

## **Abiding By LTTE Proscription Laws**

Last November the European Political Subdivision of the LTTE lost their battle against the LTTE being listed as an international terrorist organisation within Europe. The General Court of the European Union, on 24 November 2021, dismissed their plea to repeal the Council of European Union (EU) decision to retain the LTTE on the European Union List of Terrorist Organisations. The EU and the UK ordered the court to dismiss the action as inadmissible.

The LTTE was originally listed as a terrorist organisation by the EU in 2006. In 2019, pursuant to the powers conferred by Article 1(6) of Common Position 2001/931 and Article 2(3) of Regulation No. 2580/2001, the EU decided to maintain the proscription on the basis that LTTE retains military and financial capacities coupled with the intent to conduct terrorist acts for the interests of the organisation, despite its military defeat in 2009 in Sri Lanka. The above stance of the EU was disputed by the LTTE on two grounds. Firstly, International Humanitarian Law does not preclude recourse to means that fall under Article 1(3) of Common Position 2001/931 in the context of an armed conflict. Secondly, incidents referred to in paragraph 9 of the Statement of Reasons did not serve a terrorist aim, rather were aimed at ensuring the right of Tamil people to self-determination and their liberation from oppressions of Government of Sri Lanka. However, premised on Article 33 of the Geneva Convention, Article 4 (2) and 13 (2) of the Additional Protocol II to the Geneva Convention, LTTE V Council and Hamas v Council, the Court decided to retain the ban on the LTTE.

“The LTTE was widely recognised to be one of the most proficient and dangerous terrorist groups in the world.” The extremely sophisticated international support network, to a large extent, enabled the LTTE to sustain its 30 year-long struggle towards separatism and at present, ensures the LTTE is at the cutting edge of terrorist lethality and finesse. Therefore, curbing the transnational support structure through concerted national and international collaborations is the key to neutralising the extreme threat posed by the LTTE and its affiliations to the sovereignty of nations and security of international system as a whole. The judicial acknowledgment of the proscription of the LTTE by the EU prompts countries to review their practices with regard to the legality of LTTE publicity and fundraising activities based on Security Council Resolution 1373 (2001). This can be viewed as an apt opportunity to rejuvenate existing international and national collaborations, bringing global operations of the LTTE to a grinding halt.

## **Curtailling illegal actions**

Proscription empowers EU member countries to confiscate or freeze funds and assets of the organisation and to prohibit making funds and other resources available for the cause of the organisation. In addition, proscription of an organisation hampers its political life, because it equips member countries to curtail rights of group members to stand for political office, to have access to services and positions in public service, to vote in Elections, to travel across national borders. Therefore, the EU's decision to maintain the proscription can be viewed as a significant blow to the LTTE, in view of the fact that majority of strongholds of the LTTE propaganda and fundraising activities hold European Union membership. It impairs efforts of the LTTE at harnessing political and economic support of European Union members for its aim of creating a separate Tamil state in northeastern Sri Lanka and will bring ongoing terrorist campaigns in Sri Lanka to a standstill.

Further, due to marginalisation at international level, the LTTE is bound to face disadvantages in internationalising their cause and legitimising the claim for an independent state of Tamil Eelam through propaganda and infiltration of legislatures of Western jurisdictions. Responding to the LTTE argument, the Court stated: that neither International Humanitarian Law, regardless of the motivation for the armed conflict, nor the principle of right to self –determination, permit employment of means that fall under Common Position 2001/93.

## **Major setback**

The reasoning of the judgment starkly undermines the popular rhetoric of LTTE propaganda campaigns, which are used to motivate contributions for the cause and to justify LTTE atrocities committed during the armed conflict. This, undoubtedly, will cause the LTTE to suffer a major setback in their global propaganda campaign.

The General Court of Europe affirmed that in non-international armed conflict, as it was in Sri Lanka, provisions of Common article 3 of the Geneva Conventions and its expanded provisions in Additional Protocol II of 1977 should be factored in all evaluations when addressing accountability. Ruling out the principle of command responsibility, Article 6 of the Additional Protocol requires anyone charged with an offence to be tried in his presence and on the basis of individual penal responsibility. Due to the inability to locate and identify

former combatants, which becomes a barrier to prosecution, the current effort of the United Nations Human Rights Council (UNHRC) to collect evidence to exercise 'Universal Jurisdiction' to prosecute for war crimes in Sri Lanka becomes a futile exercise.

### **Shrinking international space**

It is critical that Sri Lanka makes use of this increasingly shrinking international space for LTTE operations prudently to combat the re-emerging threat of LTTE on Sri Lanka soil through a multi-pronged and multi-dimensional strategy.

The Court ruling and the EU ban, which require enhanced vigilance on overt and covert operations of LTTE, set the tone to enhance Sri Lanka's counter terrorist financing efforts. Improved international cooperation with counterparts in European nations in terms of financial intelligence sharing, financial crime investigation, financial crime prosecution and extradition enables to mitigate and preclude threats of terrorist financing, because the LTTE receives a substantial financial support from member states of the European Union.

Constant emphasis by the Court over revival capacities of the LTTE, despite its military defeat, warrants Sri Lanka to act in a more proactive and a preventive manner rather than solely a reactive way to the current terrorist threat posed by the LTTE.

Proliferation of the propaganda in the form of praising, supporting, naturalising and justifying the LTTE cause and its terrorist activities is a major challenge to the territorial sovereignty of Sri Lanka, because it ploughs the ground for violence. In this regard, it is of utmost importance to design laws to prevent indirect incitement to terrorism in compliance with international human rights law and standards.

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