

Statement on Sri Lanka by: Hon Mr Steven J Rapp, former US Ambassador-at-Large for War Crimes

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Transcript of an oral statement made by Hon Mr Steven J Rapp, former US Ambassador-at-Large and currently Distinguished Fellow at The Hague Institute for Global Justice, in conversation with Hon K Manikcka Vasagar, Minister for International Affairs with the Transnational Government of Tamil Eelam (TGTE) in Geneva on 15 March 2017.

Hello and Good Day!



I am here in Geneva and one of the issues upon which I am engaging is something that I worked very hard on when I was US Ambassador-at-large for Global Criminal Justice visiting Sri Lanka twice in 2012 and 2014. I believe very strongly in there being transitional justice and accountability for the crimes committed in 2009 in particular, and the truth being established. The framework that was envisioned after President Sirisena was elected and a new parliament was elected, this matter came before the UN Human Rights Council in September 2015.

There was a resolution in which there would be moves towards transitional justice in Sri Lanka and that would include the missing persons, the disappeared person's agency having the capacity to find out the truth about those loved ones that were lost, a special prosecutor's office that would investigate crimes that have been committed that violate both international and Sri Lankan law, a hybrid court that would have international judges and, of course, judges from all of the communities of Sri Lanka who can ensure that there is independent justice, and also a reparations authority. All this, of course, has to be developed in consultation with the people of Sri Lanka.

I was pleased with the Consultative Task Force which was established. Its Report was delivered in November and it became public in January and, with reaction of the people across Sri Lanka, and particularly, those that are survivors of the victims of the conflict. They very much wanted the truth. There is always the temptation after a conflict to try to cut the corners and say 'Well, let us just all get along, let us move ahead. We don't have to establish the truth, we can repair the injury'. I was particularly moved by the fact that many said that between reparations and truth, they would rather have the truth than reparations.

I have been disappointed that these commitments that were undertaken in September 2015 by the

government have not been kept and the whole matter has moved entirely too slowly, and particularly, that the report of the Consultative Task Force that represented 7300 consultations across the country was rejected by some government actors. This is inconsistent with the commitments that were in that Resolution that the Government agreed to in September 2015. I think now if we have a continuation of the Resolution, and that is what is discussed here, it is not enough to say 'Well, in 24 months we will see what kind of progress we have achieved'. There has to be specific action called for immediately. There has to be moves, one, in the direction of really getting serious about the accountability mechanism. That could and should include the establishment of the prosecutor's office now. We are talking about a prosecutor's office that is a part of a hybrid institution that should have internationals and nationals aboard. But it should be able to develop a capacity to build this case. You don't need the judges necessarily but you need to get to work to develop the evidence, to talk to witnesses, many of whom are suffering still from injuries from the war, many of whom are old and infirm and won't be available if we wait. I do think that is essential.

Then we need genuine witness protection steps. This means that the people that are in the Witness Protection Authority have to be vetted. People are not going to trust an organization that has people in it that might have been associated with one side or another, who may not have their interests at heart. That has to be vetted. There also has to be an ability to take testimony outside the country because people are fearful of ending up in a white van or blue van or whatever, if they come back. It has to be done that way. We have done that in my country; we have done that in other courts when witnesses came across the ocean and do not feel they can safely cross. They can take their testimony as a video one.

Then, we have to move forward with other aspects of this mechanism. But there has to be some specific deadlines in this approach. It is essential in Sri Lanka that we develop an approach that serves the interest of all of the people in this country including the Tamil community. I have visited the North on both of my trips and saw the occupation of lands, people that are still not able to return to their homes, there was the involvement in business of the army and the size of an army at a time when the country that has no real enemy.

Changes need to be made and certainly important constitutional changes that need to be considered. But you cannot just say, 'Let's change the constitution and have this kind of reform' when you still have outstanding issues.

I have a lot of respect for Sri Lankans I have worked with who are key judges and prosecutors. As an international prosecutor for the UN, I can remember the great leadership that they exercised at the international level.

I am confident that this can be done but it cannot be a process that continues to delay and delay, and have commitments that have been made internationally rejected and dismissed. Or we won't have the kind of reconciliation essential to the country.

I will be speaking out on this again in a couple of days because there are reports of continued violations, people being tortured and raped, who are being picked up and impunity continues to reign. People think they can get away with it. I know that there are actors in Government and elsewhere who do not want this to happen. What this fundamentally needs is that there needs to be accountability. If there is no accountability, then these kinds of things would continue to happen. I really call on my friends in Sri Lanka to implement the commitments that they have made. I think they are essential for the future.

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