessed 19 March 2024.

³¹ Christa Rottensteiner, ‘The Denial of Humanitarian Assistance as a Crime under International Law’ (1999) 81 *International Review of the Red Cross* 555.

³² Anita Nwotite (n 21)

³³ Richard Wilson, ‘War Crimes: History, Basic Concepts, and Structures War Crimes: History, Basic Concepts, and Structures’ (2022) <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=3193&context=facsch_lawrev> accessed 14 February 2024.

- (f) Persecution.
- (g) Genocide.

Each of the above mentioned war crimes has its own sub-set of crimes. It is now an accepted view that withholding, denial, or blocking of provisions of humanitarian assistance to victims of armed conflicts amounts to war crimes under International Human Rights Law and IHL.

In the recent ruling of the International Court of Justice in *South Africa v. Israel*, ICJ has ruled that there are grounds to substantiate plausible genocide in Gaza. One of the charges is the denial of humanitarian assistance and starvation.³⁴

Charges against GOSL on Denial of Humanitarian Assistance

GOSL militarily defeated LTTE and its armed conflict in May, 2009. In that non-international armed conflict the actors; especially the separatist militants unleashed unlimited violence against the civilians in various ways such as suicide bomb attacks, landmine attacks, bombardment of economically important properties, indiscriminate attacks on children, women, religious dignitaries and places of worships etc.³⁵

Many previous attempts to settle the conflict via negotiated settlement with third party intervention such as India and Norway was unsuccessful.³⁶ Meanwhile, in July 2006, LTTE closed Mavil Aru anicut and stopped

³⁴ Alexandre Skander Galand, 'The ICJ's Findings on Plausible Genocide in Gaza and Its Implications for the International Criminal Court' (*Opinio Juris* 5 April 2024) <<http://opiniojuris.org/2024/04/05/the-icjs-findings-on-plausible-genocide-in-gaza-and-its-implications-for-the-international-criminal-court/>> accessed 4 July 2024.

³⁵ Joanne Richards, 'An Institutional History of the Liberation Tigers of Tamil Eelam (LTTE)' (2014) <<https://repository.graduateinstitute.ch/record/292651/files/CCDP-Working-Paper-10-LTTE-1.pdf>>.

³⁶ Kumudini Samuel, 'Straining Consensus: Government Strategies for War and Peace in Sri Lanka 1994-98 | Conciliation Resources' (*www.c-r.org* 1998) <<https://www.c-r.org/accord/sri-lanka/straining-consensus-government-strategies-war-and-peace-sri-lanka-1994-98>> accessed 2 July 2024., Raja Goonaratne, 'Sri Lanka News | Sundayobserver.lk' (*archives.sundayobserver.lk* 21 June 2009) <<https://archives.sundayobserver.lk/2001/pix/PrintPage.asp?REF=/2009/06/21/fea01.asp>> accessed 2 July 2024.

the flow of water to some 30,000 acres of ripe paddy fields and 60,000 people in nearby villages.³⁷ In view of the humanitarian operations to open the waterway, the subsequent operations in the north and east and the final phase of humanitarian operations in 2009, LTTE withdrew forcibly taking a large number of civilians as “human shields.”³⁸ So, GOSL launched humanitarian operations to rescue those entrapped civilians in the battle zones in 2009.

Some foreign governments, international and local non-governmental organizations brought allegations of committing crimes by both parties.³⁹ In this backdrop, GOSL appointed a special commission called Lessons Learned and Reconciliation Commission (LLRC) in 2010 with a broad mandate to investigate into five specified matters spanning from 21 February 2002 to 19 May 2009.⁴⁰

Also, UN Human Rights Council in its Resolution 25/1 adopted in March 2014 requested the Office of the High Commissioner for Human Rights (OHCHR) to investigate into the alleged crimes.⁴¹ OHCHR formed a special investigation team on Sri Lanka (OISL) for this purpose. Its Final Report (OISL Report) was released on 16 September 2015 and contains 11 charges of which 09 is against the GOSL and 03 against LTTE.⁴²

³⁷ M Mayilvaganan, ‘War against the Tamil Tigers: How Did Sri Lanka Win?’ (2023) 2 Journal of Contemporary Politics 55.

³⁸ Joanne Richards, ‘An Institutional History of the Liberation Tigers of Tamil Eelam (LTTE)’ (Geneva Graduate Institute 2014) <<https://repository.graduateinstitute.ch/record/292651/files/CCDP-Working-Paper-10-LTTE-1.pdf>> accessed 2 July 2024.

³⁹ Anusha Rathi Detsch Jack, ‘Congress Wants to Hold Sri Lanka’s Feet to the Fire on Human Rights’ (*Foreign Policy* 21 September 2023) <<https://foreignpolicy.com/2023/09/21/sri-lanka-civil-war-40-years-human-rights-abuse-united-states-congress-biden-united-nations/>> accessed 17 March 2024.

⁴⁰ Chitta Ranjan De Silva and others, ‘Report of the Commission of Inquiry on Lessons Learnt and Reconciliation’ (2011) <<https://reliefweb.int/report/sri-lanka/report-commission-inquiry-lessons-learnt-and-reconciliation>> accessed 2 July 2024., Major General A.W.J.C. de Silva and Others, ‘LLRC Observations Cleared; Army Commander Hands over Court of Inquiry Report to Secretary Defense’ (*www.army.lk* 2 July 2024) <<https://www.army.lk/news/llrc-observations-cleared-army-commander-hands-over-court-inquiry-report-secretary-defence>> accessed 2 July 2024.

⁴¹ Office of High Commissioner of Human Rights, ‘OHCHR Investigation on Sri Lanka’ (2014) <<https://www.ohchr.org/en/hr-bodies/hrc/oisl#:~:text=In%20its%20resolution%20A%2FHRC,violations%20and%20abuses%20of%20human>> accessed 2 July 2024.

⁴² UN High Commissioner for Human Rights and OHCHR Investigation on Sri Lanka, ‘Re-

This paper analyzes the charge on the “**Denial of Humanitarian Assistance**”. The gist of the charge is that GOSL **pursued a policy of deliberately denying humanitarian assistance to the civilians trapped in the conflict zone**. The essence of the charge is couched in the following paragraphs of the OISL Report.⁴³

- (A) *The provision of food assistance became more difficult after the relocation of the United Nations and humanitarian organizations from Kilinochchi. During the four months when United Nations road convoys had operated (October 2008 to January 2009) despite various security incidents, the average shipment of food had been 3639 metric tons per month. This figure included Government food contribution, as well as contributions from the Government of India and NGOs (OISL Report paragraph 987).*
- (B) *After 16 January 2009, however, the amount food allowed into the Vanni plummeted, In March 2009; the United Nations Resident Coordinator’s Office indicated that at least 3000 MT was needed per month for between 150,000 and 200,000 people. Between February 2009-when aid delivery resumed by ship – and the last ship delivery on 9 May-, authorized and delivered food shipments totaled only 2, 442 MT for the whole period, according to the Ministry of Disaster Management and Human Rights. A Table prepared by the Ministry and detailing the shipments between February and May 2009 shows that most of the foods was provided by WFP. While Minister of Disaster Management and Human Rights stated on 17th February that the Government was to “send food to people in the Mulative No Fire Zone”, it only provided 105 MT for the whole five months period. In a press release dated 7 May, ICRC stated that it had delivered over 2300 MT of WFP food by ship during this period. This was*

port of the OHCHR Investigation on Sri Lanka (OISL)’ [2015] [digitallibrary.un.org <https://digitallibrary.un.org/record/803408?ln=en>](https://digitallibrary.un.org/record/803408?ln=en) accessed 2 July 2024.

⁴³ Office of the High Commissioner of Human Rights, ‘Report of the OHCHR Investigation on Sri Lanka’ (UN Human Rights Council 2015).

included in the above mentioned Government lit of shipments.

Legal Obligation of Sri Lanka under IHL to Provide Humanitarian Assistance

Sri Lanka is a party to the four main Geneva Conventions of 1949. Common Article 3 and Additional Protocol II to the Geneva Conventions apply to internal armed conflicts. However, Sri Lanka is not a party to AP II. So, Sri Lanka's legal obligations under IHL is based on the following main legal provisions.

- (a) Common Article 3
- (b) Customary International Humanitarian Rules such as Rule 53.
- (c) Articles 4-6, 9 and 13 of APII (Although SL has not signed APII, certain provisions in the AP II are considered as a part of customary international humanitarian law for which all states irrespective of agreement are bound to observe),
- (d) Judgements given by the international court, judicial tribunals etc.

Analysis of the Charge on Denial of Humanitarian Assistance

OISL charge has two limbs, i.e. A and B. Limb A deals with the 'allegation' regarding Killinochchi district. Limb B seems to have two parts. Part I deals with Vanni district and Part II deals with Mullative district.

Table 1 below shows the analysis of Limb A of the above charge.

Table 1: Analysis of Limb (A) of OISL Charge - Kilinochchi District

Limbs of the Charge	Description of Charge			Calculation of the Food Availability Based on Material Facts	Inferences	
	District	Time Period	Material Facts in the charge		Admission by OISL via charge	Availability of Actual Amount of Foods
A	Kilinochchi	October 2008 to January 2009	i) Average food shipments per month - 3639 MT ii) Relocation of UN Office and other organizations caused difficulties in providing HA	i. Total Food GOSL sent- $3639 \times 4 = 14,556$ MT for 4 months.	i.GOSL sent an average 3639 MT of foods for 4 months ii. Relocation of UN and Other offices caused difficulties	i. Total days, in the 4 months=123 ii So, Total foods per day= 118.34 MT ($14,556 \div 123=118.34$) iii. 118.34 MT= $118,340$ Kg

According to **Table 1:** above, GOSL has sent a total of 14, 556 MT of foods for the 4 months period. The total number of days in the 4 months period is 123. Accordingly, there had been 118.34 MT of foods per day. In other words, when metric tonne is converted into kilograms (1 MT=1000 Kg) it amounts to 118,340 kilograms of foods was available per day . Since Limb (A) does not contain details about the total population in this district at the relevant period, per person food availability cannot be worked out.

Accordingly, it is observed that OISL has framed the charge in Limb (A) without considering the material facts in the charge itself. So, it is seen that OISL Report neither provides any credible facts nor evidence to substantiate that GOSL implemented a deliberate policy of **denial of humanitarian assistance** to civilians in the conflict zone. Quite contrary, it proves that GOSL has sent a total of 14, 556 MT of foods to Kilinochchi district.

Limb (B) -Part-I- Vanni District-

Table 2: below shows the analysis of Part I of Limb (B) of the OISL charge.

Table 2 : Analysis of Limb B (Part I) of OISL Charge - Vanni District

Limbs of the Charge	Description of Charge			Calculation of the Food Availability Based on Material Facts	Inferences	
	District	Time Period	Material Facts in the charge		Admission by OISL via charge	Availability of Actual Amount of Foods
B-Part I	Vanni	February to May 2009	i) Food sending plummeted ii) Total food delivered for 4 months = 2442 MT iii) Total population was 150000-200000	i. Total Food GOSL sent for 1 month- $2442 \div 4 = 610.5$ MT	i. GOSL sent 2442 MT of foods ii. Total population was 150000-200000	i. Total days in the 4 months=120 ii. So there had been 5.0875 MT of foods per day ($610.5 \div 120 = 5.0875$) iii. When convert to Kg=5,087.5 Kg iv. So per person food availability =39.31 Kg ($200000 \div 5087.5 = 39.31$)

According to **Table 2:** above, GOSL has sent a total of 2442 MT of foods for the 4 months period. It means that there had been 610.5 MT of foods per month. The total number of days in the 4 months period was 120 in 2009. So that, there has been 5.0875 MT of foods per day ($610.5 \div 120 = 5.0875$) in the Vanni district at the relevant period. When MT is converted to kilograms

(1 MT = 1000 Kg), it is observed that there has been 5,087.5 Kg of foods per day.

The total population in this district according to the charge is 150,000-200,000. Accordingly, if the upper range is considered as the total population i.e. 200,000, then there has been 39.31 kilograms of foods per person daily.

The amount of food⁴⁴ intake that a person should take daily varies depending on the age, body weight, activity level, and dietary requirements, sex, climatic conditions etc. According to the recommendations of Medical Research Institute of Sri Lanka and the calculations of the Department of Census and Statistics per capita calorie requirement is 2,500 kilocalories per day.⁴⁵ Accordingly, the daily average adult food requirement (in grams) is considered roughly a little less than 2 Kg.⁴⁶ If it is assumed that all the 200000 populations were adults, then there had been extra 37.31 Kg (39.31 Kg - 2 Kg = 37.31 Kg) of foods in the district to be given to every person per day.

Therefore, it is observed that on the basis of the statistics provided in Part I of Limb (B) of the charge that there had been extra 27.24 Kg of foods to be distributed among every person on each day in the Vanni district during the 4 months period referred to in the charge.

So, it is observed that the OISL allegation that GOSL adopted a deliberate policy of denial of humanitarian assistance to victims in the Vanni district is groundless and has no credible evidence to substantiate it. On the contrary, it is established that GOSL has sent more foods than the daily requirement during period under review.

⁴⁴ Food means substances in liquid, concentrated, solid, frozen or dried forms that human beings consume to satisfy their energy requirements and it excludes alcoholic beverages, dietary supplement, soft drinks, or tobacco.

⁴⁵ Thilani Kaushalya, 'In a Pickle: Ensuring Food Security during an Economic Crisis' (www.cepa.lk2022) <<https://www.cepa.lk/blog/in-a-pickle-ensuring-food-security-during-an-economic-crisis/#:~:text=According%20to%20the%20Medical%20Research>> accessed 2 July 2024.

⁴⁶ The daily average adult food requirement is made up of food 805 g, beverages 303 g, fruit and vegetable 640 g - Caroline A. Joyce and Others, 'Food & Nutrient Intake among Sri Lankan Adults' (cgspace.cgiar.org 2023) <<https://cgspace.cgiar.org/server/api/core/bitstreams/676cd864-2aaf-4a84-9ac5-cb3b881bfd36/content>> accessed 2 July 2024.

Limb (B) Part II- Mullative District

Table 3: below shows the analysis of Part II of Limb B of the OISL charge.

Table 3: Analysis of Limb B (Part II) of OISL Charge - Mullative District

Limbs of the Charge	Description of Charge			Calculation of the Food Availability Based on Facts in the Charge	Inferences	
	District	Time Period	Material Facts in the charge		OISL Admission in the Charge	Availability of Actual Amount of Foods
B- Part II	Mulative	February 2009	i) As per Minister, on 17 th February GOSL was to send food to Mullative No Fire Zone ii. GOSL only provided 105 MT for the whole five months period	i. Total Food GOSL sent for 1 month - $105 \div 5 = 21$ MT	i. GOSL sent 105 MT of foods for 5 months	i. A total of 105,000 Kg of foods available for 5 months (105x1000) ii Food for 1 month = 21,000 Kg.

The vital facts such as the specific period and number of total population in Mullative district at the relevant period are not provided in this part of the Charge. However, OISL Report admits that GOSL has sent 105 MT of foods.

So, Part II of Limb B of the OISL charge admits that GOSL has sent 105,000 Kg of foods to Mullative district. Therefore, on those facts, it is not improbable for any reasonable person to conclude that the OISL charge that GOSL had implemented a policy of deliberately starving civilians or denying humanitarian assistance to civilians during the conflict period is a groundless allegation.

Rebuttal to OISL Allegations

A team of Sri Lankan experts rebutted all charges in the OISL Report. They submitted a comprehensive Report entitled “**A Factual Appraisal of the OISL Report: A Rebuttal to the Allegations**”

Against the Armed Forces.⁴⁷ This report provides a large amount of credible evidence to disprove this allegation. Summary of those credible evidence is given below.

- (a) The provision of all humanitarian assistance to conflict areas were coordinated by a committee named Consultative Committee on Humanitarian Assistance (CCHA). It consisted of 11 GOSL officers and 14 non-government representatives including US ambassador, Head of Delegation of European Commission, UN Humanitarian Coordinator, Delegation Head of ICRC, Country Directors of World Food Program and WHO etc.
- (b) However, OISL team has not interviewed any members of CCHA before framing this charge against Sri Lanka.
- (c) CCHA Minutes dated 30th January 2009 records that UN Resident Humanitarian Coordinator Mr. Neil Buhne praised GOSL for the work done through Government Agents in delivering assistance to civilians. The relevant part of the Minutes is quoted below;

‘... Mr. Buhne applauded the good work done through the Government Agent structures in delivery of relief and assistance to IDPs in such circumstances and noted that they should be given a gold medal for the works done.’⁴⁸
- (d) The committee appointed to study the US State Department Report which included similar allegations has concluded based on more credible evidence of Government Agents such as Mulative that there had not been food shortages to cause death of civilians as they had maintained buffer stocks for three months.

⁴⁷ Dharshana Weerasekera, ‘A Factual Appraisal of the OISL Report: A Rebuttal to the Allegations against the Armed Forces’ (Raja Goonaratne and Kalyananda Thiraganama eds, 2018) <http://www.sinhalanet.net/wp-content/uploads/2017/03/GSLF_In_the_Defence_of_the_Armed_Forces_of_Sri_Lanka_Vol_01.pdf> accessed 17 February 2024.

⁴⁸ Minutes of the Consultative Committee on Humanitarian Assistance dated 30th January 2009. This Minutes has been cited in the Report titled ‘A Factual Appraisal of the OISL Report: A Rebuttal to the Allegations against the Armed Forces’ authored by Dharshana Weerasekera and co-edited by this writer in 2018 and available at <http://www.sinhalanet.net/wp-content/uploads/2017/03/GSLF_In_the_Defence_of_the_Armed_Forces_of_Sri_Lanka_Vol_01.pdf>

Conclusion

In conclusion, this study establishes that OISL allegation against Sri Lanka on denial of humanitarian assistance to civilians in the conflict zone (three districts, i.e. Kilinochchi, Vanni and Mullaitivu) is a groundless allegation which is not substantiated on credible evidence led on a reasonable standard of proof. On the contrary, it is established on the material facts given in the charge itself and other credible evidence that GOSL has acted in compliance with the cardinal principles of IHL relating to the provision of humanitarian assistance to civilians during the final phase humanitarian operations against the separatist militants in 2009.