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Session 2: Analysis of CFA & its Implementation

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Analysis of the Ceasefire Agreement and its Implementation

Preliminary Remarks

In view of the limited space, a study of the Ceasefire Agreement (CFA) cannot be a thorough dissection in terms of every single sub-article or violation. Hence this paper, will first capture the spirit of the CFA (which will be called the 'CFA perspective') and then look at the document and its implementation from that perspective. Thus, only those issues that impinge on the sustainability of the CFA will be analysed. The reflections and perspective of the study will be determined largely by the events and experiences of one living in the North, which has been the epicentre of the hostilities.

General Observations

Positively, the cessation of hostilities has held despite numerous acts determined by the SLMM as violations. That is, in spite of violations such as direct firing of arms and killings, there hasn't been an act of war. Considering the fact that the CFA is a self-imposed agreement, and not externally imposed by a foreign power or authority, its survival for over four years, is in itself an achievement for which chiefly the Parties to the agreement, the monitors and the facilitators should be appreciated.

This, however, needs to be qualified. The absence of war, or negative peace as it has been called, might have been an advantage to the South, but not quite so to the North. The opening of the A-9 route, for instance, enabled the Jaffna market to be flooded with goods not seen for many years. But it largely remained a market for outside traders; the profit was not ploughed back into the Jaffna economy, whereas the economy of the South started picking up. It was a period of social re-linking of the North and South after a long period of estrangement, but at the same time, a period of socio-cultural disintegration without any committed policing of public morality. The socio-economic rebuilding of the devastated North has been so sluggish, that the negative peace has had a degree of negative impact on the confidence of the North in the peace process. The peace dividend of this negative peace has hardly been felt in the North. The North still remains an aggressively militarized area.

Negatively, there have been violations and undermining of a number of the stipulations of the CFA. It will not be the endeavour of this paper to list all of them, nor will it be fact-finding exercise. The main aim, rather, will be to highlight those issues that have posed a threat to the cessation of hostilities, with a view to learning lessons from them.

A note, however, about quantifying the violations is in order. In assessing issues of a normative sort, the primary question should be 'what kind' rather than 'how many'. In an evaluative

exercise, it is the gravity of each category of violation that should be used as the criterion rather than the number of times it was committed.

The Preamble: the CFA Perspective

The spirit of the CFA is determined by the overall objective of the GOSL and the LTTE, which is 'to find a negotiated solution to the ongoing ethnic conflict', and its particular role, namely, being 'a means of establishing a positive atmosphere' conducive to the pursuit of this objective. The parties to the CFA will be expected not to 'undermine' or 'violate' this spirit and to 'implement confidence building measures'

Article 1: Modalities of a Ceasefire

Regarding the separation of forces, the implementation of the provisions in the North has been quite satisfactory, although in the East, disputes have been reported about the status quo of the control of territories as at 24 December 2001 (Art. 1.6).

Serious violations under Art.1 relate to incidents at sea. For example, the blasting of the LTTE vessel and the eleven-member crew by the SLN in international waters on 10.3.2003, was dangerously provocative for several reasons: (i) it was carried out in international waters, which the SLN was not empowered by the CFA to do; (ii) The SLN acted merely on the belief that the cargo was 'warlike material', whereas the LTTE claimed it be commercial; (iii) even if it were military hardware, what is prohibited by Art. 1.3 is moving munitions etc. 'into the area controlled by the other party', but not transferring or carrying arms as such; (iv) Art.1.2 forbids, among other things, firing direct and indirect weapons, and offensive naval operations; and Art. 1.3 provides that the SLAF shall perform their legitimate tasks "without engaging in offensive operations against the LTTE."

This incident, not being the first of its kind, put the CFA in serious jeopardy. There was the danger of the folding up of the CFA and the peace negotiations, consequent on the sea incidents.

From the point of view of lessons to be learnt, attention has to be paid also to another aspect of a jeopardizing nature, namely, the adverse reaction of the people that might put untoward pressure on the parties.

The danger was exacerbated by the reaction of the people. The vast majority of them believe that it was the LTTE that saved them from the genocide war advanced by the successive governments of Sri Lanka, and that it was the military strength of the LTTE that persuaded the State and its armed forces to abandon the 'war for peace' military venture and to come to the negotiating table. Their protests against such incidents had the potential to precipitate a derailment of the CFA.

Another incident reported to have almost provoked a confrontation was Karuna's movement by sea from Batticaloa to Mullaitivu on 16th November 2002 without appropriate intimations.

It would seem that there exists a lacuna in the provisions of the CFA with regard to the conduct of the Parties in territorial waters. Does the CFA apply exclusively to the conduct of the antagonists on the land, or would the recognized control over territory include 'territorial waters' as well? Though admittedly it is a knotty matter, the CFA wants clarity.

With reference to Art. 1, a worse threat emerged concerning provisions about movement and uniform (Art. 1.11, 1.12, 1.13), when four women cadre of the LTTE engaged in political work

were assaulted by Sri Lankan soldiers (at Manipay on 12.02.2003) for wearing a belt. The subsequent SLMM ruling on the belt was that it was not an item of military uniform. Art. 1.11 and 1.12 are about the modalities of individual combatants moving into territories of their opposite party for personal reasons. When they so move they are required to be 'unarmed and in plainclothes'. The immediately next article, namely 1.13, which is about 'political work', provides that 'unarmed members of the LTTE shall be permitted' to engage in such work. But unlike the previous two articles, it does not require anything about the 'uniform'.

How is this article to be interpreted: according to the letter or the spirit of the CFA? The costly ambiguity of Art.1.13 arises particularly in virtue of its juxtaposition to the previous two articles; the CFA needs to be more specific.

This incident posed an even greater threat than the sea incidents although the latter involved killings. 'Women' cadre's being attacked was a culturally sensitive issue. As well as the people at large, the men counterparts were infuriated by the assault on their 'sisters' to the extent of considering a more serious military retaliation.

The above considerations demonstrate that the designing of a CFA should not be confined narrowly to the modalities of the conduct of the antagonists. It should be broad enough to be culture-sensitive, or people-sensitive (as it will be further corroborated below).

The question of paramilitary groups has been a contentious and erosive issue. Although Art. 1.8 requires that such groups 'shall be disarmed by D-Day + 30'; this has not been implemented. Acceptance of this article precludes any feigning of ignorance of their existence. Nor is such feigning consistent with the evidence given by the civilians of the relevant areas or with the statements of the SLMM. This might finally prove to be one of the two prime causes of the resumption of hostilities (the other cause being militarization).

Article 2: Measures to Restore Normalcy

From the CFA perspective, the important confidence building measures relate to, returning lands and buildings to owners or to their intended purposes, relaxing the restrictions on fishing and respecting the rights of the civilians.

Much has been achieved with regard to the return of religious and educational buildings (Art. 2.2, 2.3). Thirty-two schools, however, still remain inaccessible to the educational authorities as well as students. Though relatively small in number, this issue is great in significance because of the importance education plays in the life of the people and the value they attach to it

As for houses, hundreds of them are still inaccessible to the owners either because they are occupied by the SF or lie within high security zones (HSZ). Thousands of people live ignominious lives as IDPs, some of them for more than twenty years.

Lands have been released to some extent. But lands have also been held back as HSZs. Further, while shifting camps from one site to another, new lands have been taken over, and new camps erected to strengthen and expand the HSZs.

Restrictions on fishing (Art.2.11) were appreciably relaxed. Regrettably, though, they have been tightened again since the beginning of 2006. In some areas like Mathagal, fishing has been totally banned.

In this sense, there is a continuous violation (under the sub-articles of Art.2) of people's rights to residence, livelihood and dignity.

A notable aspect of the implementation regarding houses and schools is that it was carried out only after several demonstrations and 'hartals' which the delay in these matters had provoked. In a protest march in Vadamarachchi on 20 June 2005, the people handed gunny-bags to military sentry posts, symbolically asking the soldiers to 'pack up'. At a meeting of civil society leaders three days prior to this incident, the LTTE political worker of that area remarked how difficult he found it to restrain the people of the coastal villages. Such has been their frustration and the effect it can have on the sustainability of the CFA. (It would be irresponsible to dismiss these spontaneous protests as stage-managed by the LTTE, as if the civilians of the North were morons, incapable of any autonomous thinking or action).

Art.2.1 provides that the Parties shall act "in accordance with international law" and "abstain from acts hostile against civilian population." Violations have been reported in relation to matters specifically mentioned in the article such as torture, intimidation, abduction, extortion and harassment. Since November 2005, paramilitary groups have become a menace. Enforced disappearances, extra-judicial killings and rape have also re-surfaced, like in the latter half of 1996, at such an alarming rate that the people have vehemently decried them, staging protest marches and 'hartals', in spite of assaults by the security forces on the Vice Chancellor of the Jaffna University, professors, and students.

The issue of 'child recruitment', which has received much attention, is reported to be another violation of Art.2.1. The article itself does not mention 'child recruitment' though it explicitly expresses other kinds of violation. Rather, it is said to be derived from the general reference in the article to 'international standards'. But so can other issues be derived, like sexual exploitation of children under the pretext of tourism, rape in custody, torture in custody, unlawfully long detentions without trial and swindling of public funds by State officials, all of which are 'acts hostile to civilians' but not highlighted by the State or the SLMM. The reason, understandably, is that they do not fall within the ambit of the particular perspective of the CFA.

From the perspective of the CFA, therefore, the question to be posed is: is a particular kind of violation such as to sabotage the CFA? Child recruitment hasn't been shown to be so.

Now, to avoid problems, the CFA should explicitly state under what circumstances child recruitment, and indeed other violations, would fall within the ambit of the CFA perspective.

Article 3: Sri Lanka Monitoring Mission (SLMM)

The role of the SLMM is not an easy task. But it has done its job creditably well, notwithstanding criticisms. Some suggestions might be in place to better its performance.

The Head of the Mission (Art. 3.2) should be of a different nationality from that of the facilitator. At the same time, there should be a close collaboration between the SLMM and the facilitator to ensure that the CFA and the peace negotiations are kept on course.

The size of the SLMM should be enlarged and its presence be more widely distributed over the relevant territories.

The role and function of the SLMM should be well publicised.

Appointment of the local monitoring committees (Art. 3.7) should not be done separately, but together from a list of names submitted separately.

A mechanism should be set up for regular meetings with civil society representatives.

Better co-operation should be accorded by the Parties to the SLMM in carrying out their duties.

Conclusion

As observed at the beginning, there have been achievements and failures. The failures were due to non-compliance and, in some instances, to ambiguities of certain provisions of the CFA.

To improve the performance in general, a theoretical consideration can be articulated that should underpin the nature and structure of CFA.

The CFA should be primarily people-sensitive, that is, sensitive to the peculiar values of the people concerned, their needs and experiences, especially experiences of oppression, deprivation and humiliation. To the people affected by the war the priorities are home, livelihood, dignified living and freedom from fear. Security issues should be decided respecting these priorities. State security should be understood primarily as security of the people. They cannot be made a fodder to security of territory.

A people-sensitive framework will have the advantage of adding validity to the CFA, articulating the right priorities and exacting a higher degree of compliance from the Parties.

This consideration becomes all the more important where frustration, repeated and lasting long periods, can drive the people to adopt extreme positions. In this context, the implications of militarization in general, and High Security Zones in particular, require to be adequately addressed, and the issue of paramilitaries need to be sorted out expeditiously, if the CFA is to be sustained.