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# State Crime and Resistance

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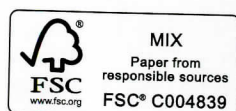
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**This book is dedicated to Acky and Mark**

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## 6 The politics of state crime and resistance

### Self-determination in Sri Lanka

*Suthaharan Nadarajah and Victoria Sentas*

Where there is power, there is resistance.

(Foucault 1976/1978: 95)

I was once asked: 'You say Tamil Eelam, but where are the boundaries of this Tamil Eelam that you talk about? Show me.' I was taken aback by the directness of the question. I thought for a while. Then I replied: 'Take a map of the island. Take a paint brush and paint all the areas where Sri Lanka has bombed and launched artillery attacks during these past several years. When you have finished, the painted area that you see – that is Tamil Eelam.'

(LTTE Colonel Kittu, cited in Satyendra 1993)

### Introduction

Sri Lanka's three-decade-old civil war ended in May 2009 with the military defeat of the Liberation Tigers of Tamil Eelam (LTTE) by the Sinhala-dominated armed forces. The state's military campaign, although conducted under close international scrutiny, was characterized by mass killings and draconian blockades preventing food and medicine from reaching trapped civilians. The final months of the war were especially bloody. From January to May 2009, the Sri Lankan armed forces conducted widespread and large-scale military bombardment of civilians in 'safe zones', hospitals and humanitarian centres, despite repeated protests by Western states, human rights groups and others (Human Rights Watch 2009, 2010; International Crisis Group 2010b; Amnesty International 2010). A United Nations (UN) panel of experts stated that the Sri Lankan military campaign, during which over 40,000 people perished, 'constituted persecution of the [Tamil] population' (UN 2011: ii, 69). The state's declaration of victory over the LTTE was followed by the internment of hundreds of thousands of Tamils for months in crowded militarized camps, amid persistent reports of rape, 'disappearances' and torture (Freedom from Torture 2011; UN 2011: 41–7).

Three years after the fighting ended, while the Sri Lankan state now claims that 'peace' has been established and a post-war economic boom is imminent,

Tamils on the island and abroad argue that a state-orchestrated genocide is continuing (British Tamil Forum 2011; Tamil National Alliance 2009). Despite international pressure, rather than resettlement and rehabilitation of the war-shattered Tamil areas, the state has prioritized 'national development'. This has translated into massive infrastructure projects, primarily in the south, and a multifaceted militarized effort to order national life according to homogenized and Sinhala-dominated terms (International Crisis Group 2011). At the same time, despite international pressure pushing for the Sri Lankan government to negotiate a political solution to the long-running ethno-political conflict with elected Tamil representatives, the state has declared the 'problem' ended by the defeat of the LTTE. Moreover, the state has further centralized and militarized the governance of Tamil areas, where it continues to violently suppress dissent (Hogg 2011).

Sri Lanka's international relations, meanwhile, are increasingly being defined by the question of its accountability for the mass killings and atrocities of 2009. Sri Lanka has become the focus of sustained campaigns to this end among international human rights groups, Western states and Tamil Diaspora organizations. Since the end of the war, such efforts have converged on establishing an independent international investigation into the war crimes, crimes against humanity and, as Tamils claim, acts of genocide. Denying any wrongdoing, the Sri Lankan state has responded by mobilizing its diplomatic and political machinery to thwart such an investigation and to demonize its advocates (Manor 2011). Three years after the war's end, avoiding an international investigation has arguably become the prime foreign policy goal of the Sri Lankan government.

Amid all of this, the hitherto central plank of Tamil resistance – the right to self-determination of the Tamil nation – appears, at first glance, to have faded from the main field of contestation. However, a closer look at the interrelated action and counteraction between the Sri Lankan state and the Tamils reveals that self-determination (fundamentally meaning the recognition of a Tamil nation and its homeland in the island's north-east) remains the primary fault line. The state denounces demands for war crimes accountability, demilitarization of the north-east and a negotiated political solution as part of the LTTE's continuing 'separatist agenda'. Political actors in the Diaspora are characterized as the 'LTTE rump', and Western critics of the Colombo regime as its agents (Ladduwahetty 2011). Conversely, Diaspora actors denounce the government's economic, development and military strategies in the Tamil areas as the continuation of genocide in the service of Sinhala supremacy. They also strive to identify the Diaspora as equally integral to the Tamil nation as the 'homeland Tamils', in contrast to the perception of Diaspora Tamils as outsiders to post-war Sri Lanka, as the state and some others insist (e.g. RAND 2001).

The central argument of this chapter is that neither state crime nor resistance to it can be fully understood through reference to the acts of violence themselves (that is, as violations of international or domestic law, on the one hand, or demands for justice or accountability, on the other), or to the self-evident identities of the perpetrators and victims (in our case, the Sinhala armed forces and

Tamils, respectively). Instead, paraphrasing Clausewitz's (1976) famous neologism, state crime and resistance constitute the continuation of politics by other means. By this, we do not refer to the possible motivations of the perpetrators (for example, racism) or of those who resist (such as survival), although these are often clearly discernible dynamics. We are concerned with the content of the subjectivities and social relations that engender state crime and resistance, armed or otherwise, as self-evidently necessary and rightful acts. Moreover, state crime and resistance to it cannot be understood merely as cause and effect, but as mutually bound and intimate relations of action and counteraction. These relations not only result in destruction, in terms of lives and property, but they are also productive, in the Foucauldian sense of the word, creating new and sometimes hybrid subjectivities that, in turn, engender resistance and counter-resistance anew.

We support our argument through an empirical study of the struggle between the Sri Lankan state and the Tamils, particularly the Diaspora, using a Foucauldian reading of the power relations and subjectivities that constitute this struggle and, conversely, the impact of the latter on the former. We begin with a discussion of power and resistance in order to explain state crime and resistance to it. We then briefly outline the historic antecedents to contemporary power-resistance dynamics between the Sri Lankan state and the Tamil Diaspora. In the third and fourth sections, we outline how current contestations over the accountability for Sri Lankan state crime depend, for both the state and Tamils, on the largely submerged question of Tamil self-determination.

### State crime, power and resistance

While Foucault's conception of power has often been criticized for supposedly foreclosing the possibility of resistance, this reading of his work has been convincingly challenged by others (Heller 1996; Pickett 1996). Foucault himself was at pains to stress, against such criticisms, that resistance is immanent to power, with both functioning in a co-extensive, even mutually constitutive, relation: 'where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power' (Foucault 1976/1978: 95). Insofar as resistance is the response to the state violence against which it struggles, and state violence is the response to defiance to state rule ('resistance'), the conditions for resistance are immanent to the power it opposes.

Crucially for our argument, resistance to power coalesces through and against the same field of social relations that give rise to state power, instead of being exterior to it. Rather than being unidirectionally linked, Sri Lankan state crime and Tamil resistance are imbricated, bound in intimate circular relations of action and counteraction that are manifestations of the same field of contested social relations that comprises 'Sri Lanka'. If we are to make sense of what follows from the Sri Lankan state's repression of the Tamil people, the processual dynamic of resistance allows us to call into consideration its productive and

generative effects. The inherent unpredictability of the contestations inherent to the field of social relations is also why, as we demonstrate here, annihilatory violence is not guaranteed to produce acquiescence and docility, but may instead intensify resistance.

For Foucault, resistance is itself a form of power. Conversely, what appears as power may itself be resistance to other forms of power. In other words, genocide and oppression may constitute resistance to the exercise of power that posits specific subjectivities as existential threats to a given order (consider the implications of the terms *counter-insurgency/terror*). This is not to suggest an equivalency between state power and the power wielded by those who are repressed by it. Rather, conceiving of resistance as a form of power highlights the interaction between state crime and opposition to it. The Sri Lankan state's efforts since the war's end to obliterate the sites of alleged war crimes, maintain draconian security laws and revoke even the limited devolution of powers to the provinces cannot be separated from the mounting international pressure in the same period for war crimes investigations, demilitarization and (territorial) power-sharing negotiations with the Tamils.

According to Foucault's categories, sovereign power – the arbitrary power to kill or let die – functions alongside more diffused forms of power, circulating and (re)constructing the strategies, subjectivities, actors and meanings of oppression and resistance. These circulating forms of power include discipline (Foucault 1975–7) and governmentality (Foucault 2007, 2008). Discerning the specificities of the operations of power, therefore, can begin by asking: what is the rationality that informs them? Moreover, to fully understand state conduct, Foucault exhorts us 'to cut off the king's head' (1980: 121). In other words, rather than starting with the state as a self-evident reality, we must consider the state – and its actions – as a manifestation and product of circulating power. Without such an analysis of social relations, an examination of state crime attributes to the state a total autonomy of action that it does not possess. In Sri Lanka, the hierarchical ethnic and social order we term 'Sinhala-Buddhist' is not only embedded and manifest in the state, it emerges through, and is sustained by, the routine practices of a much wider set of actors – political parties, civil society organizations, trade unions, the Buddhist clergy, corporate actors, individual citizens and so on.

In relation to state crime, therefore, mass atrocities cannot be seen as merely acts of sovereign power; they are informed by a specific circulating rationality which registers what is to be defended, what is to be destroyed, by whom and to what end. For the Sri Lankan state, fighting 'terrorism' is synonymous with fighting 'separatism', and vice versa (Bartholomeusz 2002). The enemies of the Sri Lankan state are therefore not only those who take up arms against it but, equally, those who challenge the ideal of Sinhala rule over a homogenized and unitary territorial space, as we explain below. It is in this way, for example, that some Sinhalese – such as left-wing advocates of Tamil self-determination and even liberals who reject Sinhala ethnocracy – also become 'traitors' and existential threats who must be destroyed in the pursuit of a stable order.

Power organizes meanings and socially constructs subjects. A power that is repressive, negative and constraining can simultaneously produce and construct – including in ways that resource resistance to such domination. Foucault (1982: 212) conceptualized resisting subjects as not merely oppressed but as brought into being as an *effect* of subjection:

This form of power applies itself to immediate everyday life which categorizes the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognize and which others have to recognize in him. It is a form of power which makes individuals subjects. There are two meanings of the word *subject*: subject to someone else by control or dependence, and tied to his own identity by a conscience or self-knowledge. Both meanings suggest a form of power which subjugates and makes subject to.

Rather than power being simply wielded by, or over, subjects, the subject is constituted by social power, the manifestation of which includes, but is not limited to, state crimes. This does not mean that the subject is absolutely determined by power. Instead, the conditions for acting are both impeded and made possible by the social relations which produce these conditions (see Butler 1997). Holistic interpretations of Foucault's entire work consider the subject to be both constituted and 'self-constituting'; that is, while power produces subjects, the subject may simultaneously resist and remake the powers that constitute it (see Armstrong 2008). The Tamil Diaspora, for example, has been constituted as a *foreign* enemy of the state, a role it actively embraces now through its resistance to state crime, while at the same time rejecting its supposed externality to the island's 'internal affairs' – a dynamic we discuss below.

In sum, we argue that state crime and resistance to it are deeply structured by the entire field of social relations that has come to constitute post-independence Sri Lanka. The ethnic strife that has escalated since 1948, the armed conflict that erupted in 1983, the cataclysmic violence that marked its end and the state violence since the war's end are all manifestations of the contestations inherent to this field. State violence has an enduring, routine presence in politics – a dynamic that obscures the material conditions of its violence (Poynting and Whyte 2012). In Sri Lanka, the mass killings of 2009 and what has followed since should not therefore be understood simply as unlawful aberrations to the otherwise legitimate endeavours of the state (aimed at defeating terrorism). Rather, these should be seen as the inevitable consequences of a social field in which a majoritarian order seeks to propagate and defend itself against perceived existential challenges – represented first and foremost by the Tamil demand for self-rule.

### The content of state crime

In this section, we consider how the project of state-led social transformation in post-independence Sri Lanka (previously Ceylon) led to two interwoven

phenomena: first, to the consolidation and polarization of ethnicity as a political force; and second, to the concomitant emergence of oppression, conflict and escalating state crime, as well as coeval Tamil resistance, both political and militant. As Camilla Orjuela (2003: 198 see also Krishna 1999: 31) puts it:

Sri Lanka could be seen as a textbook example of an ethnic conflict, where economic, political and cultural deprivation and grievances of a minority have provoked a violent rebellion against a state that has come to be seen as representative of only the majority ethnic group.

Discrimination against the Tamils by the post-independence Sinhala-dominated state has been discussed in numerous scholarly works and policy studies and need not be elaborated further here (see, for example, Balasingham 2004; Bartholomeusz 2002; Bose 1994; De Votta 2004; Krishna 1999; Wilson 1994; Winslow and Woost 2004; and discussion in Nadarajah and Vimalarajah 2008: 16–32). Inexorable 'Sinhalaization' of the post-colonial state has resulted in a bureaucracy, judiciary, police and military with an entrenched majoritarian ethos. Even by the mid-1970s, well before the armed conflict began, Sri Lanka was perceived as having 'regressed to an illiberal, ethnocentric regime bent on Sinhala superordination and Tamil subjugation' (De Votta 2004: 6). What is of importance for our purposes is how the all-pervasive discourse and state practices of Sinhala nationalism came to establish an antagonistic dichotomy between the island's Tamil and Sinhala collectives, one that quickly replaced the promise of the singular collective – 'Ceylonese' – to which the departing colonial power believed it had transferred power.

While at independence Tamil and Sinhala were already politicized ethnic identities (Orjuela 2010: 15), the post-independence majoritarian state-building project transformed these into *essentially* antagonistic ones, turning on competing conceptions of territorial belonging (Krishna 1999; Stokke 1998). First, the demographic distribution of power immediately provided the Sinhala majority with an unassailable domination of parliament, which enabled effective capture of the machinery of state. Second, whereas until the end of centuries of colonial rule in 1948, the Tamils had lived predominantly in the north-east and the Sinhalese in the south, after independence the notion that the island belonged to the Sinhala, and that the Tamils were latecomers or vestiges of past invasions from India, informed a grand attempt at territorial and demographic reorganization by the state. This comprised both constitutional redrawing of electoral boundaries and state-sponsored 'internal' colonization by the Sinhalese of historically Tamil areas (Wilson 1994).

These processes precipitated a specific form of Tamil resistance: self-recognition as a Tamil nation with rights equal to the Sinhala nation's and a political project to protect the integrity of the (north-eastern) Tamil homeland through territorialized rule (Krishna 1999: 68–9). This resistance flowed from power's forceful ordering of the population into the valued 'Sinhala' and threatening 'Tamil' categories; but while embracing this divide, this resistance rejected

an inherent hierarchy between them and instead pursued parity between the two 'nations' (TULF 1976). It is in this way that demands for Tamil self-determination and, in particular, territorial autonomy emerged as a direct reaction to an increasingly violent Sinhala state-building project.

The clearest early manifestation of this resistance was the formation in 1947 of the Federal Party (FP), which, advocating federal self-rule for the Tamil homeland as a response to Sinhala colonization, repeatedly won elections in the north-east for the next two decades (Wilson 1994; Krishna 1999: 68–77). Indeed, Tamil parties advocating self-rule of the Tamil homeland have consistently received popular backing in the north-east in post-independence Sri Lanka. Amid the intensification of processes of state exclusion, repression and violence that the FP's success spurred, the demand for federalism made way in the mid-1970s for calls for outright independence of Tamil Eelam, first articulated in 1976 by the Tamil United Liberation Party (TULF) that was formed by the merger of the FP and other Tamil parties. These contestations over self-determination reveal how the Tamil homeland became reified in Sri Lanka's social relations; Tamil resistance turned on the defence of this territorial space, and Sinhala domination on its denial and dismantling.

Tamil resistance to the Sinhala project manifested itself not only in repeated electoral endorsement of the FP, but also in widespread participation across the homeland in the party's civil disobedience and protest campaigns (Wilson 1994). The state responded to these agitations with greater repression (alongside episodic anti-Tamil rioting); accelerated colonization; and legal, constitutional and bureaucratic changes that further favoured the majority (*ibid.*). In 1972, the British-supplied constitution was discarded and, despite vehement Tamil objections, was replaced with one that explicitly held Sri Lanka (the country's new Sinhala name) to be a Sinhala-Buddhist state. The Tamil response, as enunciated by the TULF (1976) in the landmark Vaddukoddai Resolution, was to declare further efforts at cohabitation futile and outright independence for Tamil Eelam as the central Tamil demand (Wilson 1994: 113–32).

The demonstrable futility of Tamil peaceful agitation had by then already stirred the first moments of militancy. The state responded to these sporadic acts of sabotage and assassination with military repression and a massive (World Bank-funded) expansion in colonization after 1978. Following the state-backed anti-Tamil pogrom in July 1983, a full-scale armed struggle erupted for Tamil Eelam (Balasingham 2004). From the outset, the conflict was characterized by state crime – massacres and other atrocities, as well as humanitarian blockades of Tamil areas (see, for example, Paust 1998). Crucially, the state's conflation of fighting 'terrorism' with fighting (Tamil) 'separatism' became explicit (Bartholomeusz 2002). For example, alongside its first major military operations, the state also passed the sixth amendment to the Constitution, outlawing the advocacy of secession (Nadarajah and Vimalarajah 2008: 29–30).

In sum, since independence, the constitution and consolidation of 'Tamils' and 'Sinhalese' as self-evidently antagonistic collectives has informed, and has in turn been reinforced by, drastic changes in state policy, constitutional

arrangements and security practices. These practices have produced specific forms of Tamil resistance, the intensification of which has led to the intensification of the former, and vice versa. As the armed conflict progressed, state crime – in which tens of thousands of Tamils were massacred, summarily executed or 'disappeared' – fuelled Tamil support for armed struggle (Bose 1994; Balasingham 2004). Conversely, the expanding Tamil armed resistance – which soon led to the internationalization of the Tamil question – spurred ever more violent efforts by the state not only to crush the armed challenge, but also to deny and destroy the territorial bases for Tamil autonomy (through intensified colonization, militarization and the redrawing of electoral boundaries). At the same time, the state has rejected international involvement in the recognition and resolution of the ethnopolitical crisis (articulated most often in the language of 'internal affairs' or as 'defending sovereignty').

To restate our argument, neither the logic of state crime, which soon reached genocidal intensity, nor that of Tamil resistance can be understood in isolation from the contested social field that has been post-independence Sri Lanka. Moreover, the struggle for autonomy of the Tamil homeland constitutes a specific response to Sri Lankan state crime. State crime is in turn a response (resistance) to the self-constitution of Tamils as a self-governing nation and the existential threat this poses to the ideal of the island as a bastion for Sinhala-Buddhism.

### Accountability and foreign enemies

These same dynamics now inform the heavily internationalized contestations over the question of accountability for the mass atrocities of 2009. The findings of the UN panel of experts (2011) and international human rights groups (Amnesty International 2010; Human Rights Watch 2009, 2010; International Crisis Group 2010b) support the conclusion that Sri Lanka's conduct in the final months of the war unambiguously constitutes state crime. However, this is not so in Sinhala-Buddhist terms, whereby actions undertaken in defeating terrorism and separatism – a paramount and cardinal duty of the state – are seen to be beyond reproach. This is why the increasingly forceful demands by the international community that Sri Lanka pursue accountability for the 2009 atrocities, and the associated charge that large numbers of Sri Lankan *citizens* were massacred, have not produced alarm or disquiet among the Sinhala polity and media. Instead, these demands have provoked outrage, anger and a strident assertion of state sovereignty and independence, discursively framed in calls to arms against Western 'neocolonialism' (see, for example, Peiris 2010).

Conversely, Tamil demands for accountability, now led primarily by Diaspora actors (Vimalarajah and Cheran 2010), overlap with those of the international community. Crucially, these two projects have very different contents and rationalities, a difference that is reflected best in how victims and state crimes are understood. For international actors, the victims are primarily human beings or, if viewed politically, citizens of Sri Lanka. However, for the Tamils, victims are first and foremost members of the Tamil nation. This difference is

exemplified by Tamils' reference to the atrocities as self-evident genocide (see British Tamil Forum 2011; Tamils Against Genocide 2011). In contrast, the international community prefers the language of war crimes and crimes against humanity (see Amnesty International 2010; Human Rights Watch 2010; International Crisis Group 2010b; UN 2011). We consider the significance of this later.

In Sinhala-Buddhist terms, however, these subtleties matter little. As such, the largely West-based Tamil Diaspora, international human rights organizations and Western states have come to be lumped together (see International Crisis Group 2010b: 31) as a nefarious coalition of *foreign* enemies intent on both thwarting the hard-won victory against terrorism and dividing the country. This discourse has been reinforced by another key demand by the international community: that Sri Lanka pursue a political – that is, power-sharing – solution to 'Tamil grievances' through negotiations with the main Tamil party, the Tamil National Alliance (Blake 2011).

What is important for our study of the productive nature of power is how state crime has worked to generate the Diaspora as Sri Lanka's nemesis. There are two dimensions to this constitution: as a human collective and as a political entity. First, while Tamil emigration began in the 1970s amid discrimination and repression, it was after the armed conflict erupted in the early 1980s that state massacres and other atrocities triggered wave upon wave of refugee flight to the West. Over three decades, these overseas destinations became home to a large and cohesive Tamil community, which not only prospered, albeit with great difficulty amid vicious anti-immigration regimes and local hostility and racism, but also continued to cherish its ties to the homeland (Vimalarajah and Cheran 2010). The Tamil Diaspora now represents a heterogeneous global community that shares multiple, hybrid identifications: the Diaspora are Western citizens with deep roots in their 'host countries', but are also members of the Tamil nation, who maintain strong familial, social, cultural, economic and political ties to Sri Lanka's north-east.

Second, while expatriate Tamils were always part of Sri Lanka's social field, in social, political and humanitarian terms it was only in the last years of the armed conflict that the Diaspora manifested as a distinct (singular) entity on this terrain. Amid the overarching discursive frame imposed on the Sri Lankan conflict – that is, as a war between the state and the LTTE – expatriate Tamils were given little consideration, being seen merely as an adjunct of the island's Tamil community. From 2007, the Tamil Diaspora not only became an object (singular) of scholarly and international policy and security studies (Vimalarajah and Cheran 2010; Sentas 2012), but also one attributed with specific characteristics, mentality and agency. As Sri Lanka's offensive against the LTTE expanded after 2006, and mass civilian casualties mounted rapidly, expatriate Tamil activity (such as mass protests and rallies, or advocacy targeting international governments and human rights groups) intensified. This mobilization reached a crescendo in the final months of the conflict, with tens – sometimes hundreds – of thousands marching through Western capitals (see Vimalarajah and Cheran 2010). Diaspora campaigns sought international action to initially stop, and then

to seek justice for, the slaughter of *their people, in their homeland*, the details of which were being reported hourly through Tamil websites and satellite television.

Thus, it was through its resistance to Sri Lankan state crime that 'the Diaspora' emerged on the international stage as a distinct entity with autonomous agency. Prior to this, despite decades of demonstrations and campaigns in support of Tamil self-determination, its members were understood only in relation to the LTTE – either as its recalcitrant supporters (RAND 2001) or its hapless victims (Human Rights Watch 2006). In other words, Diaspora campaigns against Sri Lankan state crime are a form of self-constitution as a legitimate actor, alongside Tamils on the island, within the internationalized contestation over Sri Lanka's future.

It is the destruction of the LTTE, in particular, that has served to foreground the Diaspora as a distinct, forceful and consequential element of the internationalized politics of Sri Lanka's conflict. First, the ongoing military repression within Sri Lanka has largely silenced domestic Tamil agitation. Despite episodic Tamil outbursts – spontaneous demonstrations, the occasional riot and, perhaps inevitably, robust electoral endorsement of the Tamil National Alliance – the oppressive security presence in the north-east, replete with paramilitary and extra-judicial violence, has all but smothered organized Tamil political resistance (International Crisis Group 2011; Hogg 2011). Diaspora actors, despite manifest rivalry and discord, have – at least for the moment – become the de facto vanguard of the Tamil liberation project, thus replacing the LTTE in the state's view as its primary Tamil threat.

Second, and consequently, the Diaspora has become a key actor in the discourses on 'Sri Lanka' engaged in by the international community, the state and, crucially, the Tamils themselves, both on the island and abroad. To the international community, the Diaspora has appeared as a 'hard-line', albeit heterogeneous, Tamil bloc, but also an unavoidable one given its persistent political agitation in Western capitals (International Crisis Group 2010a, but see Vimalarajah and Cheran 2010). For the Tamil self-determination struggle, the Diaspora became an indispensable vehicle – including as an important source of material support for Tamils on the island. Crucially, in taking up the issue of accountability, Diaspora actors are potentially powerful allies. However, they are also unpredictable ones, remaining beyond the authority and reach of the Tamil political party leadership.

### The meaning of accountability

It is its pursuit of accountability that has led, most of all, to the Diaspora being represented by the Sri Lankan state/Sinhala discourse as a dangerous enemy that has taken up the 'separatist' project of the LTTE. The state and mainstream (Sinhala-owned) media swing between denouncing the Diaspora as a singular entity and claiming those attacking Sri Lanka to be a minority among Tamils abroad (see Peiris 2010). In either case, it is the Diaspora's machinations in the

West – rather than objective concern over alleged state crimes – that are blamed for the international community's post-war hostility to the Sri Lankan state. Western politicians are said to be in hock with Tamil voters and Western media to be in the pay of the Tamil expatriates or LTTE agents sitting on the organization's cash piles (Pennells and Probyn 2011). Alternatively, the West is seen as having sinister designs on Sri Lanka, in which the Tamils are complicit (Reuters 2011).

Whatever the ascribed logic, according to this discourse, the Tamil Diaspora is routinely merged with the West as a composite existential threat to the state. This conflation was already developing amid the mobilization of the Diaspora during the final phase of the conflict, most visible in the mass protests against the war, alongside repeated calls by the United States, United Kingdom and other states for Sri Lanka to cease its shelling of safe zones and hospitals and to respect international humanitarian law. In other words, calls for humanitarian ceasefire or restraint were primarily understood as a shared *foreign* effort to thwart the state from defeating terrorism or, equivalently, as self-evident support for 'dividing' the country – a belief reinforced by growing international calls for a power-sharing/devolution 'solution' to address 'Tamil grievances'.

Sri Lanka's construction of the Diaspora as a composite threat with the West prevails in spite of the existence of some friction between Diaspora and international and state actors, such as criticism of the UN's inaction during the final stages of the war. More importantly, Diasporic subject positions reflect the fundamentally different political stakes for Tamils from those of international actors, in seeking accountability from the Sri Lankan government. Diaspora actors campaigning against state crime during and after the conflict have foregrounded the Tamil identity in their work – conceptualizing themselves as part of the Tamil nation/people, agitating against state persecution of Tamils (as opposed to 'Sri Lankans') and interpreting state repression through the territorial frame of the Tamil homeland (see, for example, British Tamil Forum 2011). Thus, as noted earlier, in contrast to international claims of war crimes and crimes against humanity in seeking accountability, Diaspora groups foreground genocide.<sup>1</sup> In reference to a 'solution', the Diaspora seeks the exercise of self-determination (for example, calling for a referendum on independence among homeland Tamils), rather than the pursuit of 'reconciliation', as the international community urges.

'Diaspora' therefore reflects contingent processes of subjects' self-constitution – a collective process that has resourced a renewed drive for self-determination since the war's end. Resistance generates strategic or affective attachments to collective identities through oppression and hardship suffered, both in Sri Lanka and abroad. Consequently, Tamil advocacy operates within a discourse whereby state crime is integral to a wider state campaign to extinguish the Tamil challenge to Sinhala majoritarian rule. Thus, while conducting advocacy through the rubric of international humanitarian law, human rights or press freedoms, Diaspora campaigns turn on the rights of *Tamils*, rather than these universalist principles per se. In contrast, international efforts on accountability notably

avoid the question of genocide and centre on upholding international humanitarian law or human rights, without reference to the specific identities of the victims. These differences have also led to strident criticism by some international actors of the Diaspora as 'hard-line' and its activities as an impediment to 'reconciliation' and 'peace' (see, for example, International Crisis Group 2010a).

At the same time, Sri Lankan state/Sinhala resistance to the notion of accountability or a negotiated solution is based on the view that Diaspora activities are part of a Tamil campaign against a rightful majoritarian rule. International actors are understood to share this goal (a conflation reinforced by persistent Western pressure for a political solution as well as criticism and demands for state reform along liberal democratic lines). As such, the state has increasingly pursued efforts targeting the Diaspora, such as overt and intimidating surveillance and videotaping of expatriate protests and meetings (Vimalarajah and Cheran 2010: 26). Sri Lanka has also promulgated laws to seize monies or land in the north-east belonging to expatriates, and sometimes detained and tortured individuals when they return to the island (Freedom from Torture 2011).

In seeking to maintain majoritarian domestic order, Sri Lanka has increasingly concentrated its machinery against external threats. The state therefore fiercely resists an independent, especially international, investigation of the 2009 mass atrocities; negotiations with Tamil leaders; as well as demilitarization and international/Diaspora-led rejuvenation of the war-shattered north-east. However, in doing so, it also *constitutes* these external threats: it is by resisting these supposedly Diaspora-inspired international demands that Sri Lanka has come to alienate itself from its closest allies in the West. These action, counter-action dynamics are increasingly producing 'Sri Lanka' as a problematic state in the global liberal landscape (see, for example, Manor 2011), in contrast to the long-standing and widely held view that Sri Lanka was one of this predominant world order's most promising new members, albeit one that was being held back by 'terrorism'.

## Conclusion

To return to our argument, today's post-war antagonisms around Sri Lanka's accountability for state crimes reflect a struggle between subjectifying power and resistance to it. The latter is manifest as the Diaspora and its campaigns for accountability, the former in practices of state defiance to such demands. This relation, in turn, is the product of a concomitant struggle between subjectifying power and resistance. The former is manifest as the 'Sinhialized' state and its practices, including state crime, since independence; and the latter by the self-constitution of the Diaspora as an exiled part of the Tamil nation. Thus, both state crime and the drive for accountability are deeply conditioned by the contested social field that constitutes 'Sri Lanka'. In this regard, the ongoing struggle over accountability for state crime, just like the mass atrocities of 2009, are rooted in the longer and deeper contestations that have been played out since

1948: that is, between power that seeks to reify a Sinhala majoritarian domestic order and resistance that seeks a different order, one that ensures Tamil freedom from this power embedded in the post-independence Sri Lankan state.

Self-determination, rather than being a demand of the LTTE that has been annihilated along with the organization, is a diffuse and circulating ambition that has been reformulated through subjectivities such as the Diaspora and thus deeply embedded in routine Tamil practices. In short, the struggle for accountability for Sri Lankan state crimes is underpinned by Tamil claims for self-determination, even if these are not explicitly articulated. It is thus unsurprising that the struggle over who has the right to make political claims vis-à-vis Sri Lanka, and the content of these claims, overlaps with the question of accountability for state crime and constitutes the central site of the power-resistance dynamic since the war's end.

While the state's defiance of its accountability for war crimes has served to constitute the Diaspora as an existential foreign threat, the Diaspora's concomitant self-constitution as an integral part of the Tamil nation has been advanced through its pursuit of accountability. Transnational campaigns seeking recognition of, and justice for, the genocide against the Tamil nation generate new sites and practices of Tamil self-governance (alongside political agitation and civil disobedience in the Tamil homeland); it is on behalf of the Tamil people, and not 'just' individuals, that justice is sought. State crime and resistance against it cannot then be understood simply by reference to abstracted acts of violence and demands for accountability. If we are to contest the rationality of the genocidal practices enacted against Tamils, then state crime can never be separated from the subjectivities and social relations that form their normative basis.

## Note

- 1 Unlike war crimes, which are violations of International Humanitarian Law by individuals, both crimes against humanity and genocide occur where governments or de facto authorities perpetrate or tolerate systemic attacks against civilians. Only the crime of genocide, however, requires that a government *intends* to destroy a national, ethnic, racial or religious group.

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