

Even before the war between the Tamil Tigers and the Sri Lankan Government came to an abrupt end in May last year, serious allegations of war crimes were flying thick and fast between both sides. Dateline reporter, Ginny Stein, recently travelled to Sri Lanka and to New York to test the claims of the survivors of that very, very vicious conflict.

REPORTER: Ginny Stein

Sri Lanka's national day is being celebrated in New York. Amidst the polite chit-chat at this diplomatic soiree on Park Avenue, there is also a barely contained note of triumph. It's almost a year ago that the Sri Lankan Government finally defeated the Tamil Tigers, or LTTE - the separatist militants it had been fighting for almost three decades. Leading the celebrations is dual Australian/Sri Lankan citizen Ambassador Palitha Kohona. He cut his diplomatic teeth working for Australia's Department of Foreign Affairs, but is now Sri Lanka's representative to the UN.

PALITHA KOHONA, SRI LANKA'S REPRESENTATIVE TO THE UN: It's a new beginning for Sri Lanka because we've ended the conflict and we've had an election where a president has been elected with an overwhelming majority, so now it's a question of moving on with life, rebuilding the country.

But not everyone in the international community is as keen to move on. Concerns about war crimes are being raised at the highest levels of the UN and hard questions are being asked about the government's conduct.

PHILIP ALSTON, UN SPECIAL RAPPORTEUR ON EXTRAJUDICIAL EXECUTIONS: It suggests a determination to simply wipe out as many people as possible and not to follow the rules of international humanitarian law.

PALITHA KOHONA: I think it's ridiculous to suggest that somehow the Sri Lankan Government did something to the LTTE which has to be accounted for.

This is the man credited with crushing the Tamil Tigers - General Sarath Fonseka. He's currently under house arrest, but last month General Fonseka was here, in the Tamil-dominated north of the country, for a political rally. Fonseka was making a run for the presidency against

the incumbent Mahinda Rajapakse.

GENERAL SARATH FONSEKA (Translation): Looking at this area now, the civilians are happy and free. When I see the change in people's lives, I feel very happy.

He lost the election, and two weeks ago, Fonseka was arrested on military charges which included engaging in politics before he'd resigned as chief of the army. During the bitter election campaign Fonseka had dropped a bombshell of his own, accusing his former political masters of committing war crimes.

DR PAIKIASOTHY SARAVANAMUTTU, CENTRE FOR POLICY ALTERNATIVES: If you look at the recent controversy over remarks that Sarath Fonseka made and then hastily retracted in a press conference, and the government's reaction to it, now they're saying that, "No, Sarath Fonseka never said that there were war crimes committed, and there were no war crimes committed." Now, this confuses everyone.

Dr Paikiasothy Saravanamuttu is a political analyst in the capital, Colombo. Today he's attending a candlelight vigil for a journalist slain in broad daylight just over a year ago on a busy street. His assassins remain at large.

DR PAIKIASOTHY SARAVANAMUTTU: The death of Lasantha Wickramatunga is something that people remember as a particularly horrible seminal event in the stifling of dissent in this country.

More than 30 journalists fled the country during the war's final months, others have been abducted or jailed. Dr Saravanamuttu believes that intimidation and closing off the war zone to all outsiders made this a hidden war.

DR PAIKIASOTHY SARAVANAMUTTU: No independent actors were allowed in to come up with independent, impartial reports. There was no question of verification. So now we have to wait for IDPs to get over their trauma and begin to talk, and again, they will be contested.

This man is one of those IDPs, or internally displaced persons. He doesn't want to be identified, so I'll call him Ambalan. He says he and his wife left their home in August last year.

'AMBALAN', EYE WITNESS: We have to just move from that area in order to save us from the shelling and firing, and we stayed in that place with the intention that it will be over in one or two days, or within one week. But it continued. So we have to move constantly in order to save our lives.

As the frontline swept eastwards, Ambalan and his wife ended up in the tiny enclave where the Tigers made their last stand and where hundreds of thousands were pinned down. Foreign aid sources say the government denied Red Cross requests for larger, more frequent evacuations so Ambalan's family waited to flee via the only ferry.

'AMBALAN': On this day I had the chance to send my mother and my wife through the ship, but on the morning, at the time we heard a big noise. And immediately we saw people were screaming and crying. And at that time I was told that some people died where my wife stayed.

Ambalan found his wife among the 15 dead - her jewellery, damaged by the shrapnel that killed her, is all he has to remember her by. He believes the attack came from the army's direction. It's impossible to verify his story, but there are many others like it.

This is a video which supporters of the Tamil Tigers say shows an army assault on a hospital in a designated no-fire zone. It includes the audio of a purported phone call with the Red Cross coordinator for the area.

WOMAN (OVER PHONE): The patients, the medical staff have left the hospital because they are not safe there anymore.

Tamils say 9 people were killed here and 15 wounded. But according to the Sri Lankan Defence Force, this edited video released a few days later shows the hospital was untouched.

REPORTER: Hospitals. Were they targeted?

PALITHA KOHONA: There was only one hospital that anybody had ever marked on a map in that whole area and we have got pictures to show that hospital was never targeted.

REPORTER: Those pictures, I have seen those, that video was edited.

PALITHA KOHONA: If a hospital had to be shelled, Ginny, I know the way we took out LTTE officers, their camps, with such clinical precision - if we wanted to do that to a hospital we could have done that also. Why do a half-hearted job if you wanted to really finish it off?

It's impossible to know what actually happened, but this wasn't the only hospital to allegedly come under fire.

GOBI KRISHNA: I know for sure once in Puthukkudiyiuppu Hospital, the hospital itself was bombed. Luckily, if I was five minutes earlier, I would not be talking to you today.

For the past 2.5 years, he was a volunteer with a Tamil charity – an organisation the Sri Lankan Government accuses of being a front for the Tamil Tigers. Krishna's now back home in Australia, but was inside the war zone as refugees moved from one safe zone to another.

GOBI KRISHNA: The government announces "Go to these towns," in the radio. Sometimes it put leaflets from air to "go to this no-fire zone, and you'll be safe." But you go there and settle, in two, three days time, they will start shelling that area then people have to move.

Krishna's experience backs what many foreign aid organisations believe was a deliberate strategy to sweep hundreds of thousands of Tamils across the country. And he claims that not only were safe zones attacked, but that controversial weapons were also used.

GOBI KRISHNA: Cluster bombing - the bombs coming in clusters - and I also, after bombing I have seen also at least four times there are white fumes coming. Very intense thick, white fumes. And they say that is phosphorus chemical bombs. But I have seen with my eyes that white fumes.

REPORTER: In your view, were war crimes committed?

GOBI KRISHNA: For sure - I think, you ask people to go to a safe zone and nothing will happen, and bombing that - I think that's a war crime in my way of thinking. And hospitals have been bombed, I have seen that. I thought that's war crime.

REPORTER: Were war crimes committed?

PALITHA KOHONA: Now, this is a difficult question to answer because nobody really knows whether war crimes were committed. There is no evidence. There are suggestions, there are allegations but beyond that there's nothing concrete.

In the last desperate stages of the war, relief organisations estimated 300,000 people were hemmed into a narrow war zone. The government insisted the number was just 70,000 and restricted food and medical supplies accordingly.

GOBI KRISHNA: Definitely I was weak, because I had lost 25 kilos during this time.

REPORTER: Were people getting enough food?

GOBI KRISHNA: No way.

REPORTER: Were you hungry?

HUSBAND EYE WITNESS: Yah, yah. Because we couldn't get enough flour, we couldn't get enough rice, and equally we couldn't get enough vegetables or fish or meat, or anything for cooking.

PALITHA KOHONA: How could that allegation be made? For 27 years, during 27 years of conflict the Sri Lankan Government actually fed every single person in the north.

GORDON WEISS, FORMER UN SPOKESMAN: We were trying to deliver humanitarian aid consistently inside the siege zone and we were consistently stonewalled at various levels.

REPORTER: Were they starving the people out? Was that what was going on?

GORDON WEISS: Yes. That's what happens in sieges.

Gordon Weiss is an Australian who was the UN's spokesman in Sri Lanka during the war. He was engaged in daily tussles with the Sri Lankan authorities.

GORDON WEISS: The Sri Lankan Government was masterful at controlling information and in refuting information. So if we take forward a piece of information about people being killed and then the government responds firstly by denouncing it publicly and secondly by calling in people to the Foreign Ministry, and browbeating them and threatening them with expulsion, now that sort of pressure every day, it's extremely difficult for people to operate in those circumstances.

So difficult, in fact, that two months ago when Gordon Weiss's work visa expired, he decided not just to leave, but to quit the UN. On his way to the airport to leave Sri Lanka for good, Weiss was clearly frustrated.

GORDON WEISS: It was a secret war, but, you know, the war is over and that leaves a lot of questions unanswered.

As the fighting raged on, the government maintained no civilians were being killed and that no heavy weapons were being used.

GORDON WEISS: Now for months, the Secretary General was told by the President "We're not using them, there are no heavy weapons used." When one leader speaks to another you speak in good faith and accept assurances. If you are told a bare-faced lie it's very difficult to work against that.

Weiss says he was under pressure not to add up or publicly declare just how many people had been killed. The UN's official death toll at the end of the conflict was 7,000. Weiss says the real figure could be more than five times that.

GORDON WEISS: I believe that between 10,000 and 40,000 is a reasonable estimate. I think most likely it's somewhere between 30,000 to 40,000.

PALITHA KOHONA: If that number died, I do not know where they were buried, because to bury 40,000 you would have had to have an army of people working day and night, digging graves and putting them in. That certainly did not happen.

One of the few pieces of hard evidence from this war emerged three months after it ended, and sparked immediate international outrage. It's a video showing a naked man, blindfolded and bound, in the final moments of his life.

MAN (Translation): He must have seen it. That's why he turned and looked.

Another seven bodies can be seen already lying in the dirt and there's more gunfire. While, it's impossible to tell if the dead men are Tamil, their executioner appears to be wearing an army uniform. Towards the end of the video, another man is brought to the same spot - and murdered. The footage has prompted an investigation by the UN's Special Rapporteur for Extra-Judicial Killing, Philip Alston.

REPORTER: Does it fit a war crime?

PHILIP ALSTON: Oh, very clearly, because you've got people who had been arrested, they are completely bound and gagged and so on. There is no attempt to escape, they were not armed, that is straight out murder on a significant scale and it's clearly a war crime.

But the video's authenticity was quickly dismissed by the Sri Lankan Government.

PALITHA KOHONA: The government has experts on its side who categorically said this was fabricated. On the other hand, we have Professor Philip Alston's experts saying perhaps not.

PHILIP ALSTON: These technical experts, the highest qualified, all said that accords exactly with what one would expect in a real-life situation. And they came up with a whole range of reasons why it could not have been staged, So every pointer indicates, very strongly, that the video is authentic.

The videotaped killings are not the only incident being investigated by the UN. There was also an international outcry over the death of this man, Puleedevan, and another senior Tamil Tigers leader who attempted to surrender as the conflict ended.

REPORTER: The surrender process the UN did have contact, what contact are you aware of?

GORDON WEISS: I'm aware that the UN was involved in some way, that the Norwegians were involved in some way, that there were independent parties, such as a couple of journalists who had contacts with the LTTE, who were also involved.

One of those journalists was Marie Colvin, a respected foreign correspondent for London's 'Sunday Times'. She says that for several days she was an intermediary in the surrender negotiations, taking phone calls from the Tigers leadership and the UN.

REPORTER: Was there a deal?

PALITHA KOHONA: In my view, there was absolutely no deal. In fact, it would have been impossible to have done a deal at that time.

But by Colvin's account there was a deal, and it involved the highest levels of government. She says the UN Secretary-General's Chief of Staff, Vijay Nambia, told her that he'd been: "assured by Sri Lankan President Mahinda Rajapakse that Nadesan and Puleedevan would be safe in surrendering." All they had to do was "hoist a white flag high".

PHILIP ALSTON: And the assumption was that they would then be taken into captivity, they would be prisoners of war, whatever.

Instead, they were shot dead. In his hastily retracted remarks during the election campaign, General Fonseka said orders to shoot came from the President's brother, Defence Secretary Gothabaya Rajapakse.

PHILIP ALSTON: Was there, in fact, an order given that if you capture any of these LTTE fighters you should simply execute them as soon as possible? If there was such an order, then that's a real problem.

There is little doubt that extreme acts were committed by both sides as this bitter conflict drew to an end. Many survivors say the Tamil Tigers forcibly conscripted children in the final weeks. This woman fought to save her son being taken away, but failed.

MANEK FARM REFUGEE (Translation): They wanted the boy to go with them. I said I wouldn't give him up. They grabbed him by the hand. Me and my daughter tried to pull him back. We pulled, it didn't work. Nothing worked. We threw chilli powder. We threw that and beat them. I bashed four or five. After I'd bashed them, they detained me for 15 days.

It was while she was a prisoner of the Tigers that she heard news of her son's fate.

MANEK FARM REFUGEE (Translation): Eight days later, we heard on the radio that he was dead.

Later, in the final weeks of the war she watched as two Tamil Tiger soldiers shot dead a woman who was attempting to flee with her two sons. Other eyewitnesses who had been sheltering at a church, claim the Tigers marched away 600 young people, and that other civilians were used as human shields.

REPORTER: The government and the Tigers, they both have blood on their hands?

'AMBALAN': Yeah, yeah. That is, yes - both were having blood on their hands.

For now, the victors are showing off their spoils. This captured ship south of Colombo is drawing crowds of curious onlookers. According to the army it was waiting to whisk away the Tamil Tigers' leader who's now dead, along with most of his fighters. Sri Lankans are enjoying peace for the first time in decades but it's come at a cost. Their leaders are keen to move on from the past, so the question now is whether the international community has the will to make alleged war criminals pay the price.

GORDON WEISS: Certainly, the evidence is out there. The evidence lies in the testimony of hundreds of thousands of people who survived the siege.

DR PAIKIASOTHY SARAVANAMUTTU: We can't just draw a line under this. We need to really look at it, and ask ourselves the serious, hard questions of how we could do these things to each other. That's the only way that you can heal, unite and move forward.

GEORGE NEGUS: Ginny Stein filming and reporting there. And you may be surprised to know that Sri Lanka's biggest post-war donor has been Australia - \$72 million so far, with another \$30

million promised.

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