

Sri Lanka, Naval War against Tamil Tigers

INTRODUCTORY TEXT: *The Sea Tigers was the name of the naval wing of the Liberation Tigers of Tamil Eelam (LTTE, known also as the Tamil Tigers) during the Sri Lankan Civil War (1983-2009). During its existence, it gained a reputation as a capable adversary for the Sri Lankan Navy. This case will discuss whether the international law applicable to armed conflict at sea governed this conflict and whether the actual hostilities were conducted according to its rules.*

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Case prepared by Eleonora Heim, Master student at the Universities of Basel and Geneva, under the supervision of Professor Marco Sassòli and Ms. Yvette Issar, research assistant, both at the University of Geneva.

A. NAVY REDOUBLES EFFORTS TO BLOCKADE MULLAITIVU

[Source: The Island, “Reinforcements sent to Trincomalee: Navy redoubles efforts to blockade Mullaitivu”, 3rd June 2001, Available at <https://www.island.lk/2001/06/03/defenc01.html> (footnotes omitted)]

[1] LTTE leader Velupillai Prabhakaran has ordered leaders of the Sea Tigers to come up with ways and means to beat the Sri Lanka Navy's blockade off Mullaitivu, after Navy Commander Vice Admiral Daya Sandagiri revamped his strategy, according to sources in the Wanni.

[2] Vice Admiral Sandagiri ordered the change in tactics after several LTTE arms-carrying ships successfully unloaded their deadly cargoes off the Mullaitivu coast in recent months. President Chandrika Bandaranaike had voiced her concern at a meeting of the National Security Council over Tiger arms ships getting through, and Sandagiri lost no time in formulating new plans.

[3] On Sandagiri's orders, a large number of naval Fast Attack Craft (FAC) arrived in the Eastern Naval area in Trincomalee in April and May and were placed under the command of Eastern Area Commander Commodore L. D. Dharmapriya to join gunboats and FAC's that patrol the waters off the Mullaitivu coast. Most of these major naval units are from less important theatres of operations, such as the western and southern coasts.

[4] However, warships have not been shifted away from the Northern Area, which also plays a crucial role in the fight to halt supplies reaching the LTTE. [...]

[5] The navy gained much intelligence on the Tigers' methods of sneaking arms ships in, after several LTTE cadres and Sea Tiger cadres who gave themselves up or were captured in battle in the last two months, gave detailed descriptions of how it is done. The LTTE no longer brings ships to the beach, but keeps them 50-100 miles away off Mullaitivu, in the international shipping lane. By day they sail up and down, mingling with the hundreds of ships which sail around South Asia, and are impossible to detect since they have legitimate registrations and are flying the flags of other countries.

[6] But at night-time, they unload their cargo into large boats, which have sneaked out to the shipping lane in the guise of trawlers. These boats head back to Mullaitivu and by the time they were spotted by patrolling Dvoras [Dvora-class fast patrol boats], they had been joined by up to a dozen Sea Tiger attack craft which act as escorts for the last few miles of the voyage. The Dvoras were too few in number to be able to handle such odds, and by the time reinforcements arrived from Trincomalee and the Jaffna Peninsula, the convoy would invariably be almost home, leaving the navy warships to battle it out with the Sea Tiger craft.

[7] However, the new strategy (details of which are not being revealed for security reasons) is intended to beat the LTTE's tactics.

[8] Navy Headquarters was especially shaken when the captured cadres reported that among the items the Tigers received in recent shipments were sets of diving equipment which did not release air bubbles, making Sea Tiger frogmen impossible to detect from the surface at night. These suits even give the Sea Tigers the ability to use frogmen in daytime, to sneak into harbours such as Trincomalee and Kankesanthurai and blow up warships. Sentries and navy boats guarding harbours rely on the telltale trail of bubbles to give away the presence of frogmen.

[...]

B. DEADLY PLAN TO BLAST COLOMBO PORT

[Source: Sunday Times, Sri Lanka, "Deadly Plan to Blast Colombo Port", 18th June 2006, Available at <http://www.sundaytimes.lk/060618/news/1.html>]

[1] A Tiger guerrilla plot to attack eight different ships in the Colombo Port came a cropper [failed badly] for

two consecutive days due to rough seas and their plans going awry. Eight different explosive packages with timing devices and magnets attached were to be used in this attack.

[2] Last morning one guerrilla died after swallowing a cyanide capsule. A second is warded at the Welisara hospital. Three others who were on a boat were arrested on the high seas by the Navy. On the boat, among other things, were: frogmen's kits, oxygen cylinders, mobile telephones, a Global Positioning System (GPS), two timed-explosive devices, a passport, two National Identity Cards and cash.

[3] Those in custody have begun baring details of the Tiger guerrilla plans to cause mayhem in the Colombo Port, an exercise which, if successful, would have caused enormous damage to the nation's economy. They had tried to carry out the attacks on Friday but found the seas too rough to move in their boats. Thereafter, things went wrong yesterday partly due to rough seas.

[4] A second incident in the Gulf of Mannar, said to be a diversion, timed for the attacks on the ships, saw gun battles between the Sea Tigers and the Sri Lanka Navy. Eleven sailors were killed. Navy Commander Vice Admiral Wasantha Karannagoda said at least 25 to 30 guerrillas were killed. He said eight of their boats were destroyed.

[5] In the resultant melee, both Tiger guerrillas and military officials traded allegations against each other over the death of a woman inside a church and the killing of four fishermen on the beach at Pesalai near Mannar. Two more bodies were found in the vicinity, reports said. Forty four civilians were injured.

[6] Media Minister Anura Priyadarshana Yapa said the Government would conduct an inquiry to ascertain the circumstances under which the attacks on civilians occurred. "It is only after it is over that we will know how it took place," he said yesterday.

[7] Details of the planned attack on eight ships in the Colombo Port began to unravel after residents along the coast of Pamunugama heard a loud explosion at sea. Thereafter, residents had seen two suspicious persons swimming and coming ashore. One had bitten a cyanide capsule. When Police arrived, upon being alerted, the second person had swallowed a cyanide capsule.

[8] The first died whilst the other was admitted to the Welisara hospital. Within barely 35 minutes after the first explosion, a second blast was heard. Police who are conducting investigations have learnt that two explosive packages had been destroyed. Besides the two found on the boat, two were discovered by fishermen in Wennappuwa.

[9] Late last night another explosive package was found at Dungalpitiya in Pamunugama and defused.

[10] After Police were told of the find, Special Task Force (STF) commandos took charge of them. One more packages is still missing.

[11] Sri Lanka Navy rushed patrols from SLNS Rangala, their main establishment in Colombo. Two Inshore Patrol Craft (IPC) ran into rough seas. One capsized. Two sailors were rescued and three were reported missing. Navy personnel arrested a guerrilla wearing a frogman's kit and swimming at sea.

[12] Thereafter a Navy patrol seized the guerrilla boat with three cadres on board.

[13] Security measures in and around the Colombo Port were immediately strengthened. Whilst Army units have moved into areas on ground, Navy patrols in the waters outside the port area have been stepped up.

[14] According to reports from Mannar, a flotilla of Sea Tiger boats had ordered fishermen not to set out on their tasks yesterday morning. Many who were at sea were told to withdraw. On learning this, three Navy Fibre Glass Dinghy (FGB) patrols had moved in to find at least 11 Sea Tiger boats in the area. They came under attack.

[15] The incident has led to civilians fleeing their homes.

[16] Mannar's Government Agent M. Vishvalingam told The Sunday Times that 7,000 persons had fled to the Church of Our Lady of Victories after the fighting. He said there were fears they could cross the Palk Straits and go to India. He said he had brought this to the attention of the Government.

[...]

Discussion

I. Classification of the Conflict and Applicable Law:

1. (*Document A, paras [1]-[2], Document B, paras [1]-[3]*) How would you classify the situation in Sri Lanka at the beginning of the 2000s? (GC I-IV, Arts 2 and 3; P I, Art. 1; P II, Art. 1)
2. (*Document B, para. [1]*) Under what circumstances will fighting against a "guerrilla" organization amount to an armed conflict? What criteria must be fulfilled for such fighting to be regarded as an armed conflict? What law is applicable to such conflicts? (GC I-IV, Arts 2 and 3; P I, Art. 1; P II, Art. 1)
3. What evidence can you find in this case to support the view that the requisite criteria to classify the fight between the Tamil Tigers and the Sri Lankan Armed Forces as a non-international armed conflict are fulfilled? (GC I-IV, Arts 2 and 3; P I, Art. 1; P II, Art. 1)
4. Could this situation be classified as a war of national liberation? What criteria would have to be met for the situation to be classified as such? Does Additional Protocol I of the Geneva Conventions apply to this situation? (P I, Art. 1(4))
5. Do you think the legal framework applicable to blockades and armed conflicts at sea the same for both international and non-international armed conflicts? (GC I-IV, Arts 2 and 3; P I, Art. 1; P II, Art. 1; San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 12 June 1994, Rules 1 and 2)

II. Naval Warfare and Naval Blockade

6. What is the San Remo Manual on International Law Applicable to Armed Conflicts at Sea? Does it constitute a legally binding set of rules?
7. Where, at sea, may hostile actions in the context of an armed conflict be carried out? Under which conditions may they take place outside these zones? (San Remo Manual, Rule 10)
8. (*Document A, para. [5]*)

a. Are belligerent ships allowed to disguise themselves? By flying the flags of other countries on their ships, do the Sea Tigers violate any rules of IHL? Are the Sea Tigers obliged to distinguish their vessels from the ordinary ships that sail the international shipping lane? Is the strategy of the LTTE to mingle during the day in international shipping lanes and attacking only at night in accordance with IHL? Under which conditions would it be legal? (San Remo Manual, Rules 110 and 111)

b. Since the LTTE often disguises its ships, under what conditions may the Sri Lankan forces search merchant vessels that might be LTTE vessels? (San Remo Manual, Rules 112 - 124)

9. (*Document B, para. [2]*) Does IHL apply to the arrest by the Sri Lankan Navy of the three LTTE members? Does the law of naval warfare apply?

10. (*Document B, paras [7]-[8]*) Were the Sri Lankan Police obliged by IHL to care for the LTTE members who had attempted to end their lives through cyanide poisoning? Who does IHL oblige to care for the wounded, sick and shipwrecked? Armed forces? Police forces? Fishermen? Is your answer the same in IACs and NIACs? (CIHL Rule 110; GC I-IV, Art. 3; P II, Art. 7; P II, Art. 8; P I, Art. 10; GC II, Art. 12).

11. (*Document B, para. [11]*) If the capsized Navy vessel and the shipwrecked sailors were encountered by Sea Tigers, what would the obligations of the latter have been towards the former? Would the Sea Tigers have violated IHL by leaving the sailors at the mercy of the ocean? If the Sea Tigers had rescued the sailors, would they have been entitled to detain them?

12. (*Document B, paras [5], [14]-[16]*)

a. Do the basic rules on the conduct of hostilities apply to attacks from the sea that produce their effects on land? (See, for guidance, P I, Art. 49)

b. Based on Document B, do you think that the principles of precaution and proportionality in attack have been followed by the parties involved?

c. How would you classify the Sea Tigers order to fishermen "not to set out on their tasks" and their order to those already in the water "to withdraw" right before their military manoeuvre? (CIHL Rule 15; CIHL Rule 20; P I, Art. 57 (2) c).

13. (*Document A, para. [4]*) According to this document, the Sri Lankan forces tried "to halt supplies reaching the LTTE."

a. Is a blockade unlawful under the laws of war? Does IHL contain a definition of a blockade? Does this depend on its type (naval, aerial, land blockade)? Do IHL treaties regulate blockades? (CIHL, Rule 53; San Remo Manual, Rules 102-103)

b. Does your answer depend on whether the conflict is international or non-international? If you consider that the legal institution of blockade does not apply to non-international armed conflicts, could the government nevertheless prohibit ships from entering its ports and/or inspect such ships?

c. What may render a blockade unlawful? Under IHL? Under IHRL?

d. Does the Sri Lankan government have obligations under IHL or IHRL vis-à-vis the Tamil population?

e. Do the parties involved have an obligation to allow free passage of humanitarian relief supplies? (GC IV, Art. 23; P I, Art. 70; P II, Art. 18; CIHL, Rule 55; San Remo Manual, Rules 102-103)