

Columbia University
Graduate School of Arts & Sciences
Human Rights Studies Master of Arts Program

Tamil Eelam: Inevitably a Dream?
Tamil Nationalism and the Right to Self-Determination

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Submitted in partial fulfillment of the
requirements for the degree of
Master of Arts

April 2018

ABSTRACT

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This thesis seeks to examine the compatibility between political demands associated with Tamil nationalism in Sri Lanka over the 20th century and what the international community was prepared to grant. It does this by simultaneously examining the contiguous stories of Tamil nationalism in Sri Lanka and the right to self-determination more generally over the course of the 20th century and up until the early 21st century, when the Sri Lankan civil war ended. It divides the time period into 3 sections to simultaneously compare the evolution of Tamil nationalism and transformation of the right to self-determination. It concludes that the demands associated with Tamil nationalism have, throughout the 20th century and early 21st century, always been incompatible with what the West was prepared to give them.

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ACKNOWLEDGMENTS

This thesis was no easy feat to accomplish. It pushed me to confront and challenge preconceptions that I had taken at face value and wrestle with topics that were intimately connected to my identity as a British Tamil. I've been extremely fortunate to have the support of many people throughout this process and I want to take this opportunity to give special thanks to some of them. I am indebted to David Scott for his generous, enthusiastic and non-judgmental guidance throughout this process. Madurika Rasaratnam's book *Tamils and the Nation* and discussions that I have had with her have been extremely influential in determining the way I explore the topic of Tamil nationalism in this thesis. Being a member of People for Equality and Relief in Lanka (PEARL), a community with an inspiring commitment to advocacy, has given purpose to my drive to learn about my past. I am humbled by the interest that Thavalingam uncle took in educating me about Tamil history and the effort he put into ensuring that I was exposed to the complexity of the topic during my trip to Sri Lanka in 2017. Finally, I want to thank my parents, to whom this thesis is dedicated, for more than I can ever put in words.

Introduction

The Sri Lankan civil war, which took place from 1983 to 2009, was the military confrontation between Tamil militant groups, primarily the Liberation Tigers of Tamil Eelam (LTTE) demanding an independent state in the North East of the Island, ('Tamil Eelam') and the Sri Lankan state. In 1993, the leader of the LTTE, Vellupillai Prabhakaran stated at the annual 'Heroes Day' address "we are standing on a strong moral foundation. We are fighting for a just cause. Our political objectives conform with international norms and principles. Our people are eligible for the right to self-determination. They have the right to statehood. Under international law this right cannot be denied. We must be firm in the cause of our struggle because truth and justice are on our side. Only when people are firmly and resolutely committed to their cause can they win their freedom"¹. This interpretation of their fight was in sharp contrast to the way that much of the international community perceived the civil war. The US, UK, The EU and Canada deemed the LTTE terrorists over the course of the 26 year war and emphasis was placed on condemning their tactics. Human rights organizations such as Human Rights Watch (HRW) would condemn the civilian casualties that had been caused by both sides to the war but were silent on the political issue that had given rise to the war. This thesis is motivated by the lack of clarity on the compatibility between what the LTTE were demanding on behalf of Tamil people in Sri Lanka and what the international community felt the Tamil community were eligible to receive when it came to the right to self-determination, as a minority community within a former colony.

The LTTE's call for an independent state, for the realization of the right to self-determination, throughout the civil war was not an isolated phenomenon of Sri Lankan Tamil

¹ Velupillai Prabhakaran, "Maha Veerar Naal Address, மாவீரர் நாள் 1993," Tamil Nation, November 27, 1993,

nationalism and a strengthening in Tamil demands for better forms of representation can be traced from the early 20th century. When I say Tamil nationalism², I am referring to the recognition of Sri Lankan Tamil people as a distinct community with a desire of preserving their culture and land through political representation. When nationalism is defined this way, it seems that Tamil people have always been nationalist. Over time however nationalism has acquired a political character, it has transformed from being a self-evident assumption of the existence of a community to a demand *for* the existence of a separate community in Sri Lanka. Thus the demands associated with Tamil nationalism, driven by the desire to preserve a collective identity, have strengthened over time, from increased representation in government to a federal government to, finally, arriving at a separate state based on the right to self-determination. Tamil nationalist sentiments however should not be confused with Tamil demands for self-determination. I define self-determination within the context of Tamil nationalism as the desire for Tamil people to be governed by Tamil representatives. The desire for self-determination entered the timeline of Tamil nationalism after the adoption of the Soulbury Constitution in 1948 when Ceylon was granted independence. This was the moment when the Tamil community decided that it was not in their interest to be governed by a Sinhalese majority government and the demand for a federal government entered political discourse.

It was also during this time that the concept of self-determination entered political discourse as a right through the statements and writings of Lenin and Wilson in the early twentieth century. By the 1960s it had entered international law as a right that all colonial states possessed and it's withholding gained the status of *jus cogens*. *Jus cogens* is a peremptory

² I will use the term 'Tamil nationalism' in this thesis to refer only to Sri Lankan Tamil nationalism. It does not refer to Indian Tamil nationalism. Additionally, when I refer to a Tamil community I am referring only to 'Ceylon Tamils' living primarily in the North and East of the island and not 'Indian Tamils'. The relationship between these two communities is an interesting topic to explore but beyond the scope of this thesis.

status attributed to the prohibition of certain crimes and “enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules”³. The right to self-determination also became the only human right to be featured in both human rights covenants in 1966. However, despite the apparent legal strength of the right to self-determination, the LTTE’s demand for the right was deemed illegitimate. Through this thesis, I do not just want to look at why the LTTE’s claims to self-determination were not supported by the international community from 1983 to 2009. I am interested in the history of political claims associated with Tamil nationalism over the course of the 20th century and how they corresponded to what the international community felt a minority community of a colony and later former colony could have in terms of political power. The fact that the international order has often been determined by a few Western states is not an uncontroversial statement and the power to grant what Tamil people in Sri Lanka have wanted over the course of the 20th century has often lay at the discretion of other people. Thus for my project it is important to look at how the right to self-determination has been perceived by those in power.

My goal through the investigation that follows is to answer the question of whether the demands associated with Tamil nationalism over the 20th century has ever coincided with what the international community was prepared to give them. In order to do tackle this question I will need to tell two separate stories, the first is of self-determination and the way it has been perceived by global powers and the second is the story of Tamil nationalism, which I will outline in a truncated form due to spatial limitations. It is likely that these two stories are interconnected, as it may be that Tamil people mobilized the language of self-determination as promoted by the international community to advance their goals but for the

³ ICTY, Judgment of The Prosecutor v Anto Furundžija (IT-95-17/1) (International Criminal Tribunal for the former Yugoslavia December 10, 1998). Para 153. For more information on the *jus cogens* nature of self-determination see pgs. 169-174 in Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal*, Reprinted, Hersch Lauterpacht Memorial Lectures 12 (Cambridge: Cambridge University Press, 1996).

purpose of my current project I will artificially separate the two stories. As expected it is difficult to ascertain exactly what every member of the Tamil community wanted at different times, but for my current project I will assume that election results and the messages communicated by political representatives are accurate indications of what Tamil people wanted. The thesis that follows will be structured in 3 sections that examine these two stories in parallel by dividing the 20th century (and early 21st century as my enquiry is limited by the end of Sri Lankan civil war) into 3 time periods that correspond to important shifts in the global order. The first is the early 20th century up until the end of the World War II. The second section starts at the beginning of a new world order that was created with the establishment of the United Nations and the final section looks at the post Cold War era. I will conclude that the demands associated with Tamil nationalism have, throughout the 20th century and early 21st century, always been incompatible with what the West was prepared to give them.

Section 1: The first half of the 20th century

1.1 The story of self-determination: Wilson & Lenin.

The end of World War I saw groundbreaking conceptions of self-determination that were vastly different from previous conceptions. Two key figures that pioneered the concept of self-determination were American President Woodrow Wilson and Russian revolutionary, Vladimir Lenin. They both championed aspirational visions of self-determination that transformed the right into as a positive rather than negative international right that imposed obligations on third party states. States had a duty to help nations who wished to realize the right to self-determination rather than simply not interfering in foreign states that already possessed the right. The characteristics of their conceptions served their own political visions and despite both conceptions recognizing ethnic nations' right to self-determination it was

only Lenin's conception that extended to the Third World by applying to countries under European colonial rule such as Ceylon. For Wilson, sovereignty still presupposed civilization. Their aspirational conceptions however differed significantly from the reality of state recognition during this period of time.

Woodrow Wilson's vision of a post war world order, which led to the creation of the League of Nations in 1920, was based on the concept of international peace and justice. Self-determination featured prominently in this vision and Anthony Whelan has identified 3 key characteristics of his conception⁴. The first was the dependence of legitimacy of rule on the consent of the governed, the second was that self-determination entailed sovereignty, and finally, it gave weight to ethnic nationalism. These characteristics were all visible in a variety of speeches given by Wilson towards the end of and after the war. In his "Peace without Victory" speech in 1917, thought of as his first articulation of the post war order, Wilson argued for the "principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty"⁵. Wilson's address to Congress in 1919 showed that he believed nations had the right to self-determination: "National aspirations must be respected; peoples may now be dominated and governed only by their own consent. "Self-determination" is not a mere phrase. It is an imperative principle of actions which statesmen will henceforth ignore at their peril."⁶ I will add a final component to Wilson's conception of self-determination and that is that it entailed the right to a *democratic* government⁷. I refer to the procedural aspect of

⁴ Anthony Whelan, "Wilsonian Self-Determination and the Versailles Settlement," *The International and Comparative Law Quarterly* 43, no. 1 (January 1994): 99–115, <https://doi.org/10.1093/iclqaj/43.1.99>.

⁵ Woodrow Wilson, "A World League for Peace" (Address to the Senate of the United States, United States Senate, January 22, 1917), <http://www.presidency.ucsb.edu/ws/?pid=65396>.

⁶ Woodrow Wilson, "Analyzing German and Austrian Peace Utterances" (President Wilson's Address to Congress, United States Congress, February 11, 1918), <http://www.gwpda.org/1918/wilpeace.html>.

⁷ Anthony Whelan acknowledges this in his article: "President Wilson actually preferred the phrase "self-government" which implied their right to select their own *democratic* government". Whelan, "Wilsonian Self-Determination and the Versailles Settlement." 100.

democracy here - Wilson, along with other participants at the Paris Peace conference, felt that the right to self-determination applied to the majority of a set population and that consent of the governed could be obtained with a majority vote⁸.

Lenin proposed a similar conception of the right to self-determination before, during and after WWI, in terms of scope and eligibility (aspirations were enough to make a nation eligible to the right) however with a very different vision of the post war order. For Lenin, recognition of the right to self-determination was a necessary step in the creation of “a united world proletariat”⁹. He recognized ethnic groups as a nation but for him, the groups that were entitled to self-determination were not simply ethnic nations but the working class within these nations. This was evident in his writing in 1903 when he wrote, “unconditional recognition of the struggle for the freedom of self-determination in no way obligates us to support each demand for national self determination. Social democracy, as the party of the proletariat, has as a positive and major task the achievement of self-determination not of peoples and nations, but of the proletariat within each nationality.”¹⁰ His 1915 essay titled *The Question of Peace* makes it abundantly clear that he intended the right to apply to oppressed nations, “A socialist of any of the *oppressor* nations (Britain, France, Germany, Japan, Russia, the United States of America, etc.) who does not recognise and does not struggle for the right of oppressed nations to self-determination (i.e., the right to secession) is in reality a chauvinist, not a socialist.”¹¹ He also connected colonialism to oppression and Antonio Cassese has characterized Lenin’s self-determination as an “anti-colonial

⁸ This is supported by the use of plebiscites to resolve border disputes with the creation of Czechoslovakia, Poland and Yugoslavia after the end of WWI. See Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States since 1776* (Oxford ; New York: Oxford University Press, 2010). 129.

⁹ Stanley W. Page, “Lenin and Self-Determination,” *The Slavonic and East European Review* 28, no. 71 (1950): 342–58. 351.

¹⁰ Vladimir Lenin, “The National Question in Our Programme,” *Iskra*, July 15, 1903, Marxists Internet Archive, <https://www.marxists.org/archive/lenin/works/1903/jul/15.htm>.

¹¹ Vladimir Lenin, “The Question of Peace,” *Proletorshaya Revolutsia*, 1921, Marxists Internet Archive, <https://www.marxists.org/archive/lenin/works/1915/jul/x02.htm>.

postulate”¹². A letter to Lenin by the Soviet Foreign Minister Chicherin explicitly stated “Our international programme must bring all oppressed colonial peoples into the international scheme. The right of all peoples to secession or to home rule must be recognized... The novelty of our plan must be that the Negro and all other colonial peoples participate on an equal footing with European peoples in the conferences and commissions and have the right to prevent interference in their internal affairs.”¹³ This quote also makes clear that, like Wilson, Lenin’s conception of self-determination entailed sovereignty¹⁴.

These conceptions of self-determination were radically different from previous practice when it came to state recognition, which depended on *de facto* attainment of statehood¹⁵. Of state recognition in the 19th century, Mikulas Fabry writes, “the right to self-determination applied to any self-defined people and outsiders were required to do no more than to recognize the *de facto* attainment of what was presumed to be their will.”¹⁶ In stark contrast the conception of self-determination put forward by Wilson and Lenin “did not demand respect for self-attained outcomes but for “wishes” and “aspirations”.”¹⁷ It also imposed duties and obligations on third parties. It had all the qualities of a contemporary human right, which oblige state parties to international treaties to respect, protect and fulfill the rights covered in them.

In reality, acknowledgement of new states in the aftermath of World War I up until the end of World War II followed a similar pattern to the previous century. It required recognition by

¹² Cassese, *Self-Determination of Peoples*. 16.

¹³ Vladimir Ilich Lenin, *On the Foreign Policy of the Soviet State* (Moscow, 1968). 421.

¹⁴ Vladimir Lenin, “The Right of Nations to Self-Determination,” *Prosveshcheniye*, no. 4,5,6 (June 1914), <https://www.marxists.org/archive/lenin/works/1914/self-det/index.htm#ch01>. Lenin stated that “if we want to grasp the meaning of self-determination of nations, not by juggling with legal definitions, or “inventing” abstract definitions, but by examining the historico-economic conditions of the national movements, we must inevitably reach the conclusion that the self-determination of nations means the political separation of these nations from alien national bodies, and the formation of an independent national state.”

¹⁵ Fabry, *Recognizing States*. Fabry examines the ways states were recognized prior to the 20th century in Chapters 1-3.

¹⁶ Fabry. 117.

¹⁷ Fabry. 120.

the great powers of the day and these powers chose to recognize states that had achieved *de facto* independence, “even if none of them could establish independence when they did without the military defeat of the German, Austro-Hungarian and Russian Empires.”¹⁸ The US administration’s actions did not mirror Wilson’s universalistic and sweeping language on the right to self-determination. It was clear that the US administration viewed Wilson’s conception of self-determination as flawed and wanted to proceed with caution with Secretary of State Robert Lansing warning President Wilson “to go very slowly before we take a step which commits this government to the recognition of an independent state based upon the principle that a people who have been oppressed and their native land held in subjection by superior force are entitled to be free and to possess the land” in his *Memorandum on the Recognition of the Czecho-Slovaks as a Nationality*¹⁹.

Considerations relating to the ethnic, religious, linguistic, historic and other characteristics of a territory’s inhabitants did enter debates relating to the drawing of borders in new states, but this was only *after* these new states had been deemed legitimate according to the standard *de facto* criteria. Even at this stage, despite the fact that “the major allies of the United States in Europe, Britain, Russia, France and Italy, officially espoused self-determination too”²⁰ primacy was not given to Wilson’s conception of self-determination and Fabry has noted that “the lack of any transparent hierarchy among the criteria determining territorial delimitations – that is some *a priori* conception of how to balance self-determination with economic, geographical, historical, or strategic factors – encouraged maximal demands, discouraged compromise, and led inevitably to perceptions of inconsistencies across cases.”²¹ Another key reason for the limited application of Wilson’s principle of self-determination was the lack of

¹⁸ Fabry. 118.

¹⁹ United States Department of State, “Papers Relating to the Foreign Relations of the United States. The Lansing Papers, 1914-1920.” II (1920 1914), <http://digicoll.library.wisc.edu/cgi-bin/FRUS/FRUS-idx?type=header&id=FRUS.FRUS19141920v2&isize=M>. 139. Also see Fabry, *Recognizing States*. 123.

²⁰ Fabry, *Recognizing States*. 121.

²¹ Fabry. 129.

clarification he gave to the actual application of the concept. There is little indication that Wilson grappled with the challenges that his idea of self-determination posed such as which groups of people qualified for the right, what obligations third parties had and how the right to self-determination was to be achieved if a group was deemed to qualify. The magnitude of demands for the right that his words resulted in led to Wilson admitting in 1919 that “when I gave utterance to those words [‘that all nations had a right to self-determination’], I said them without the knowledge that nationalities existed, which are coming to us day after day... You do not know and cannot appreciate the anxieties that I have experienced as a result of many millions of people having their hopes raised by what I have said.”²²

Additionally, whilst self-determination was introduced into international considerations when it came to setting boundaries of new territories, self-determination was not seen as something that minorities, or numerically inferior groups within a population were eligible to. Secession was not an option and the Commission of Jurists and Commission of Rapporteurs made this clear in the Åland Islands dispute in which the Swedish speaking population of the Åland Islands demanded self-determination through secession from Finland. They stated that “to concede to minorities either of language or of religion, or to any fractions of the population, the right of withdrawing from the community to which they belong, because it is their wish or their pleasure, would be to uphold a theory incompatible with the very idea of the State as a territorial entity.”²³ The simultaneous denial of sovereignty but granting of significant autonomy to the region due to the recognition of a distinct Åland Islands population suggests a lack of clarity in the conception of self-determination at this time. Unlike Wilson and Lenin’s conceptions it is not clear that self-determination necessarily entailed secession and sovereignty. To add further confusion the commissioners, in a seeming contradiction, also

²² Quoted in Cassese, *Self-Determination of Peoples*. 22. fn 33.

²³ The Åland Islands Question, “Report Presented to the Council of the League of Nations by the Commission of Rapporteurs,” April 16, 1921. 4.

agreed that an abuse or failure of sovereign power might as a last resort justify secession “when the State lacks either the will or the power to enact and apply just and effective guarantees of religious, linguistic and social freedom.”²⁴

In addition to self-determination of nations, Wilson’s vision of a post-war world included minority provisions. Whilst Wilson did not provide much clarification on which ‘peoples’ were entitled to self-determination, his emphasis on minority provisions shows an awareness that for new states, “depending on where the dividing line is drawn, an ethnic, religious or other community aspiring to nationhood can become either a “people entitled to full self-government, or a minority, with only minimal rights accorded to members of what was, in the Versailles scheme, a residual category”.²⁵ Minority protections were not included in the League Covenant²⁶ but were included in various peace treaties, which obliged defeated and new states to protect all inhabitants “without distinction of birth, nationality, language, race or religion”²⁷. The inclusion of these provisions also shows the paternalistic nature of the granting of sovereignty by ‘great powers’, as obligations towards minorities were seen as signs of a ‘civilized’ state. When Wilson suggested the inclusion of minority provisions in the German Treaty, British Prime Minister, David Lloyd George suggested that “international obligations” be imposed upon all the new states to bring them up to the standards of “other civilized countries”. During the post war period, a condition of sovereignty for states that had passed the *de facto* criteria was protection of minorities²⁸.

²⁴ The Aaland Islands Question. 28.

²⁵ Whelan, “Wilsonian Self-Determination and the Versailles Settlement.” 103.

²⁶ The US, UK and other imperial supporters were opposed to the universal application of minority protections when Japanese delegate, Baron Makino suggested it during the drafting. See Carole Fink, “The League of Nations and the Minorities Question,” *World Affairs* 157, no. 4 (1995): 197–205.

²⁷ League of Nations, “Polish Minority Treaty” (1919), <http://ungarisches-institut.de/dokumente/pdf/19190628-3.pdf>.

²⁸ This was seen again in the granting of independence for Iraq in 1931 when the Permanent Mandates Commission asked for guarantees relating to the protection of minorities. See Fabry, *Recognizing States*. 151.

Interestingly, the US's attitudes towards Czechoslovakia show that the US was not opposed to the use of force in liberation movements. When recognizing the belligerency of Czechoslovakia, Lansing acknowledged "If they succeed in their revolt and are associated with the United States and Entente in a military victory, they will have established by force of arms, their sovereign right to self-rule and independence". Additionally the US explicitly stated that it was "prepared to enter formally into relations with the *de facto* government thus recognized for the purpose of prosecuting the war against the common enemies, the empires of Germany and Austria- Hungary"²⁹. This recognition of the legitimacy of a liberation movement and acknowledgement of it as a *de facto* state is significant for my current project.

It is important to acknowledge, for my present enquiry, that it was the case that the self-determination accepted by European powers was limited to apply only to states within Europe and did not extend to European colonies. Prime Minister David Lloyd George endorsed Wilson's principle of self-determination in a 1918 speech stating that "government with the consent of the governed must be the basis of any territorial settlement in this war" however this principle was limited only for "the future of European civilization"³⁰. The mandate system within the League of Nations, which transferred the colonies and territories of defeated states to new states, also made it clear that sovereignty still presupposed civilization during the post World War I period. Article 22 of the League covenant justified the transfer of sovereignty by claiming that the territories were "inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world"³¹.

²⁹ See Fabry. 124.

³⁰ David Lloyd George, "British War Aims" (Caxton Hall, London, January 5, 1918), https://wwi.lib.byu.edu/index.php/Prime_Minister_Lloyd_George_on_the_British_War_Aims.

³¹ League of Nations, "Covenant of the League of Nations" (1919), <http://www.refworld.org/docid/3dd8b9854.html>. Article 22.

1.2 The story of Tamil nationalism: The move from communal to territorial representation.

Following Britain's conquest of Ceylon in 1815, a highly centralized government was put in place through the Colebrook Constitution in 1833. A legislative council and executive council was introduced and whilst there were no elections for any of the positions, members of key communities were nominated to become unofficial members of the legislative council and represent the views of their community. Initially there were representatives from the European, Sinhalese, Ceylon Tamil and Burgher communities. In 1889, representatives for the Muslim and Kandyan Sinhalese communities were added. Thus a communal form of representation was introduced on the island and for the first time Ceylonese people from some communities had a very limited voice in the administration. These members of the legislative council had no right to initiate legislation and could only contribute to discussion.

The reason for this communal form of representation is most likely because of the geographic separation of the diverse communities the island was home to, which had led to pockets of communities with incredibly varied cultures. Tamil and Sinhala populations lived in relatively isolated locations, the Tamils in the North and the East and the Sinhala population in the South. The British later brought 1 million Indian Tamils from India as cheap labour for tea estates in Kandy, in the central provinces of Sri Lanka. (This doubled the Tamil speaking population from 1 to 2 million). What is important to note here is that despite the Ceylon Tamils constituting 12.86% of the total Ceylonese population and the Sinhalese counting for 66.13% of the total population in 1911³², they had the same number of representatives in government. This along with the fact that prior to Britain's conquest of the island, previous

³² Department of Census & Statistics, Sri Lanka, "Table 2.10: Population by Ethnic Group and Census Years," Wayback Machine, August 8, 2014, <https://web.archive.org/web/20140808035544/http://www.statistics.gov.lk/Abstract%202013/CHAP2/2.10.pdf>.

colonial powers had administered the Tamil territory separately from the rest of the county led to “the perception that each of them were the island’s ‘founding races’, the major communities, while the others (Muslim, Indian and Burghers) were the minorities³³.

Political representation for Tamils during British rule, up until the early twentieth century, however did not come from the North or East but from Colombo, in particular individuals within the Ramanathan- Arunachalam family who resided in the illustrious Cinnamon Gardens estate, also known as Colombo 7. Cultural segregation did not exist between the middle classes of each community, who held jobs in the public service and resided together in the capital. There was little opposition to the fact that Tamil politics was dominated by the English educated elite in the capital, despite the majority of the community living in the North Eastern regions of the island because “a notion prevailed that among the Ceylon Tamils that the pre-eminence of Coomaraswamy³⁴ and his successors together with the recognition that they received from their colonial patrons, redounded to the credit of the community as a whole. This pattern of political behavior persisted until the 1920s.”³⁵

K.M De Silva, a prominent Sri Lankan historian has written of politics in the early twentieth century “What distinguished elite politics in Ceylon in the first two decades of the twentieth century from succeeding decades was the harmony that prevailed between the Sinhalese and Tamil leadership.”³⁶ In the early late nineteenth century and early twentieth century the brothers, Sir Ponnambalam Ramanathan and Sir Ponnambalam Arunachalam, dominated Tamil politics. Ponnambalam Ramanathan was nominated to be the unofficial Tamil member from 1879 to 1892 and his brother Arunachalam was nominated to be an official member of

³³ Wilson, *Sri Lankan Tamil Nationalism: Its Origins and Development in the Nineteenth and Twentieth Centuries* (Vancouver: UBC Press, 2000). 42.

³⁴ Wilson is referring to Arumuganathapillai Coomaraswamy who was the earliest known member of the Ramanathan-Arunachalam family and was an unofficial member of the Legislative Council from 1833-1836.

³⁵ Wilson, *Sri Lankan Tamil Nationalism*. 45.

³⁶ K. M. De Silva, *A History of Sri Lanka* (London : Berkeley: C. Hurst ; University of California Press, 1981). 387.

the Legislative Council from 1906 to 1912. It is difficult to categorize the brothers as ‘Tamil nationalists’, for much of their careers Wilson writes that they “both clamored for increased self-government without enunciating any distinct goals or objectives for the protection of Tamils”³⁷. It would be more apt to describe them, especially Ramanathan, as Ceylonese nationalists. They were well respected by both the Tamil and Sinhalese communities and when limited franchise was introduced to the legislative council in 1910³⁸, Ramanathan was elected as the educated Ceylonese member twice (despite running against Sinhalese candidates). In 1915, following the anti-Muslim riots between Sinhalese Buddhists and Ceylon Moors, he condemned the harsh punishment imposed by the British³⁹ in the legislative council “and antagonized the minority community next in size to the Ceylon Tamils, the Tamil-speaking Ceylon Muslims”⁴⁰. Arunachalam was a key proponent of constitutional reform as founding president of the Ceylon National Congress (CNC) in 1919. This national political party, which initially comprised of members from the Tamil and Sinhala communities, was instrumental in the push for increased self-government from the early 20th century up until independence in 1948.

Thus Tamil nationalism up until the 1920s constituted what A.J Wilson calls a “Tamil national awareness”⁴¹, where the Tamil community maintained their separateness from the Sinhalese and other groups on the island. They did not think of themselves as a minority and “looked on themselves as one of the two “founding races” of the island”⁴². They were

³⁷ Wilson, *Sri Lankan Tamil Nationalism*. 68.

³⁸ The Crew McCallum Reforms of 1910 added four elected unofficial members to the Legislative Council. Two were Europeans; one was Burgher and one educated Ceylonese.

³⁹ De Silva has written of Ramanathan’s response to the riots: “In the Legislative Council Ponnambalam Ramanathan, with all the moral authority of the elected representative of the educated Sri Lankans, rose to the defence of the Sinhalese leaders in a series of impassioned speeches notable alike for their fearless condemnation of the excesses committed by the British forces in suppressing the riots, and the cogently argued refutation of the conspiracy theory”. De Silva, *A History of Sri Lanka*. 378.

⁴⁰ A. Jeyaratnam Wilson, *The Break-up of Sri Lanka: The Sinhalese-Tamil Conflict* (Honolulu: University of Hawaii Press, 1988). 57.

⁴¹ Wilson, *Sri Lankan Tamil Nationalism*. 3.

⁴² Wilson. 48.

satisfied with being represented by the anglicized elite in Colombo because of the respect given to Ramanathan and Arunachalam by the British because “an honor conferred by it on one Tamil in those days meant prestige for the whole community”⁴³. From the 1920s onwards there was an increased demand for self-government by all Ceylonese people and it is at this point when there was a clear divergence in priorities between Tamil and Sinhalese communities. Territorial representation is often associated with self-government and democracy and its introduction into the legislative council in 1920⁴⁴ resulted in conflicting objectives between the numerical minority Tamils and the majority Sinhalese. K.M de Silva notes the breaking up of the harmony between the two communities at this time: “The situation changed fundamentally after 1922 when instead of two majority communities and the minorities; there was one majority community – the Sinhalese – the Tamils now regarding themselves as a minority community. It has remained so ever since.”⁴⁵

De Silva was however mistaken when he wrote this observation because, as is clear from subsequent demands by Tamil politicians, Tamils did not regard themselves as a minority community despite having minority status thrust upon them by the introduction of territorial representation. This was abundantly clear in 1918 when the Jaffna Association⁴⁶ stated that “under any system of election, territorial or communal, the existing proportion of Tamil representatives to Sinhalese representatives should, as far as possible be maintained”⁴⁷. For a short amount of time it seemed like Sinhalese leaders in the CNC were supportive of this request, however their refusal to allocate a previously agreed special seat in the Western Province for Tamils led to a break in Arunachalam’s relationship with Sinhalese leaders in

⁴³ Wilson. 52.

⁴⁴ The Legislative Council underwent reforms, known as the Manning Devonshire Reforms, once again in 1920 and 1923 and that included increases in the number of unofficial members where many of these members were elected on a territorial basis.

⁴⁵ De Silva, *A History of Sri Lanka*. 387.

⁴⁶ Arunachalam Sabapathy, a Tamil unofficial member of the Legislative Council, founded the Jaffna Association in 1906 to represent the political interests of Tamils in Jaffna.

⁴⁷ Quoted in Wilson, *The Break-up of Sri Lanka*. 63.

the CNC such as James Peiris and E.J Samarawarawickrema. He left the CNC in 1921 as a result. Wilson attributes the breakdown of consociational politics to the fact that “the Sinhalese majority was determined not to sacrifice the numerical advantage that territorial representation would give them”⁴⁸.

The Donoughmore Commission was appointed in 1927 to review the case for constitutional reform and there was a vacuum in Tamil leadership during this crucial time. Arunachalam had died in 1924 and Ramanathan had retired from politics in 1920. The Commission, De Silva writes “had the effect of exacerbating communal and political tensions on the island, with individuals and groups making exaggerated claims and demands in the hope of influencing the Commission’s work and the political constitutional structure it would recommend.”⁴⁹ Despite these demands, the Donoughmore Report ended up recommending universal suffrage and made no provision for communal representation. De Silva writes on the aftermath of the report: “Representatives of minority opinion complained that while a significant measure of power had been transferred to Sri Lankans, safeguards for protecting the interests of minorities were surprisingly inadequate. Moreover the minorities found universal suffrage just as unpalatable as the Sinhalese, who took a stand against it⁵⁰, and indeed even more so: for universal suffrage would result not only in the democratization of the electorates but it would guarantee the permanent Sinhalese domination of politics.”⁵¹ As will be discussed in more detail below, the Donoughmore Commission did not attach importance to minority concerns because their priority was fostering an all-Ceylon national unity and they viewed communal representation as an obstacle to this goal. In reference to communal representation they wrote in their report “it is our opinion that only by its abolition

⁴⁸ Wilson. 59.

⁴⁹ De Silva, *A History of Sri Lanka*. 418.

⁵⁰ The leaders of the Ceylon National Congress were unhappy with limited extension of power to Ceylonese people and the extension of franchise to the Indian plantation workers.

⁵¹ De Silva, *A History of Sri Lanka*. 423.

will it be possible for the diverse communities to develop together a true national unity”⁵².

The Donoughmore Constitution was adopted in 1931 and Sri Lanka “became the first British colony in Asia- and indeed the first Asian country- to enjoy the principle of universal suffrage.”⁵³ The Tamils had found themselves at this crucial moment without any clear leader to represent their interests and this was further exacerbated by the disastrous boycott of the State Council elections⁵⁴ orchestrated by the Jaffna Youth Congress which left seats in Tamil regions vacant for almost 2 years.

Ganapathipillai Gangaser Ponnambalam (GG Ponnambalam) became the unofficial leader of Ceylon Tamil politics shortly after the introduction of the Donoughmore constitution. He entered the State Council after being elected as the representative of the Point Pedro constituency (his home town) in 1934. He did not come from a reputable family like Arunachalam and Ramanathan and gained the support of Jaffna Tamils because of his ability “in the campaign arena and the State council to articulate the fears of the Ceylon Tamils and advocate the safeguards they needed”⁵⁵. His most notable policy recommendation was ‘fifty-fifty’ throughout the 1930s and 1940s, which demanded that half the seats in parliament to go to the Sinhalese majority and the other half to be distributed amongst the minority communities. He advocated for ‘fifty-fifty’, initially by himself in the State Council and then with the support of the All-Ceylon Tamil Congress to the Soulbury Commission. GG Ponnambalam and Samuel James Veluppillai (S.J.V) Chelvanayakam founded the All-Ceylon Tamil Congress (ACTC) in 1944 after the appointment of the Soulbury Commission and it was the first Tamil political party in Ceylon.

⁵² Great Britain and Richard Walter John Hely-Hutchinson Donoughmore, *Report of the Special Commission on the Constitution of Ceylon* (London: H. M. Stationery off., 1928), <https://catalog.hathitrust.org/Record/007551275>. 99-100.

⁵³ De Silva, *A History of Sri Lanka*. 422.

⁵⁴ The Donoughmore Constitution replaced the Legislative Council with the State Council as the legislature of British Ceylon.

⁵⁵ Wilson, *The Break-up of Sri Lanka*. 61.

What is important to note here is that from the 1930s up until the formation of the Soulbury Commission, Tamil “national awareness” had not yet transformed into a demand for self-determination. GG Ponnambalam and ACTC were not asking that Tamils be governed by a Tamil government, they were requesting balanced representation within a unified Ceylon in line with Governor Manning’s 1922 recommendation that “no single community can impose its will upon other communities”⁵⁶. In fact, Wilson in a footnote notes that, “In the early 1930s, a memorandum for a federal constitution was submitted by a little-known Tamil from Jaffna; at that time the federal issue had not gained the support of Tamil opinion.”⁵⁷ The language that GG Ponnambalam used to advocate for ‘fifty-fifty’ is filled with appeals to rights that groups were entitled to. For example, in a 1946 speech Ponnambalam is recorded as having stated “It is essential to place before the Tamils a policy and a program which will enable the Tamils to work for the common weal in cooperation with other communities in the island while conserving the inalienable rights of the community.”⁵⁸ This language of “inalienable rights” makes it sound like he is appealing to human rights, however no human rights documents existed at the time.

Despite having strong initial support for ‘fifty-fifty’ from most minority communities, the proposal ultimately failed due to lack of unity amongst the Tamil community and outmanoeuvring by D. S. Senanayake (who would later become the first prime minister of the newly independent Ceylon)⁵⁹. A key strength of the proposal was the homogeneity, at the time, of the Board of Ministers – Ponnambalam used the fact that all the ministers were Sinhalese to show the danger that minorities faced under the existing form of representation. However Arunachalam Mahadeva, son of Ponnambalam Arunachalam and Member of the

⁵⁶ See Wilson. 7.

⁵⁷ Wilson. 83.

⁵⁸ Taken from *The Hindu Organ*, 5 February 1946. See Wilson, *Sri Lankan Tamil Nationalism*.

⁵⁹ See “Challenges to the Unitary State, I” in Wilson, *The Break-up of Sri Lanka*.

State Council for Jaffna weakened this claim by joining the Board of Ministers in 1948.

Whitehall viewed this appointment as proof “that the Sinhalese elites were willing to share power with their Tamil counterparts”⁶⁰. When he came under attack for weakening the ‘fifty-fifty’ proposal, Mahadeva is reported to have told his Tamil colleagues that it was “dead as the dodo”⁶¹. Whilst GG Ponnambalam was not able to bring about adequate protection for the Tamil community in the Soulbury Constitution of 1947, Wilson acknowledges Ponnambalam with raising “the national consciousness of the Ceylon Tamils. He was the first Ceylon Tamil in the British period of colonial rule to give his own people a sense of national awareness and persuade them that they should have a sense of patriotic pride”⁶².

The Soulbury Constitution came into force in 1948, alongside Ceylon’s independence from colonial rule, and ACTC’s success in the 1947 general election (winning 7 of the 9 seats that they contested) caused them to conclude that, “The Tamil people of Ceylon have rejected the Soulbury Constitution in as much as at the general election, not one candidate of the U.N.P.⁶³ was elected to Parliament”⁶⁴. On top of failing to include Ponnambalam’s ‘fifty-fifty’ suggestion the Soulbury Constitution contained few safeguards for minorities. The most significant minority protection was Section 29 (2)(b), which prohibited the existence of a law that “make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable”⁶⁵. Shortly after independence, it became evident that the minority provisions were not enough to protect minority communities. In 1948 and 1949, Senanayake enacted legislation that deprived the Indian Tamil community of their citizenship. “At one stroke of the legislative pen, nearly half the Tamil population of the island (i.e. the Indian Tamils) lost all their seven seats in the House

⁶⁰ Wilson. 66.

⁶¹ Wilson. 65.

⁶² Wilson. 75.

⁶³ The United National Party was D.S. Senanayake party that had been instrumental in leading the country to independence.

⁶⁴ Wilson, *The Break-up of Sri Lanka*.

⁶⁵ “The Constitution of Ceylon,” February 1948, <http://tamilnation.co/srilankalaws/46constitution.htm>.

of Representatives”⁶⁶. Interestingly, Wilson has suggested that one reason for the lack of minority provisions in the new constitution was that the “terms of reference of the Soulbury Commission did not envisage complete independence for Ceylon. There was still a modicum of power vested in the Governor, which could have been called upon in the event of a communal abuse of constitutional powers”. However, following the granting of independence to India, Pakistan and Burma in 1947 there was “no question of Ceylon remaining only partly self-governing”⁶⁷.

1.3 Conclusion: The incompatibility of communal representation and Britain’s liberal democracy.

In the first half of the twentieth century, the story of self-determination was characterized by sweeping universal statements relating to the granting of the right to self-determination as sovereignty, which did not match the reality of the recognition of new states. Ethnic nationalism was one of many considerations in the granting of statehood in the post war era and the granting of sovereignty was denied to Third World countries that were still under the control of European colonial powers and deemed too uncivilized to enter the international community of sovereign states. Alongside this story we see a push for self-government in Ceylon led by the Ceylon National Congress (CNC), which Sir Ponnambalam Arunachalam helped found in 1919. The story of Tamil nationalism during and after the founding of the CNC is distinct from the push for increased self-government in Ceylon; it is the story of the desire to maintain the status quo. By status quo, I do not mean colonial domination but rather political equality with the majority Sinhalese community, something Ceylon Tamils had had for centuries even before Britain’s conquest of the island. Whilst the British did not intend to

⁶⁶ Wilson, *The Break-up of Sri Lanka*. 35.

⁶⁷ Wilson. 78.

grant Ceylon the right to self-determination they were willing to extend to their colony increased self-government, first through the granting of limited franchise in 1920 and then through universal franchise in 1931. What is crucial for my analysis is that for British rulers, self-government in Ceylon necessarily meant the creation of a liberal democracy, which entailed the acceptance of majoritarian-territorial representation. What mattered in this system was numbers and the Sinhalese, as the numerical majority, were elevated above other communities to a position of power.

Britain's desire to supplant a model of liberal democracy in Ceylon is clear from the report of the Donoughmore Commission. The commissioners wanted Ceylon to become a "free, united and democratic nation"⁶⁸. A key word to take note of is "united" – the commissioners were aware that a homogenous society, that behaved as one nation was necessary for the success of their model of liberal democracy and they also knew that Ceylon was composed of diverse distinct communities and saw this as an obstacle to their goal. In their report the commissioners state "These diverse elements and distinct classes, even if not antagonistic to each other, are in more or less separate compartments, this resulting in the lack of homogeneity and of corporate consciousness which make it difficult to achieve any national unity of purpose". They acknowledged that the introduction of communal representation in 1833 had been an "experiment" with the intention of developing democratic institutions and "was expected to provide, peacefully, an effective legislative assembly which would give a fair representation of the different elements in the population and would also tend to promote unity"⁶⁹. The fact that it had maintained distinct communities was an unfortunate result and therefore made it an "obstacle" to their desired goal, thus its abolition was necessary along with the introduction of territorial representation. Their statements make it fair to conclude

⁶⁸ Great Britain and Donoughmore, *Report of the Special Commission*. 91.

⁶⁹ Great Britain and Donoughmore. 90.

that territorial representation was introduced to eliminate difference from political affairs⁷⁰.

The British had constructed a vision of who the ‘people’ of Ceylon were and this united group would be empty of sectarian and communal demands.

However, it would be too generous to argue that the British were being naïve about the dangers that rule by majority posed to the island. The elite members of Ceylonese society who were pushing for increased self-government, through the CNC “showed little or no regard for the interests of the masses of the population”⁷¹ and the Commissioners were aware of this, writing in their report, “Democratic and electoral institutions are being accepted and even demanded, but the modern principle of political equality that goes with them has not yet been fully grasped.”⁷² The report also acknowledged the concerns that minority communities had about giving one community more power than another: “The minority communities are fearful that any preponderance of governmental power held by another community will inevitably be used against them and are keenly on the alert for signs of discrimination.”⁷³ Thus the British did not overlook the existence of difference and diversity; rather they felt that its appropriate place was in people’s private lives rather than entering the realm of politics. “The intrusion of diversity in politics, the commissioners argued, would have the unhappy consequence of making it impossible to arrive at anything like a common consensus.”⁷⁴

The “Tamil national awareness” that had existed up until the 1920s therefore strengthened as Ceylon was granted more political freedom and then later during the Soulbury Commission.

This is because processes by which British rulers felt it most apt to introduce self-government

⁷⁰ David Scott, “Community, Number, and the Ethos of Democracy,” in *Refashioning Futures: Criticism after Postcoloniality*, *Princeton Studies in Culture/Power/History* (Princeton, N.J.: Princeton University Press, 1999).

⁷¹ Scott, 147. Use De Silva to show how CNC were not

⁷² Great Britain and Donoughmore, *Report of the Special Commission*. 83.

⁷³ Great Britain and Donoughmore. 90-91.

⁷⁴ Scott, “Community, Number, and the Ethos of Democracy.” 169.

on the island threatened their status as political equals with the majority community on the island. This Tamil national awareness did not however progress into the demand for self-determination by which I mean, as stated previously, the desire for Tamil people to be governed by Tamil representatives. GG Ponnambalam's call for fifty-fifty representation was based on the idea of non-dominance within a unified Ceylon. What is crucial to the story of Tamil nationalism is that it was perceived as illiberal and "collaboration with the colonial government"⁷⁵ to oppose universal suffrage and the reorganization of power that came with it. The numerical rationality inherent in the Donoughmore constitution was seen as progressive and more modern and there was an assumption that numbers was the most legitimate way to distribute power. Much influential historical analysis of this period does not question this assumption and promoted it⁷⁶. Thus Tamil people were caught during this period in a 'catch-22' situation, they could reject the principle of democracy and be perceived as colonial collaborators or accept it *and* their position as a minority. They chose to accept the principle of democracy and as David Scott puts it, "swallowing the poison of the hegemonic story of democracy shackled Tamil nationalism"⁷⁷.

Section 2: 1948 – 1989

2.1 The story of self-determination: Decolonization

1945 marked to beginning of a period in the 20th century which is often labeled as 'decolonization', African and Asian states gained independence from their colonial rulers at

⁷⁵ Scott. 175.

⁷⁶ For example, De Silva writes of the equal status of Tamils and Sinhalese in the pre-Donoughmore period: "This state of affairs was too good to last. In democratic politics, which the political leadership of the island was pledged to uphold, numbers were inevitably a decisive factor. Soon numbers began to count, and when that happened, or was seen to be happening, the artificiality of the "two majority communities" concept was easily exposed". K. M. De Silva, *Managing Ethnic Tensions in Multi-Ethnic Societies: Sri Lanka, 1880-1985* (Lanham, MD: University Press of America, 1986). 58-59. Jane Russell, a prominent British historian, has written of Ponnambalam's fifty-fifty demands: "The Ceylon demands were in fact stimulated by a nostalgia for an era when their community had shared "majority" status with the Sinhalese. That era had passed, however, and could not be revived." Jane Russell, *Communal Politics Under the Donoughmore Constitution, 1931-1947* (Dehiwala: Tisara Prakasakayo, 1982). 336.

⁷⁷ David Scott, In-person discussion, interview by Shibane Sivanayagam, March 29, 2018.

an unprecedented rate. Seventy territories achieved independence between 1945 and 1979⁷⁸. The reasons behind the rapid granting of sovereignty to these states is up for debate but over the course of this period of decolonization there were significant changes to the characteristics of the right to self-determination. *De facto* statehood was no longer a pre-requisite for the granting of statehood. The right to self-determination became synonymous with the granting of independence to colonial territories and peoples within non-self governing and trust territories, as determined by the UN Charter. It was also during this period that Third World states succeeded in transforming the right to self-determination from being a political ideal into a legally binding principle with *jus cogens*⁷⁹ status in international law.

Following the end of World War II in 1945, despite many colonies obtaining independence, such as Ceylon in 1948, there was no general acceptance of a *right* to self-determination, particularly from European and US political representatives. Clyde Eagleton, a legal advisor to the State Department and member of the US delegation at the United Nations Conference in San Francisco wrote in 1953 “self-determination... cannot be allowed to any group for the sole reason that the group chooses to claim it.”⁸⁰ *De facto* statehood was still a prerequisite for obtaining independence⁸¹ and there was still a paternalistic attitude to the granting of sovereignty to colonies. Chapters XI⁸² and XII⁸³ of The UN Charter, adopted in 1945, made it

⁷⁸ Héctor Gros Espiell, “Implementation of United Nations Resolutions Relating to the Rights of Peoples under Colonial and Alien Domination to Self-Determination” (New York: UN Sub-commission on Prevention of Discrimination and Protection of Minorities, 1980), <http://dag.un.org/handle/11176/353794>.

⁷⁹ As stated in the introduction, *jus cogens* is a peremptory status attributed to the prohibition of certain crimes and enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules. See pgs. 169-174 in Cassese, *Self-Determination of Peoples*.

⁸⁰ Clyde Eagleton, “Excesses of Self-Determination,” *Foreign Affairs*, July 1, 1953, <https://www.foreignaffairs.com/articles/1953-07-01/excesses-self-determination>. 602.

⁸¹ Fabry outlines how the granting of independence in Syria and Lebanon was dependent on effective statehood. See Fabry, *Recognizing States*. 155-156.

⁸² Article 73 outlined that a goal of colonial states for their colonies was “to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement”. United Nations, “Charter of the United Nations,” 1 UNTS XVI § (1945), <http://www.refworld.org/docid/3ae6b3930.html>.

clear that while self-government was a goal for non self-governing territories and territories under the Trusteeship, it was not something that many were yet ready for. Thus whilst a purpose of the United Nations was to “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”, self determination was not intended at this time to delegitimize decolonization or apply to all states. Of the inclusion of self-determination in the UN Charter, international lawyer Antonio Cassese has written that the principle “was not considered to have a value independent of its use as an instrument of peace, it could easily be set aside when its fulfilment raised the possibility of conflicts between states... the Charter *did not impose direct and immediate legal obligations on Members States*. Its omission in the Universal Declaration of Human Rights (UDHR) in 1948 further illustrates this general sentiment amongst US and European powers.

However, over the course of the next decade, Third World states that had recently obtained independence succeeded in making their conception of self-determination as an inalienable right to sovereignty a universal legally binding human right. Roland Burke has presented an interesting account of this period in which he argues that human rights concerns led to the delegitimising of colonialism⁸⁴. He suggests that the recognition of self-determination, as envisaged by Third World states as a universal right to sovereignty, was triggered by a debate at the United Nations in the late 1940s in which “European delegations had demonstrated their intention to avoid any human rights promises to those outside the metropole by way of a special colonial exception clause in the draft human rights covenant”⁸⁵. Debates relating to

⁸³ Article 76 made it a goal of the Trusteeship System “to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory”. United Nations.

⁸⁴ Roland Burke, *Decolonization and the Evolution of International Human Rights*, Pennsylvania Studies in Human Rights (Philadelphia: University of Pennsylvania Press, 2010). Through his book, Burke tries to argue that the Third World has had an overlooked history of promoting liberal versions of human rights and democracy.

⁸⁵ Burke. 40.

this clause revealed that inhabitants of colonial territories would not have their human rights guaranteed to them. It was in the immediate aftermath of the rejection of this clause that the campaign for the inclusion of the right to self-determination in the human rights covenants was launched⁸⁶ and in 1952 the UNGA Resolution on the right of peoples and nations to self-determination recognized that it was “a prerequisite to the full enjoyment of all fundamental human rights”⁸⁷.

The Final Communiqué of the 1955 Bandung conference, hailed as the first large-scale meeting of Asian and African states, outlined key characteristics of Third Worlds states’ attitudes to self-determination during the beginning of this period. Emphasis was placed on non-interference and state sovereignty and it was closely linked to the promotion of human rights; self-determination was described as a human right in itself and also a means by which human rights could be attained. Thus the conference gave self-determination both intrinsic and instrumental value – the communiqué declared both that “the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights” and also that it “took note of the United Nations resolutions on the rights of peoples and nations to self-determination, which is a pre-requisite of the full enjoyment of all fundamental Human Rights”⁸⁸. Debates in the UN General Assembly relating to self-determination in the early 1950s revealed a sharp divide in opinion within Asian and African states over whether it should have instrumental or intrinsic value. By giving it instrumental value, the idea of self-determination entailed more than simply national independence and also included qualities of the internal political institutions within a state. Proponents of its intrinsic value however argued that political freedom and national sovereignty were distinct

⁸⁶ The draft resolution on self-determination was formally presented on 9 November 1950.

⁸⁷ UN General Assembly, “The Right of Peoples and Nations to Self-Determination,” A/RES/637 § (1952), <http://www.refworld.org/docid/3b00f0791c.html>.

⁸⁸ Asian-African Conference, “Final Communiqué of the Asian-African Conference of Bandung,” April 24, 1955, https://ecf.org.il/media_items/1128.

concepts and that self-determination “did not go into the question of the political system of a particular state”⁸⁹. Ceylon’s delegate to the UN, Mahmud, fiercely advocated for this concept of sovereignty in 1954: “Before attaining complete independence, Ceylon had enjoyed great political freedom, and yet it had not been a sovereign nation, able to decide whether or not it wanted to be independent. . . . The right of peoples and nations to self-determination was simply their right to establish their own political institutions, to develop their economy and to direct their cultural and social evolution without any foreign intervention”⁹⁰.

The unanimous passing of the 1960 Declaration on the Granting of Independence to Colonial Countries and Persons (with 9 abstentions, all from the West⁹¹), greatly contributed to the right to self-determination for European colonial countries acquiring *jus cogens* status⁹². It gave primacy to the intrinsic value of self-determination and made no mention of the instrumental value of self-determination in its declaration that “the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights” and that “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁹³ Brian Simpson has concluded from rights based language within the declaration that “the program of the anti-colonial movement came to be expressed in the language of human rights”⁹⁴. Effective statehood no longer was necessary for the granting of

⁸⁹ Stated by Zenon Rossides, representative for Greece and Cyprus in the Third Committee on 27 November 1957 (Summary Records of the Third Committee, 822nd meeting, November 27, 1957, A/C.3/SR.826. para. 3.) See Burke, *Decolonization and the Evolution of International Human Rights*. 48.

⁹⁰ Summary Records of the Third Committee, 822nd meeting, November 27, 1957, A/C.3/SR.826. para. 313. See Burke. 49.

⁹¹ Australia, Belgium, Dominican Republic, France, Portugal, Spain, Union of South Africa, UK & US.

⁹² Despite being a form of non-binding soft law, the declaration “contributed to the gradual transformation of the ‘principle of self-determination into a legal right for non-self-governing peoples” Cassese, *Self-Determination of Peoples*. 70.

⁹³ UN General Assembly, “Declaration on the Granting of Independence to Colonial Countries and Peoples,”

A/RES/1514(XV) § (1960), <http://www.refworld.org/docid/3b00f06e2f.html>.

⁹⁴ Alfred W. B. Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*, Paperback edition (Oxford: Oxford Univ. Press, 2010). There are academics that disagree with this interpretation of the story of self-determination. Samuel Moyn, for example, argues that anti-colonialism was not a human rights movement. See Samuel Moyn, *The Last Utopia: Human Rights in History*, 1. Belknap Press of Harvard Univ. Press paperback ed (Cambridge, Mass.: Belknap Press of Harvard Univ. Press, 2012). Chapter 3.

sovereignty⁹⁵; Third World states had successfully elevated self-determination to the status of a *peremptory right* that was framed in the “Western liberal idiom of human equality, dignity, and freedom”⁹⁶. As the most important resolution dealing with the right to self-determination at the time, it dictated the scope of who was eligible to the right and resulted in a very narrow conception of which “peoples” were entitled to self-determination. The ‘peoples’ who were eligible for this right were Trust and Non-Self-Governing Territories⁹⁷. Interestingly, during this period, the international community including the Security Council believed liberation movements carried out by territories belonging to this category were legitimate and UN Resolutions passed in the 1970s⁹⁸ codified the legitimacy of armed resistance to colonialism as well as foreign intervention in support thereof.

In the decade following the adoption of the 1960 Declaration, there was a sharp move away from seeing self-determination as having any instrumental value for the attainment of individual human rights by Third World states and it became more and more confined to simply the granting of sovereignty and the protection of newly independent states’ territorial integrity. This was reflected through the adoption of Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty⁹⁹ in 1965 and the language of the Declaration on Friendly Relations, adopted in

⁹⁵ The 1960 Declaration explicitly stated, “inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence”. UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples.

⁹⁶ Fabry, *Recognizing States*. 154.

⁹⁷ Despite some arguments to extend colonialism to cover the “communist imperialism” it was not explicitly referred to in the Declaration beyond the condemnation of colonialism in “all its forms and manifestations”. See Roland Burke, “‘Transforming the End into the Means’: The Third World and the Right to Self-Determination,” in *Decolonization and the Evolution of International Human Rights*, Pennsylvania Studies in Human Rights (Philadelphia: University of Pennsylvania Press, 2010).

⁹⁸ See UN Security Council, “Territories under Portuguese Administration,” 312 § (1972), <http://unscr.com/en/resolutions/doc/312>. UN Security Council, “Territories under Portuguese Administration,” 322 § (1972), <http://unscr.com/en/resolutions/doc/322>. UN General Assembly, “Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,” A/RES/45/34 § (1990), <http://www.un.org/documents/ga/res/45/a45r034.htm>.

⁹⁹ UN General Assembly, “Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty,” A/RES/20/2131 § (1965), <http://www.un-documents.net/a20r2131.htm>.

1970¹⁰⁰ which stressed each state's "inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State" and that "nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States"¹⁰¹.

Academics differ in their reasons for the vigor with which Third World states defended the principle of territorial integrity. Anghie had argued that it was to reverse and avoid further exploitation by Western powers whilst Fabry has argued "the *uti possidetis* of decolonization served to safeguard the new states also against internal fragmentation."¹⁰² It seems fair to give both reasons some weight. What was extremely clear during this period was that minorities within former colonies did not qualify for the right to self-determination.

Decolonization was accompanied by many internal conflicts because "the widespread rejection of colonial rule did not necessarily translate into a desire to constitute new states within former colonial confines"¹⁰³. Colonies had been granted independence in their colonial boundaries, which had often been created by imperial powers without any regard for or input from the native populations. Claims of self-determination by many ethno-national groups within newly independent states, such as the Tamils in Sri Lanka, led to large-scale violence. However, the legal strength of territorial integrity of former colonies prevented these movements from gaining any legitimacy, even if they had obtained *de facto* statehood¹⁰⁴.

Fabry aptly summarizes the paradox of the simultaneous strengthening of the right to self-determination *and* territorial integrity during decolonization: "as self-determination was

¹⁰⁰ UN General Assembly, "Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States in Accordance with the Charter of the United Nations," A/RES/25/2625 § (1970), <http://www.un-documents.net/a25r2625.htm>.

¹⁰¹ UN General Assembly. <http://www.un-documents.net/a25r2625.htm>

¹⁰² Fabry, *Recognizing States*. 149.

¹⁰³ Fabry. 163.

¹⁰⁴ A key example is the West's response to the large-scale violence against the inhabitants of Biafra by the Nigerian government in 1967. Britain stated that "whatever their grievances, at rebellion and succession.... was a tragic and disastrous error and therefor the Nigerian government were right to resist it. See Fabry. 166.

authoritatively declared to be a universal right and an unprecedented number of states entered the society of states under its banner, the chances for future emergence of new states narrowed more than ever.”¹⁰⁵

Cassese has argued that the inclusion of the right to self-determination in both human rights covenants (the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)) in 1966 broadened the scope of the right to beyond that of granting independence to colonial countries¹⁰⁶. This was largely because of Western opposition to the inclusion of the right. One of their arguments against its inclusion played off Third World states’ fear of the fragile nature of their territorial integrity as a result of their ethnically diverse societies and argued that the right would also apply to peoples that were oppressed within sovereign states. Cassese summarizes this state of affairs as follows: “Ironically, however, it was the losing camp’s strategies which did the most to broaden the principle of self-determination. By endorsing the view that self-determination, if included in the Covenant, must not be limited to colonial situations, the West markedly contributed to the widening of the scope of the Article.”¹⁰⁷ Their argument however did not broaden the principle of self-determination to legitimize minority claims to the right¹⁰⁸, but rather introduced the idea of *internal* self-determination to the concept. “Internal self-determination is best explained as a manifestation of the totality of rights embodied in the [ICCPR]”¹⁰⁹, or if we pay particular attention the rights embodied in the covenant it is the manifestation of a loose form of democracy. The self-determination promoted by Western states transformed the principle from a static right that could only be granted once to colonial territories or groups to a *continuing right* that

¹⁰⁵ Fabry. 150.

¹⁰⁶ See Chapter 3, Cassese, *Self-Determination of Peoples*.

¹⁰⁷ Cassese. 52.

¹⁰⁸ “An examination of the 1951 debates in the Third Committee and the 1952 discussions in the Commission of Human Rights makes it even more clear that the majority of States did not intend ‘peoples’ to encompass minorities”. Cassese. 62.

¹⁰⁹ Cassese. 52.

applied to individuals which could be continuously assessed by examining a state's internal decision-making process. Thus, Article 1 of the ICCPR and the ICESCR included both *external* and *internal* concepts of self-determination. Up until the late 1980s however, the Human Rights Committee (the body responsible for the implementation of the ICCPR) gave more importance to the *external* component of the right, giving primacy to the principle of territorial integrity. A 1984 report emphasized that the promotion of self-determination "must be consistent with the States' obligations under the Charter of the UN and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination"¹¹⁰.

2.2 The story of Tamil nationalism: the entrance and rise of the demand for self-determination.

The thirty years following independence saw a rapid strengthening of Tamil "national awareness" to what Wilson calls a "national consciousness"¹¹¹. From 1949 up until the 1970s there was a consistent push for a federal government by the Federal Party (FP) led by S.J.V Chelvanayakam. These demands grew in strength in response to increasingly discriminatory policies by Sinhalese-dominated governments against Tamils and multiple failed attempts to reach a political settlement between the Tamils and Sinhalese. This period also saw the beginning of anti-Tamil riots and increasingly visible racist sentiments towards Tamil people. By the 1970s, youth in Jaffna, who were most affected by the policies, had begun to create militant revolutionary groups, having lost faith in the attempted political negotiations taking place in Colombo. Tamil politicians had also lost faith in the government's ability to protect Tamil interests under a unified government and in 1976, the Tamil United Liberation Front

¹¹⁰ UN Human Rights Committee (HRC), "CCPR General Comment No. 12: Article 1 (Right to Self-Determination), The Right to Self-Determination of Peoples," March 13, 1984, <http://www.refworld.org/docid/453883f822.html>.

¹¹¹ Wilson, *Sri Lankan Tamil Nationalism*. 4.

(TULF), a multi-party coalition, articulated the first demand for ‘Tamil Eelam’, an independent Tamil state. By the early 1980s, it was clear that militants controlled the demand for an independent state and in the late 1980s the LTTE emerged as the dominant Tamil militant group.

GG Ponnambalam’s decision to form a coalition government with Senanayake’s U.N.P following the first post-independence election of 1948 and his subsequent complicity in the disenfranchisement of Indian Tamils led to a break in his relationship with S.J.V Chelvanayakam. Chelvanayakam left the ACTC in 1949 and created the FP. This marked the evolution of political demands associated with Tamil nationalism from balanced representation to a federal government. The FP had four consistent goals from 1949 up until the 1970s. The first was “a federal union of Ceylon, comprising the two Tamil-speaking Northern and Eastern Provinces, along with the remaining seven Sinhalese provinces.”¹¹² The second was an end to state sponsored “colonization schemes” which Senanayake had started in the late 1940s. Sinhalese were resettled into traditionally Tamil areas and this resulted in “a decline in voting strength and a threat to what had hitherto been an unexpressed right of possession by Tamils of the Northern and Eastern provinces as their homelands”¹¹³. The third was the unity to all the Tamil-speaking peoples of Ceylon and the fourth was the equal status of Tamil and Sinhala as languages of the state.

However, support from Tamil constituents for a federal government was not visible up until the 1956 general elections. In the 1952 general elections, the FP’s ability to only secure 2 of the 7 seats¹¹⁴ they contested suggests that Ceylon Tamils were ambivalent about the demand for a federal government to secure their interests, even after the implementation of the Indian

¹¹² Wilson. 82.

¹¹³ Wilson, *The Break-up of Sri Lanka*. 37.

¹¹⁴ A. Jeyaratnam Wilson, *Politics in Sri Lanka, 1947-1979*, 2d ed (London: Macmillan, 1979). 156.

Citizenship Acts¹¹⁵. The FP were more successful in the 1956 elections in which S.W.R.D Bandaranaike won on a platform of ‘Sinhala only’ to capitalize on strong Buddhist nationalist sentiments. His bill made Sinhalese the primary language of the state rather than having both Tamil and Sinhalese replace English (which had previously been the plan). The ‘Sinhala Only’ Bill legitimized open race-hate and resulted in the first of many anti-Tamil riots¹¹⁶. It was in this political climate that the FP won 10 of the 14 seats that it contested in 1956. At this time the FP were representing all Tamils, including those outside the North and East and the “federal solution was a way of reconciling the claims of well-to-do Tamils in the seven Sinhalese provinces and the Ceylon Tamils living in their traditional homelands in the north and east”¹¹⁷.

From 1956 up until the early 1970s, Tamils faced reduced employment opportunities due to the introduction of the ‘Sinhala only’ bill and discrimination in the recruitment process. Additionally, the state’s decision to nationalize schools resulted in a lack of investment to schools in Tamil-speaking regions. The Federal Party made two attempts to reach a political settlement to resolve the increasing tension between the Tamils and the Sinhalese. The first was the Bandaranaike-Chelvanayakam pact of 1957¹¹⁸ and the second was the Dudley Senanayake-Chelvanayakam pact of 1965¹¹⁹ however Buddhist nationalists in government heavily criticized both pacts and they were both abandoned. Throughout this period the FP maintained their demand for a federal government and the language used in their manifestos suggested that they viewed it as a way to realize the right to self-determination. Their 1960

¹¹⁵ Wilson has suggested that it was a misunderstanding about the party’s intentions because the “Tamil name of the party gave the impression when translated, of a Ceylon Tamil state or a Ceylon Tamil government... in translation the name could imply a separate independent Tamil state, but such a demand was not yet in harmony with the times.” See Wilson, *The Break-up of Sri Lanka*. 84.

¹¹⁶ For a comprehensive account of the 1956 riots see Tarzie Vittachi, *Emergency '58: The Story of the Ceylon Race Riots*, Third Impression edition (Andre Deutsch, 1959).

¹¹⁷ Wilson, *The Break-up of Sri Lanka*. 83.

¹¹⁸ Bandaranaike-Chelvanayakam pact is outlined in Wilson, *Sri Lankan Tamil Nationalism*. 90.

¹¹⁹ Dudley Senanayake-Chelvanayakam pact is outlined in Wilson. 97.

manifesto, for example, stated, “If we are to preserve our identity and survive, we must preserve our language, our lands, our religions, our culture and our heritage. The one and only way... is to regain for us the right to be the rulers of ourselves in our own home. The only way to regain our right is to decide for ourselves our own destinies, without jeopardizing the unity of Ceylon, is the federal form of government.”¹²⁰ Thus the FP was committed to realizing the right to self-determination under a *unified Ceylon* and in the 1970 elections they even urged “Tamil-speaking people not to lend their support to any political movement that advocates the bifurcation of the country”¹²¹.

The situation for Tamils worsened considerably in the 1970s, mainly through the introduction of 1) discriminatory education policies and 2) the adoption of “an autochthonous republican constitution”¹²² which led to the demand for a federal government transforming into the demand for a separate state by the TULF in 1976. Sirimavo Bandaranaike’s government introduced an education policy in 1971 where admission of students was proportionate to the number of students who sat for university entrance examinations in that language and “for the first time, the integrity of university admissions policy was tampered with by using ethnicity as a basis”¹²³. It was argued that the policy would correct the Tamil’s over-representation in education. Additionally, a district quota system was also introduced in 1973 and admissions to university were to be based on a quota determined by the population of the area. These policies had a dramatic effect on Tamil acceptances to university because their minority status (geographically and linguistically) meant that they had to obtain much higher marks. The 1972 constitution, which replaced the Soulbury constitution, added to Tamil anxieties – it was full of Buddhist nationalist undertones and there were no minority provisions. Chapter

¹²⁰ Wilson, *The Break-up of Sri Lanka*. 85.

¹²¹ Wilson. 86.

¹²² Wilson. 87.

¹²³ Sasanka Perera, “The Ethnic Conflict in Sri Lanka : A Historical and Sociopolitical Outline (English)” (Washington, D.C: World Bank, February 1, 2001), <http://documents.worldbank.org/curated/en/727811468302711738/The-ethnic-conflict-in-Sri-Lanka-a-historical-and-sociopolitical-outline>. 3.

II of the Constitution declared, “The Republic of Sri Lanka shall give to Buddhism the foremost place”¹²⁴ and Section 29 of the former constitution was removed. Section 18 provided a list of fundamental rights and freedoms however it also included a blanket clause that allowed the rights to “such restrictions as the law prescribes in the interests of national unity and integrity”¹²⁵. Wilson, who was also Chelvanayakam’s son-in-law, reported that the FP was not consulted in the forming of the constitution and the demands that they made were “turned down by the Assembly even before being examined”¹²⁶. The meeting of the Constituent Assembly on 22 May 1972 to pass the constitution was boycotted by fifteen of the nineteen Tamil representatives in Parliament. Chelvanayakam resigned his seat in parliament in 1972 as a result of the adoption of the new constitution. A by-election was not held for his seat until 1975 in which Chelvanayakam won his seat back “by the largest majority he had ever obtained since entering politics in 1947.”¹²⁷ It was at his victory address that the demand for secession was first articulated: “I was to announce to my people and to the country that the Tamil Eelam nation should exercise the sovereignty already vested in the Tamil people and become free.”¹²⁸ One year later in 1976 the FP joined the multi-party Tamil United Front to form the Tamil United Liberation Front (TULF) and the party declared, in what is also known as the Pannakam or Vaddukoddai resolution, “the restoration and reconstitution of the Free, Sovereign, Secular, Socialist State of Tamil Eelam based on the right of self-determination inherent in every nation has become inevitable in order to safeguard the very existence of the Tamil nation in this country.”¹²⁹ From 1976 up until the end of the civil war, Tamil nationalism entailed the political demand for a separate state to realize the right to self-determination.

¹²⁴ “Sri Lanka Constitution 1972” (1972), <http://tamilnation.co/srilankalaws/72constitution.htm>. Chapter 2, Section 6.

¹²⁵ Sri Lanka Constitution 1972. Section 18(2).

¹²⁶ Wilson, *The Break-up of Sri Lanka*. 87.

¹²⁷ Wilson. 88.

¹²⁸ Satchi Ponnambalam, *Sri Lanka: National Conflict and the Tamil Liberation Struggle* (Thornton Heath, Surrey : Totowa, N.J., U.S.A: Tamil Information Centre ; U.S. distributor, Biblio Distribution Center, 1983). 184.

¹²⁹ Tamil United Liberation Front, “Vaddukoddai Resolution,” May 14, 1976, http://www.sangam.org/FB_HIST_DOCS/vaddukod.htm.

Following the Vaddukoddai resolution there were rapid transformations to the movement for an independent Tamil state. It moved from being fought through parliamentary politics by higher *Vellala* caste, often-Western educated elites to an armed struggle fought by youth who pre-dominantly came from a lower *Karaiyar* caste. 1983 was the beginning of the official armed conflict and by 1985 it “became clear that a peaceful settlement could not be reached without [Tamil militant’s] participation”¹³⁰. It is difficult to pinpoint the exact reason for the rapid rate at which military groups took control of the demand of ‘Tamil Eelam’. Wilson has attributed some of this change to the loss of Chelvanayakam in 1977, commenting “his death marked an end of an era in Tamil politics. He was the cautionary voice, the safety valve that contained the emerging violence. His authority enabled him to chide the Tamil youth to desist from violence”¹³¹. The LTTE, which emerged in the late 1980s as the dominant militant group, after killing off or absorbing members of other insurgent groups, maintained that it was because many members of the Tamil community saw the taking up of arms as the only option left to them. A 1983 LTTE publication stated for example, “the Tamil people have taken up the armed struggle, as the only recourse left to win the freedom of the rights of the Tamil people on the basis of the right to self-determination”¹³².

The disaffection of the Tamil population with the Sri Lankan government and parliament’s ability to bring about a solution that protected their interests is not an unreasonable explanation for the exponential rise in support for the LTTE in 1983. Government action before, during and after the state-sponsored pogrom of Tamils in 1983, also known as ‘Black July’, which killed thousands of Tamils and left tens of thousands of Tamils displaced,

¹³⁰ Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*, Rev. ed (Philadelphia: University of Pennsylvania Press, 1996). 291.

¹³¹ Wilson, *The Break-up of Sri Lanka. The Break-Up of Sri Lanka*. 90.

¹³² A Balasingham, *Liberation Tigers and Tamil Eelam Freedom Struggle*, 1st ed. (Political Committee, Liberation Tigers of Tamil Eelam, 1983).

resulted in a surge in support for Tamil militants. A few weeks before the event, President Jayawardene was quoted in the Daily Telegraph of 11 July 1983 as saying: “I am not worried about the opinion of the Tamil people... now we cannot think of them, not about their lives or their opinion ... Really if I starve the Tamils out, the Sinhala people will be happy”¹³³. In response to the violence, the President appeared on television on 26 July 1983 and “did not utter a word of regret to the large number of Tamils who had suffered”, instead “assuaging the fears and hysteria of the Sinhalese people”¹³⁴. As Wilson puts it, his “ultimate blunder” in his response to the violence, was his decision to make Tamil demands for the right to self-determination illegal through the enactment of the Sixth Amendment to the constitution. The amendment titled “Prohibition against violation of territorial integrity of Sri Lanka” declared, “No person shall, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka”¹³⁵. This amendment led to all 16 TULF representatives forfeiting their seats in Parliament, and the TULF did not return to parliamentary politics until the 1989 elections. From 1983, Tamil demands for self-determination was dominated by Tamil militants.

It is not my intention here to narrate the full story of the Sri Lankan Civil War, which has been widely documented¹³⁶. What is useful for my project is to make it clear that for the LTTE, the right to self-determination entailed nothing less than political independence. Their chief strategist, Anton Balasingham whilst examining the concept of self-determination lamented in 1983 that “The most ridiculous misrepresentation and misconceptualisation of this concept arises from a position in which the right of the Tamil nation to self-determination

¹³³ A.R.M. Imtiyaz, “Ethnic Conflict in Sri Lanka: The Dilemma of Building a Unitary State,” in *Conflict and Peace in South Asia*, ed. Manas Chatterji and Jain B.M., vol. 5, 0 vols., Contributions to Conflict Management, Peace Economics and Development 5 (Emerald Group Publishing Limited, 2008), 125–47, [https://doi.org/10.1016/S1572-8323\(08\)05009-1](https://doi.org/10.1016/S1572-8323(08)05009-1).

¹³⁴ Wilson, *Sri Lankan Tamil Nationalism*. 113-114.

¹³⁵ “Sixth Amendment to Sri Lanka Constitution” (1983), <http://tamilnation.co/srilankalaws/83sixthamendment.htm>.

¹³⁶ A good narrative of the civil war can be found in Madurika Rasaratnam, *Tamils and the Nation India and Sri Lanka Compared* (New York, NY: Oxford University Press, 2017). Chapters 6 & 7.

is given recognition while opposing secession”.¹³⁷ Additionally, for much of the 70s and 80s the LTTE’s demands for the right to self-determination were ideologically committed to Leninism. In their 1983 publication, a rare glimpse into the thinking of the LTTE, the struggle is framed as “revolutionary tasks of national emancipation and socialist revolution” in response to “the reality of national oppression, of the blatant violation of basic human rights, of racial crimes, of police and military violence, of attempted genocide” and also to “the worst form of capitalist exploitative machinery”¹³⁸. Interestingly they legitimized their struggle by viewing the success of the TULF in the 1977 elections as “a plebiscite, a public expression of a nation’s will”¹³⁹.

2.3: Conclusion: Tamils mobilized around the language of self-determination after the right was perceived to have expired in Sri Lanka.

‘Decolonization’ was a crucial time for both the right to self-determination and Tamil nationalism. The right to self determination entered the framework of international law through its inclusion in the UN Charter, signifying that the principle held a place in the new world order envisaged by the ‘Four Powers’. At this time, however self-determination did not impose any immediate legal obligations on member states and was valued for being an “instrument of peace”¹⁴⁰. Over the next couple of decades however Third World states successfully transformed it from being a means by which to achieve peaceful relations amongst existing states to a *human right* that colonial territories had been deprived of. The Bandung conference was instrumental for mobilizing Third World states’ position on self-determination and it was described to have both intrinsic and instrumental value in the Final

¹³⁷ Balasingham, *Liberation Tigers and Tamil Eelam Freedom Struggle*. 36.

¹³⁸ Balasingham. 4.

¹³⁹ Balasingham. 28.

¹⁴⁰ Cassese, *Self-Determination of Peoples*. 43.

Communiqué. An alliance between the Soviet Bloc and newly independent Third World states, which provided for a numerical advantage in the General assembly saw the principle, as envisaged by the Third World, achieve *jus cogens* status, through various UN Resolutions. The 1960 Declaration along with the subsequent 1970 Declaration on Friendly Relations, showed that territorial integrity and *uti possidetis* was fundamental to the idea of self-determination and would be given primacy over other claims to self-determination. Thus as Cassese notes, self-determination was a right that expired once it had been exercised. Whilst the debates leading up to the adoption of self-determination in both human rights covenants suggested the inclusion of the idea of *internal* self-determination into the principle, this was not monitored or given primacy over territorial integrity by bodies such as the Human Rights Committee up until the end of the Cold War. Thus for much of this period, the granting of external self-determination did not depend on the internal character of a state.

Alongside this, Tamil nationalism went through dramatic changes. Following independence, S.J.V Chelvanayakam first articulated the demand for self-determination in 1949, through the demand for a federal government. This demand did not gain traction amongst the Tamil electorate until 1956, following Bandaranaike's infamous 'Sinhala Only' campaign.

Discrimination in the employment sector, riots and increased racial tension sustained this demand for 2 decades. Whilst it was essentially a demand to "freely determine their political status and freely pursue their economic, social and cultural development"¹⁴¹ it was not a demand for *external* self-determination, and emphasis was placed repeatedly on maintaining "the unity of Ceylon"¹⁴². After two decades of pushing for devolution of power without seeing any results, the introduction of discriminatory education policies that mostly affected

¹⁴¹ See Article 1.1 of UN General Assembly, "International Covenant on Civil and Political Rights" (1966), <http://www.refworld.org/docid/3ae6b3aa0.html>. UN General Assembly, "International Covenant on Economic, Social and Cultural Rights" (1966), <http://www.refworld.org/docid/3ae6b36c0.html>.

¹⁴² Wilson, *Sri Lankan Tamil Nationalism*. 85.

the politically isolated Tamil youth saw the creation of youth militant groups and the adoption of a constitution in 1972 that did not attempt to serve any of Tamil interests resulted in the multi-party TULF adopted a resolution that transformed the demand for a federal government into a demand for *external* self-determination in 1976. The next decade saw Tamil militants dominate the demand for self-determination and from 1983 to 1989 there were no TULF representatives in Parliament as a result of the adoption of the Sixth Amendment in 1983 which made Tamil demands for the right to self-determination illegal. The militant struggle was framed up until the late 1980s as a socialist revolution against both Sinhala chauvinism *and* capitalism.

This period is perhaps the time when the mismatch between Tamil demands and what the international community was prepared to grant them was most clear. Tamil people started demanding the right to self-determination first as an autonomous federal government and then as secession when the right was perceived to have expired for the people of Ceylon (and later Sri Lanka) by the international community. When they articulated the demand for a federal government, it would not have been seen as an international issue because the right only referred to *external* self-determination. The first time they seized the language of self-determination was in 1976 when the TULF first articulated their demand for “the restoration and reconstitution of the Free, Sovereign, Secular, Socialist State of Tamil Eelam based on the right of self-determination inherent in every nation”¹⁴³. By this time, debates leading up to the human rights covenants had revealed consensus around the idea that the right to self-determination did not apply to minorities. The 1970 Declaration had made it clear that once a colony was granted independence it had “exercised their right of self-determination in accordance with the Charter” and Cassese has commented that it can be inferred from this

¹⁴³ Tamil United Liberation Front, “Vaddukoddai Resolution.”

that, “if a people choose to associate or integrate with a sovereign country, it can subsequently only exercise the right to internal self-determination”¹⁴⁴. From 1948, Sri Lanka was thought of as a post-colonial state where the colonial issue of external self-determination had been solved. The internal character of the state and its treatment of its minority community did not give legitimacy to secession and it also did not delegitimize the sovereignty of the state.

Once the right to self-determination had entered the framework of international law the interpretation of international lawyers mattered when deeming who was owed the right to self-determination and it seems apt here to quote the opinion of Hannum Hurst, a prominent international lawyer, on Tamil claims to the right to self-determination in 1990: “The more prosperous Tamil population refused to admit that it held a privileged position out of proportion to its numbers, and it did not seem to understand its delicate position as a minority in a country which itself felt threatened by the looming presence of India”¹⁴⁵ and later “There will be no peace in Sri Lanka until the Tamil community recognizes that it is, in fact, a minority – and a rather small one at that.”¹⁴⁶ Despite the right to self-determination acquiring the status of a human right, during this period the idea of numbers distributing power and to some extent rights prevailed.

Section 3: Post Cold War Era

3.1 The story of self-determination: the universal entitlement to liberal democracy.

The end of the Cold War was a pivotal moment in the history of human rights, as it signaled the triumph of certain characteristics of society that would determine the new global order.

¹⁴⁴ Cassese, *Self-Determination of Peoples*. 73.

¹⁴⁵ Hannum, *Autonomy, Sovereignty, and Self-Determination*. 302.

¹⁴⁶ Hannum. 307.

This new global order had key implications for the way in which Third World sovereignty and the right to self-determination were understood by global powers. John Ikenberry has argued that the end of the Cold War signified the triumph of liberalism, over communism, as the dominant political ideology. It was when “the “inside” Western system became the “outside” order”¹⁴⁷. Antony Anghie has argued that it “signified the triumph of capitalism and its decisive emergence as the one economic system that every society had to follow if it was to prosper and progress”¹⁴⁸. The post-Cold War period is characterized by a US led project to universalize the liberal democratic state and it can be argued that this has predominantly been done through international human rights law. International human rights law, initially created in response to the savage actions of Hitler in Germany was transformed to combat ‘evil’ Third World states deemed to be savages *not* because of their barbaric actions against individuals but because these actions were *a result* of their illiberal ideologies. It is the paternalistic use of human rights law to intervene and ‘save’ sovereign states that led Anghie to conclude that the project of universalizing liberal democracies or what he terms “good governance” is simply a continuation of imperialism¹⁴⁹. This agenda of bringing about a global liberal democratic order led to the weakening of the concept of sovereignty as territorial integrity and the transformation of self-determination from a collective right that applied to groups to an individual right to liberal democracy (which was what western states had promoted during the drafting of the human rights covenants. Additionally the use of force to achieve the right to external self-determination was deemed illegitimate.

The term ‘liberalism’ can be applied to a variety of political ideologies that give weight to freedom and equality. The type of liberalism that was fiercely promoted by the US from the

¹⁴⁷ Gilford John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order*, Princeton Studies in International History and Politics (Princeton, NJ Oxford: Princeton University Press, 2011). 8.

¹⁴⁸ Antony Anghie, “Governance and Globalization, Civilization and Commerce,” in *Imperialism, Sovereignty, and the Making of International Law*, 1st pbk. ed, Cambridge Studies in International and Comparative Law (Cambridge, UK ; New York: Cambridge University Press, 2007). 245.

¹⁴⁹ Anghie. Chapter 5.

1990s was characterized by emphasis on globalization, free markets, democracy, rule of law, and the promotion of human rights. Many of these characteristics, whilst hugely beneficial for US and European societies by giving them the ability to continue to trade and exercise influence in former colonies for example, have been found by many researchers to be detrimental for Third World development¹⁵⁰ and have resulted in even more inequality between the First and Third Worlds. Nevertheless, through the seemingly universal language of human rights, the liberal democratic state has been promoted globally, especially to Third World states as a desirable state of affairs and a way by which Third World states can achieve development. As Anghie puts it, “attempts by Western states to promote ‘good governance’ in the Third World...are directed at reproducing in the Third World a set of principles and institutions which are seen as having been perfected in the West, and which the non-European world must adopt if it is to make progress and achieve stability.”¹⁵¹

When the Universal Declaration for Human Rights was adopted in 1948 it was not intended to be a liberal project¹⁵². In fact, when the human rights covenants were being drafted in the Third Committee, the US did not participate in related debates¹⁵³ and Third World states played a significant role in their formation. This was because of their numerical advantage within the General Assembly, along with the fact that Western states viewed human rights debates issues as “superfluous to real international diplomacy”¹⁵⁴. Anghie has noted how it had become increasingly clear to the Third World during this time that the international system that they had entered as sovereigns states did not reflect their interests and that the

¹⁵⁰ See for example, David Held and Anthony G. McGrew, eds., “The Great Globalization Debate: An Introduction,” in *The Global Transformations Reader: An Introduction to the Globalization Debate*, 2nd ed (Cambridge, UK : Malden, MA USA: Polity Press ; Distributed in the USA by Blackwell Pub, 2003).

¹⁵¹ Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law*, 1st pbk. ed, Cambridge Studies in International and Comparative Law (Cambridge, UK ; New York: Cambridge University Press, 2007). 249.

¹⁵² Anghie. 254.

¹⁵³ See Roland Burke, “Introduction: The Politics of Decolonization and the Evolution of the International Human Rights Project,” in *Decolonization and the Evolution of International Human Rights*, Pennsylvania Studies in Human Rights (Philadelphia: University of Pennsylvania Press, 2010).

¹⁵⁴ Burke. 7.

new field of human rights law offered a way to produce a new international standard that the Third World could play a role in creating¹⁵⁵. Thus emphasis was placed for the two decades of the human rights covenants on the right to self-determination and economic rights¹⁵⁶. However, there was a shift in the human rights movement following the end of the Cold War - emphasis was placed more on protecting the individual rather than collective rights and on civil and political rights rather than economic and social rights¹⁵⁷. The human rights project became a liberal project, and the necessary connection between liberalism and human rights is now supported by many human rights academics¹⁵⁸. While some academics such as Samuel Moyn argue that this change occurred in response to newly independent states committing gross human rights violations with impunity within their sovereign territory¹⁵⁹, there are others such as Anghie who argue that international human rights law, interpreted this way, offered Western powers a way to “regulate the behavior of a sovereign within its own territory”¹⁶⁰ and was therefore employed to help provide the political institutions in Third World states required for a global liberal order that favored the West.

Over the course of the 1990s obligations that international human rights imposed on states were reinterpreted so that it became necessary for the international community to regulate the internal political character of a state, such that “*only* liberal democracies are presumed capable of securing human rights, only *they* can count as partners in the new conversation of

¹⁵⁵ Anghie, *Imperialism, Sovereignty, and the Making of International Law*. 210.

¹⁵⁶ See Antony Anghie, “Sovereignty and the Post-Colonial State,” in *Imperialism, Sovereignty, and the Making of International Law*, 1st ed, Cambridge Studies in International and Comparative Law (Cambridge, UK ; New York: Cambridge University Press, 2007).

¹⁵⁷ Roland Paris comments of the human rights emphasized in Cold War peace-building efforts: “The typical formula for peace building included promoting civil and political rights, such as the right to free speech and a free press, as well as freedom of association and movement; preparing and administering democratic elections; drafting national constitutions that codified civil and political rights; training or retraining police and justice officials in the appropriate behavior for state functionaries in a liberal democracy”. Roland Paris, *At War's End: Building Peace After Civil Conflict* (Cambridge University Press, 2004). 19.

¹⁵⁸ See for example, Neil Mitchell, Rhoda E. Howard, and Jack Donnelly, “Liberalism, Human Rights, and Human Dignity,” *The American Political Science Review* 81, no. 3 (1987): 921–27, <https://doi.org/10.2307/1962683>. Makau W. Mutua, “The Ideology of Human Rights,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 1996), <https://papers.ssrn.com/abstract=1525598>.

¹⁵⁹ Moyn, *The Last Utopia*.

¹⁶⁰ Anghie, “Governance and Globalization, Civilization and Commerce.” 254.

international society”¹⁶¹. Thus the sovereignty that Third World had acquired through the promotion of the right to self-determination, went through radical changes and rather than guaranteeing their territorial integrity, became dependent on their ability to conform to Western expectations of what a state should look like. Two examples by which human rights has been employed to justify Western led intervention in Third World states are 1) the connection between human rights and development as argued for by international financial institutions (IFIs) and 2) the Responsibility to Protect (R2P) Doctrine.

In his impressive book, *Imperialism, Sovereignty and the Making of International Law*, Anghie connects the contemporary human rights movement to the promotion of liberal democracies (what he calls “good governance”). He does this by outlining the link between human rights and development made by IFIs, such as the World Bank or the IMF (both founded in the post WWII period) which both provide crucial loans to Third World States. Their founding provisions prohibit them from interfering in the political affairs of a recipient. However, by arguing that only states that that respect human rights can achieve real development *and* that only a very specific type of liberal government can promote human rights they can “justify formulating an entirely new set of initiatives that seeks explicitly to reform the political institutions of a recipient state, on the basis that such reform is necessary to achieve development”.¹⁶² Failure of IFI policies to stimulate development is blamed on the lack of “good governance” rather than the policies themselves or the political systems they promote. The use of human rights to transform Third World states into what the First World has deemed universally virtuous is what led Makua Mutua to characterize the post Cold War

¹⁶¹ David Scott, “Norms of Self-Determination: Thinking Sovereignty Through,” *Middle East Law and Governance* 4, no. 2–3 (January 1, 2012): 195–224, <https://doi.org/10.1163/18763375-00403003>. 199.

¹⁶² Anghie, *Imperialism, Sovereignty, and the Making of International Law*. 261.

contemporary human rights movement using a “savage-victim-savior” metaphor¹⁶³. He argues that this “three-dimensional prism” was intentionally constructed by “the main authors of the human rights discourse, including the United Nations, Western states, international non-governmental organizations (INGOs), and senior Western academics”¹⁶⁴. The role of the ‘savage’ is generally occupied the state that violates human rights. However it is not its role as a state that determines its status as a ‘savage’ but its “cultural deviation from human rights”¹⁶⁵ by being an illiberal, anti-democratic or other authoritarian cultured state. The ‘victim’ is “a powerless, helpless innocent whose naturalist attributes have been negated by the primitive and offensive actions of the state or the cultural foundation of the state”. Finally the ‘saviors’ are the authors of the human rights discourse, which Mutua argues is “ultimately a set of culturally based norms and practices that inhere in liberal thought and philosophy”¹⁶⁶. Thus “the metaphor is premised on the transformation by Western cultures of non-Western cultures into a Eurocentric prototype and not the fashioning of a multicultural mosaic”¹⁶⁷.

The ‘Responsibility to Protect’ doctrine, adopted in 2005 is another way by which human rights has been used to redefine sovereignty. Used exclusively against Third World states¹⁶⁸, it is a norm that legitimizes the use of force by Western states in Third World states, when human rights violations occur, for the purpose of saving a society from their savage illiberal leaders. Chapter VII of the UN Charter gave exclusive responsibility to the Security Council, a purely political body, to authorize any use of force for the maintenance of international peace and security, and Article 2.4 which whilst stressing the concept of territorial integrity

¹⁶³ Makau Mutua, “Savages, Victims, and Saviors: The Metaphor of Human Rights,” *Harvard International Law Journal* 42, no. 1 (2001): 201–46.

¹⁶⁴ Mutua. 202.

¹⁶⁵ Mutua. 203.

¹⁶⁶ Mutua. 204.

¹⁶⁷ Mutua. 205

¹⁶⁸ This is clear by the list of ‘Populations at Risk’ compiled by the Global Centre for the Responsibility to Protect. See “Populations at Risk: Global Centre for the Responsibility to Protect,” accessed April 18, 2018, <http://www.globalr2p.org/regions/>.

also included the provision that “this principle shall not prejudice the application of enforcement measures under Chapter VII”¹⁶⁹. Thus from the conception of the United Nations, the importance given to national sovereignty was shaped by the Council’s discretion when deciding what constituted a threat to international peace and security. As mentioned in the previous section, territorial integrity of newly independent states was given extreme weight and up until the end of the Cold War, the Security Council did not view gross human rights violations as a threat to international peace and security, especially because the nature of conflict in the post war period tended to mean that conflict was confined within the boundaries of a sovereign state. Following the end of the Cold War, there was evidence of a change in the Council’s attitude to sovereignty in the face of human rights violations that was reluctantly accepted by China and Russia¹⁷⁰. R2P, widely cited a success for its unanimous adoption at the UN World Summit in 2005¹⁷¹, is praised by many liberal western academics for changing the ethical discourse from “looking at the right of outsiders to intervene to right of civilians to have protection and be saved”¹⁷². The norm gives the international community a responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity”¹⁷³. Thus it codified the

¹⁶⁹ United Nations, Charter of the United Nations.

¹⁷⁰ For changing attitudes to humanitarian intervention see Jennifer Welsh, “The Security Council and Humanitarian Intervention,” in *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*, ed. Vaughan Lowe et al. (Oxford, New York: Oxford University Press, 2010).

¹⁷¹ Many states within the Global South expressed concern about paragraphs 138 and 139 of the World Summit Outcome document, which referred to R2P. See for example Mr Chimphamba’s statement as Chairman of the Group of the Group of African States: “On human rights issues, the African Group wishes to stress Africa’s commitment to human rights. However, it is important to point out the difficulty of defining collective security solely in terms of the responsibility to protect. The protection of citizens should not be used as a pretext to undermine the sovereignty, independence and territorial integrity of States. In addition to the civil and political rights included in the Secretary-General’s report, human rights need to include social and economic rights, particularly the rights to development and to determine systems of governance”. UN General Assembly, “Verbatim Records of Debates on the 2005 World Summit,” April 6, 2005, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/297/46/PDF/N0529746.pdf?OpenElement>.

¹⁷² T.G Weiss, “Humanitarian Action and Intervention,” in *The UN Security Council in the Twenty-First Century*, ed. Sebastian von Einsiedel (Boulder, Colorado: Lynne Rienner Publishers, 2016).

¹⁷³ UN General Assembly, “2005 World Summit Outcome,” Refworld, October 25, 2005, <http://www.refworld.org/docid/44168a910.html>. Para 139.

idea that conflict that was contained within the boundaries of a sovereign territory could constitute a threat to international peace and security.

As the concept of territorial integrity within the right to self-determination weakened, more primacy was given to the conception of self-determination pushed for by Western states during the drafting of the human rights covenants. David Scott has argued that in the post Cold War period, the triumph of the Western ideology of liberal democracy meant that “a *new* norm of self-determination was asserting itself – a norm of self determination *as* democratic entitlement”¹⁷⁴ The right to self determination in this period is no longer a claim to independence or *external* self-determination but a claim to *internal* self-determination, in particular “a claim about the universal entitlement to liberal democracy”¹⁷⁵. In the post-Cold War era, many academics and jurists, (Scott uses Thomas Frank as an example) argue that the use of the word “all” in Article 1 of the ICCPR and ICESCR which states, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”¹⁷⁶ implies that it is a right that applies universally to all individuals to participate in a democratic process and should not be limited to decolonization. Thus, with the rise of the global liberal order that followed the end of the Cold War, self-determination has transformed from a being an external collective right to an internal individual one that applies to all people rather than just those under colonial rule.

It is useful to draw upon the work of Robert Meister to examine how the new liberal world order and its reinterpretation of human rights impacted the legitimacy of liberation struggles which were being fought *for* the attainment of rights, like the one being fought by the LTTE

¹⁷⁴ Scott, “Norms of Self-Determination.” 203.

¹⁷⁵ Scott. 213.

¹⁷⁶ UN General Assembly, International Covenant on Economic, Social and Cultural Rights.

in Sri Lanka during this time period. In his book *After Evil*, Meister argues that the post-Cold War ‘Human Rights Discourse’¹⁷⁷ views the revolutionary conception of human rights that dominated the period between 1789 and 1989 as evil. “Unlike previous conceptions of human rights that were a call to uprising and resistance, Human Rights Discourse operates today in the realm of intervention and rescue”¹⁷⁸ Thus this new reformulation dramatically changed the situations in which the use of force was legitimate. “Large-scale violence was the ultimate evil”¹⁷⁹ and thus force could *only* be legitimately used to rescue those who were suffering and this is what the R2P norm promotes by legitimizing humanitarian intervention. He adds “unilaterally bombing a civilian population of another country, for example, is no longer a prima facie war crime when it is done to *stop* a crime against humanity occurring on the ground”¹⁸⁰. The use of force to fight *for* human rights, as was the nature of human rights advocacy prior to the end of the twentieth century was delegitimized. As Meister puts it “the revolutionary is no longer the standard paradigm of a militant for human rights; his willingness to inflict suffering on enemies raises too many questions about politically motivated cruelty.” Contemporary human rights discourse argues to have displaced politics with ethics and “the moral truth of human rights was often said to rest on a sympathetic identification with innocent victims on all sides that finally breaks the cycles of violence that revolutions too often produce.”¹⁸¹ This was clear from an interview with James Ross, the legal and political director at Human Rights Watch. The organization does not take up the issue of statehood or the right to self-determination because they are political decisions and to

¹⁷⁷ Meister uses the term ‘Human Rights Discourse’ “to designate the transformation of Auschwitz-based reasoning into a new discourse of global power that claims to supersede the cruelties perpetrated by both revolutionaries and counterrevolutionaries during the previous two centuries”. Robert Meister, *After Evil: A Politics of Human Rights* (Columbia University Press, 2010). 3.

¹⁷⁸ Meister. 8.

¹⁷⁹ Meister. 2.

¹⁸⁰ Meister. 4.

¹⁸¹ Meister. 20.

comment on the validity of a claim to statehood would violate their “principle of neutrality”¹⁸².

Thus under the new liberal order, the human rights movement changed in order to place emphasis on rights that contributed to the creation of liberal democracies. The end goal of a liberal democracy resulted in the reformulation of self-determination, away from the decolonization interpretation of it as a group right to external self-determination to an individual right to democracy. Human rights organizations did not examine the legitimacy of claims to external self-determination in conflicts triggered by demands for secession. Those who used force to promote human rights, especially conceptions of human rights that no longer fitted with the new liberal order, such as the right to *external* self-determination were not seen as revolutionaries but as evil and the focus was placed on their means rather than their demands.

3.2 The return of parliamentary politics, mass mobilization behind the LTTE and an attempt to liberalize the demand for Tamil Eelam.

The demands associated with Tamil Nationalism did not change considerably throughout the civil war. In the post-Cold War era it continued predominantly as a military struggle led by the LTTE for the right to self-determination through secession up until the Sri Lankan Army ruthlessly eliminated them in 2009. There are a few features of the war that emerged in the post-Cold War era that are worth noting for my present project. The first was the re-emergence of parliamentary politics with the return of TULF politicians into parliament in 1989 and then the formation of the Tamil National Alliance (TNA) in 2001. These political

¹⁸² James Ross, Interview with Legal and Policy Director for Human Rights Watch, interview by Shibane Sivanayagam, November 17, 2017.

representatives alternated between promoting ‘moderate’ and ‘extreme’ forms of Tamil nationalism. Perhaps the most prominent ‘moderate’ attempt to resolve the war was Neelan Thiruchelvam’s ‘package’ of constitutional reform that was drafted in 1995 with President Chandrika Kumaratunga and involved devolving powers to the North and East. His push for a compromise that fell short of the demand for secession led to his brutal assassination in 1999 by the LTTE¹⁸³. Following opposition by Tamil and Sinhala nationalists the proposal was dropped. The TNA was an alliance between the TULF, the ACTC and political factions of Eelam People’s Revolutionary Liberation Front (EPRLF) and Tamil Eelam Liberation Organization (TELO)¹⁸⁴ to contest the 2001 elections and they won the majority of seats in the North and East in the 2001 and 2004 election with a manifesto that endorsed the LTTE as the sole representative of the Tamil people¹⁸⁵. However there were gaps between the TNA’s public commitments to Tamil constituents and their private statements to international actors where they would endorse more moderate stances on Tamil nationalism¹⁸⁶. Thus it seems that despite promoting the idea of ‘Tamil Eelam’, it was a cultural rather than political concept for many TULF and TNA politicians.

¹⁸³ The killing of members of Tamil society who did not support the LTTE’s mission was common throughout the war. D B S Jeyaraj made the following interesting comment of the LTTE’s frustration with TULF in a tribute to Neelan Thiruchelvam, “The LTTE had become increasingly irritated by the TULF. It found that TULF’s role in formulating the devolution package and its issue-based support to the Chandrika Kumaratunga regime bestowed upon the government greater acceptance and credibility. It also found that despite the insistence of the Tigers that only they be regarded as the sole representative of the Tamil people, it was the TULF that enjoyed global approval”. D.B.S. Jeyaraj, “Neelan’s Killing: A Tragedy Beyond Belief,” *Tamil Times*, August 15, 1999. 14.

¹⁸⁴ Eelam People’s Revolutionary Liberation Front (EPRLF) and Tamil Eelam Liberation Organization (TELO) were Tamil militant separatist groups that transformed into political parties after the LTTE killed most of their members.

¹⁸⁵ Mr.R.Sampanthan, Secretary General of the Tamil United Liberation Front (TULF) stated in a 2001 address, “The time has now come for all the Tamil political forces in the northeast to unite under one banner to give full support for the militants who are involved in the freedom struggle,” TamilNet, “‘Tamil Parties’ Alliance Formed to Support Liberation Struggle’-TULF,” *TamilNet*, October 28, 2001, <http://www.tamilnet.com/art.html?catid=13&artid=6422>. On the motivation for having a political election that endorsed a militant liberation struggle, Rasaratnam has written: “the campaigning positioned the TNA as embodiment of Tamil nationalist sentiment and urged voters to telegraph to the international community their clear endorsement of the manifesto.” Rasaratnam, *Tamils and the Nation India and Sri Lanka Compared*. 209.

¹⁸⁶ “In competing with the LTTE for the political leadership of the Tamils, these parties, including the TULF and the former militant groups, projected themselves as the ‘moderate’, ‘democratically elected’ and thus authentic/ legitimate representatives, and gave vital assurances to the international community – often in private rather than in public – of their confidence in the Kumaratunga’s and successive Sinhala elite’s sincerity in seeking an equitable solution to the Tamil question.” Rasaratnam, *Tamils and the Nation India and Sri Lanka Compared*. 201.

Secondly, from 1990 up until the end of the war, the LTTE implemented a *de facto* state in various parts of Sri Lanka¹⁸⁷. Madurika Rasaratnam writes of their *de facto* state that it was “a political project to give tangible form to the aspiration for national self-determination and sovereign nationhood”¹⁸⁸. Additionally, there was evidence of significant mobilization behind the LTTE amongst Tamils, both in Sri Lanka and in the diaspora community. Rasaratnam argues that, “while coercion and violence were part of the LTTE’s repertoire, they existed alongside other and much more potent forms of mobilization and persuasion that secured and sustained its dominant position in Tamil politics”¹⁸⁹. She cites their ability to disseminate information to the Tamil population through a variety of media which regularly reiterated their message of national liberation, their agenda of tackling issues relating to gender and caste, and their ability to manage post-disaster recovery following the 2004 tsunami as factors that contributed to this mass mobilization. The extremely high turnout¹⁹⁰ at the ‘Pongu Tamil’ (which translates to ‘Tamil Upsurge’) mass rallies, initiated in 2001 by Jaffna University students and other civil society activists to demand that the government reciprocate the LTTE’s unilateral ceasefire, suggests that there was significant support for the LTTE. The LTTE would get involved with the organization of following rallies, along with societal groups such as trader associations, teachers’ unions, fishermen’s societies and churches. This along with the success of the TNA in elections which explicitly endorsed the LTTE and the principle of territorial nationhood to achieve the right to self-determination suggest that there was significant support for the LTTE by the Tamil community in the post Cold War period.

¹⁸⁷ This included a police force, judiciary, health services, border control, customs, rehabilitation and development and a central bank. See Rasaratnam. Chapter 6.

¹⁸⁸ Rasaratnam. 185.

¹⁸⁹ Rasaratnam. 182.

¹⁹⁰ The 2001 event had 10,000 participants, the 2002 event had 60,000, the 2003 event had 150,000 and there were 200,000 participants in 2005. See Rasaratnam. 207. Interestingly, these events were not covered by international media but were featured prominently in Tamil news. See for example, TamilNet, “Thousands Attend Jaffna Pongu Tamil Rally, Seek Army Withdrawal,” *TamilNet*, September 30, 2005, <https://www.tamilnet.com/art.html?catid=13&artid=15986>.

Finally, following the end of the Cold War the LTTE and other Tamil groups that were supportive of the demand for an independent ‘Tamil Eelam’ started to formulate their demands for Tamil Eelam in a way that attempted to make it compatible with the new liberal world order. Prabhakaran’s annual ‘Heroes day’ speech “drew directly on liberal principles”¹⁹¹ and would invoke Tamil people’s rights to freedom and dignity and describe the Tamil struggle as a response to Sinhala Buddhist chauvinism that sought to “repress and subjugate our people”. His 1993 speech stated, “We are standing on a strong moral foundation. We are fighting for a just cause. Our political objectives conform with international norms and principles.” His 1996 speech emphasized that the LTTE wanted “an authentic peace, a true, honorable permanent peace” and had not yet been granted an adequate opportunity to bring it about¹⁹². His 1998 speech lamented, “the countries which lead the civilized world are reluctant to raise their voices against the uncivilized forms of oppression unleashed against the Tamils”¹⁹³. A brief submitted by the Tamil Information Centre (a London based human rights NGO that was sympathetic to the LTTE) to the UN Commission on Human Rights in 1994, also showed extreme awareness of the triumph of liberal democracy¹⁹⁴ in the international political arena and democracy was incorporated into Tamil demands: “The Tamil people believe that any permanent political solution to the ethnic conflict in Sri Lanka, has to take into consideration the legitimate aspirations of the Tamil-speaking people to determine their political, economic, social and cultural destiny, in a

¹⁹¹ Rasaratnam, *Tamils and the Nation India and Sri Lanka Compared*. 189.

¹⁹² Velupillai Prabhakaran, “Maha Veerar Naal Address, மாவீரர் நாள் 1996,” Tamil Nation, November 27, 1996, <http://tamilnation.co/lte/vp/mahaveerar/vp96.htm>.

¹⁹³ Velupillai Prabhakaran, “Maha Veerar Naal Address, மாவீரர் நாள் 1998,” Tamil Nation, November 27, 1998, <http://tamilnation.co/lte/vp/mahaveerar/vp98.htm>.

¹⁹⁴ The Tamil Information Centre acknowledge that “there is growing opinion that the international community should pay less heed to the traditional principles of sovereignty, territorial integrity and non-intervention and more to the violation of human rights, and the prevention, management and resolution of protracted and violent ethnic conflicts, in particular, to those which are the result of denials of claims to the right to self-determination.” Tamil Information Centre, “Briefing to Participants of the UN Commission on Human Rights: The Right to Self-Determination, the Sri Lankan Tamil National Question,” 1994, <http://tamilnation.co/selfdetermination/tamileelam/94tic.pdf>.

democratic fashion.”¹⁹⁵ Nevertheless these attempts were quite weak when compared to the Sri Lankan state’s attempts to control the narrative of the war.

3.3 Conclusion: A militant liberation struggle for Tamil Eelam was incompatible with the goals of the new global liberal democratic order.

In the post Cold War era, the LTTE were demanding a conception of the right to self-determination that no longer existed, according to the international community, by demanding an independent ‘Tamil Eelam’ and the means by which they were trying to achieve it had been deemed an illegitimate use of force. The goal of universalizing liberal democracies had impacted the West’s attitude to conflict resolution. Conflict resolution did not focus on addressing the grievances that caused conflict but instead prioritized the securing of a lasting and liberal peace through the transformation of conflict-ridden societies into liberal market democracies¹⁹⁶. Under the new liberal global order it looked as if the LTTE was clinging on to an outdated understanding of human rights, one where the right to self-determination entailed sovereignty and one in which the use of force in revolutions aimed at securing human rights was legitimate. This was no longer the case and their militant tactics presented an obstacle to the creation of a stable liberal democracy. Additionally, the narrative pushed by the Sri Lankan government and the existence of ‘moderate’ Tamils resulted in the dismissal of mass mobilization behind the LTTE and they were viewed as the *only* obstacle to stability in the region. Thus, due to the redefining of sovereignty during this time, the LTTE were not seen by the West as a liberation movement but as a threat to international peace and security.

¹⁹⁵ Tamil Information Centre. 4.

¹⁹⁶ For an examination of conflict resolution through democratization and marketization see Mark R. Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London ; New York : New York: Zed Books ; Distributed in the USA exclusively by Palgrave, 2001).

The priorities of the post Cold War liberal order resulted in a mismatch between the narrative of the war promoted by the LTTE (and many members of Tamil society) and the narrative accepted by Western states, which was the narrative heavily promoted by the Sinhala state. For the LTTE, the demand for Tamil Eelam, was a “civilized political demand” that was met with “a savage form of military repression”¹⁹⁷ by the chauvinist Sri Lankan state, thus the LTTE’s movement was a legitimate liberation movement. The Sinhala state’s narrative of the war can be mapped onto Matua’s Savage-Victim-Savior metaphor. The LTTE were portrayed as the savage terrorists, the Sinhala state and Tamil civilians as victims of terrorism. The state in this case were not the savages and positioned themselves as victims who were committed to neo-liberal reforms and the West and the international community were positioned as the saviors who could, through military support and aid help eliminate the scourge of terrorism. The West was most receptive to the Sri Lankan government’s narrative and this is perhaps because the Sri Lankan state’s positioning of LTTE as terrorists that posed the primary obstacle to liberal progress meant that their goals were aligned.

The West adopted the Sri Lankan state’s narrative of the LTTE being terrorists and in 1997 the US banned the LTTE as a terrorist organization, and the UK did the same in 2001. The use of the term “terrorist” to describe the LTTE was significant because “the label of terrorism separated Tamil militancy from its origins in the contestation of between Sinhala and Tamil nationalist projects, and transferred it, shorn of political content to an international plane of opprobrium and illegitimacy, where it added urgency to the military support extended to Sri Lanka in securing stability and peace”¹⁹⁸. The goal for the West was to contain and/ or eliminate the LTTE rather than address the oppression and Sinhala

¹⁹⁷ Balasingham, *Liberation Tigers and Tamil Eelam Freedom Struggle*. 3.

¹⁹⁸ Rasaratnam, *Tamils and the Nation India and Sri Lanka Compared*. 176.

nationalism that had led to the war in the first place¹⁹⁹. The idea that the ‘Tamil problem’ would be resolved with the elimination of the LTTE, was evident in a 2006 statement made by the US Under Secretary of State, Nicholas Burns: “in the case of Sri Lanka...we support the government. We have a good relationship with the government. We believe the government has a right to try and protect the territorial integrity of the country. The government has a right to protect the stability and security in the country.” Of the LTTE he stated “We also believe that the Tamil Tigers, the LTTE, is a terrorist group responsible for massive bloodshed in the country and we hold the Tamil Tigers responsible for much of what has gone wrong in the country. We are not neutral in this respect”²⁰⁰

It seemed that dismissal of the demands of the LTTE and their means resulted in dismissal of the problem of oppression all together. There was no real effort by the international community to address the Tamil grievances that had caused the war, the priority was to endorse or promote solutions that would end the militant conflict as quickly as possible in order to bring about a stable peace. The mass mobilization of Tamils behind the LTTE (such as the ‘Pongu Tamil’ rallies which would see turnouts of hundreds of thousands of people) was largely ignored or dismissed as inauthentic. Rasaratnam comments, “although organized and widely understood by participants as demonstrations to the international community of popular Tamil sentiment, and despite their growing scale and political significance, the rallies were derided and dismissed by international actors and Sri Lankan officials as being coercively engineered by the LTTE and not an authentic expression of Tamil sentiment”²⁰¹.

¹⁹⁹ This was evident in the Norwegian Peace process in which driven in large part by international actors’ conviction that the LTTE was incommitted to ‘peace’ and therefore had to be prevented- coercively if necessary – from following its ‘natural’ instincts and returning to war. This meant that ‘progress’ in the peace process came to be equated with the containment of the LTTE or the extent of its ‘transformation’ and was largely decoupled with from the pressing need to address the existential problems of militarization, large-scale displacement and war related impoverishment in the Tamil speaking regions. 196.

²⁰⁰ Under Secretary for Political Affairs R. Nicholas Burns, “Press Conference on Tokyo Donors Conference” (Washington, D.C, November 21, 2006), <https://2001-2009.state.gov/p/us/rm/2006/76483.htm>.

²⁰¹ Rasaratnam, *Tamils and the Nation India and Sri Lanka Compared*. 208.

Additionally, the consistent opposition by Sinhalese nationalists to all the political solutions that were presented, including to Neelan Thiruchelvam's package of devolution was largely ignored by the international community and was not viewed as a threat to the liberal progression of Sri Lanka²⁰². Rasaratnam has attributed the inability of the international community to see the incompatibility of forming a liberal democracy in a country with strong Sinhala nationalist and Tamil nationalist sentiments to the existence of elite 'moderate' politicians. She argues that "the intensity of Sinhala nationalist mobilization against the peace process, the notion of power-sharing, and international liberal peace actors did not undermine international confidence in the possibility of externally-assisted, state-led liberal reform or its efficacy in addressing Tamil 'grievances'. This was in great part because the international community could always find Sinhala and Tamil political elites who were willing both to engage in the modalities of liberal peace-building, deploying the ethnically neutral discourses of liberalism, democracy and development, and to reassure the international community of a multi-ethnic majority desirous of this end".²⁰³

Conclusion

The project of this thesis was to evaluate the compatibility between political demands associated with Tamil nationalism over the 20th century and what the international community was prepared to grant the Sri Lankan Tamil community. It was motivated by the desire to understand why the LTTE throughout the course of Sri Lankan civil war were demonized and stereotyped as terrorists, and why their political demands for the right to self-determination were stripped of legitimacy despite mobilizing the language of international human rights and having the support of many Tamil people in Sri Lanka and the diaspora. In

²⁰² See Rasaratnam. Chapter 7.

²⁰³ Rasaratnam. 200.

order to understand the specificity of their demands it was necessary to look at the history of Tamil nationalism. Alongside this story, I decided to examine the contiguous story of the right to self-determination, and the way those with the power to grant it, the West, had interpreted it. The research conducted to understand this story helped me grasp what the international community felt minority groups within colonies and later former colonies were entitled to when it came to self-government and the right to self-determination. By dividing the 20th century into three different time periods and examining these two stories simultaneously I have been able to conclude that throughout the 20th century and early 21st century, the demands associated with Tamil nationalism have always been incompatible with what the West was prepared to grant.

Tamil nationalism acquired a political character in the early 20th century after the island's colonizers, the British, decided to replace communal representation with territorial representation in response to demands by both Tamil and Sinhalese political representatives for increased self-government. This change in representation threatened the political equality that Tamil people had maintained with the Sinhalese population for centuries, but the British Commissioners who formed the Donoughmore constitution did not give weight to concerns relating to Sinhalese majoritarianism. For them, self-government necessarily entailed a liberal democracy and its success depended on fostering a democratic ethos, which in turn required an all-Ceylon national unity. Universal suffrage and territorial representation was employed as a tactic to foster this unity, and communal politics was seen as an obstacle to this end. The Report of the Donoughmore Commission, along with influential historical analysis, show that it seemed self-evident and progressive at this time for political power to be in the hands of the majority. Thus Tamil concerns about the dominance of the Sinhalese population and the desire to reorganize power to prevent this was perceived as illiberal, and it looked as if they

were asking for more than they deserved. It was incompatible with Britain's vision of a liberal democracy for their colony.

During the period that I have labeled decolonization, the idea that “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”²⁰⁴ acquired the peremptory status of *jus cogens*. However, despite its universal language it was clear that the right to *external* self-determination belonged only to colonial territories. The simultaneous strengthening of the concept of territorial integrity and *uti possidetis* meant that the right could only be applied once to colonial territories and expired once these territories obtained independence. Tamil nationalism however strengthened and mobilized around the language of self-determination *after* Ceylon had been granted independence in 1948, in response to increasing discrimination and oppression by the Sinhalese state and the repeated failure of parliamentary politics to address Tamil grievances. By the time they articulated the demand for *external* self-determination in 1976, Sri Lanka was perceived to be a post-colonial state in which the right to self-determination had been realized. Within this independent state, minority communities like the Tamil community were not entitled to self-determination, as it would violate the territorial integrity of the state. Their demands were incompatible with the international community's assumption of who the ‘people’ entitled to self-determination were, and this was partially because of the continued belief that power should be distributed by numbers.

Finally, in the post-Cold War era, the LTTE maintained their militant struggle for an independent Tamil Eelam. They continued to mobilize the language of self-determination

²⁰⁴ UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples.

that had legitimized the anti-colonial revolutionary struggles during the decolonization period. However, the global world order had changed significantly following the end of the Cold War. The reinterpretation of human rights within this Western-led liberal order resulted in the LTTE and their political demands being delegitimized. In this new order, the human rights that were promoted were the ones that contributed to the creation of a liberal democracy, and the right to self-determination was reformulated to mean every individual's universal entitlement to liberal democracy. The LTTE's demands for Tamil Eelam were stripped of political content because the demand for external self-determination was no longer a legitimate demand in the new liberal order, and the means they used to obtain it had been deemed evil. Force could now only be legitimately used by the West to save victims. The West could also legitimize their rejection of the demand for Tamil Eelam by adopting the Sri Lankan state's narrative that the LTTE were a terrorist organization and the sole obstacle to liberal progress, with no support from the majority of the Tamil population. This narrative was further legitimized by the existence of moderate Tamil politicians who reassured the international community that the majority of the Tamil community desired a political compromise. Thus, in the post-Cold War era both the LTTE's demands and means were incompatible with the goals of the new liberal world order, which placed emphasis on the creation of stable liberal democracies within existing boundaries. This incompatibility is clearly visible in a 2001 statement made by American Ambassador E. Ashley Wills: "The heroes of the coming months will be those who advocate tolerance, not violence, those who see the need for compromise and moderation rather than those who wish to push ahead toward unattainable visions of separation and exclusivity."²⁰⁵

²⁰⁵ "Diverse People Can Come Together, Build One Nation - US Ambassador Wills," *The Island*, March 9, 2001, <http://www.island.lk/2001/03/09/news13.html>.

Looking at the story of Tamil nationalism and the story of self-determination side-by-side, it is fair to conclude that there has never been a point in time during the 20th century where the political demands associated with Tamil nationalism have coincided with what the West (or those with the power to grant Tamil people their demands) have felt they are entitled to. A key reason for this was the seemingly self-evident belief that numbers were the legitimate way to distribute power within a territory whose borders had been decided by colonial powers. Despite the right to self-determination (the right that the LTTE mobilized their struggle around) obtaining *jus cogens* status in the 1960s, it wasn't able to legitimize their demand for Tamil Eelam because the concept of *uti possidetis* and the virtue of a liberal democracy prevailed. From the moment that Tamils accepted the framework of democracy and articulated their demands within it they committed themselves to the status of a minority community. Minority communities were not eligible to the right to self-determination and therefore it was inevitable in the late 20th and early 21st century that the demand for Tamil Eelam (first articulated in 1976 *after* Tamils had accepted the rationality of democracy) would only ever be a dream.

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