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Session 2: Analysis of CFA & its Implementation

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Analysis of the Implementation of the Ceasefire Agreement

Background

The Ceasefire Agreement (CFA) between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) signed on the 21st February 2002 has become the stepping stone to arrive at a permanent negotiated settlement for the Tamil National Question. The CFA has been a major bone of contention and has become part of the undeclared war between the parties. What is clear after the Geneva talks is that the parties can if they so wish control the violence significantly. The number of political killings dropped dramatically immediately after the Geneva talks but escalated again after a few weeks. This suggests that violations of the CFA have been part of the proxy war conducted by the parties.

Geneva 1 was all about the implementation of the CFA and several agreements of far reaching importance were reached. The LTTE agreed to refrain from violence and the GoSL agreed to ensure that armed groups would not be allowed in cleared areas. This wording notwithstanding it was an agreement to disarm the paramilitaries. During the period as of Geneva 1 there have been several breaches of the CFA and if the agreements reached in Geneva are not implemented then Geneva 2 would be in jeopardy with greater acrimony and confrontation. The SLMM is supposed to present a report of the violations and judging by the statements of the outgoing SLMM chief it is clear that serious violations have taken place. The most serious being the confrontation in the sea where large numbers of LTTE cadres and Navy personnel were killed but also the continued use of claymore mines against the armed forces. The other was the continued presence of armed groups in Government cleared areas as confirmed by the SLMM.

The context of the Agreement.

The CFA is framed in such a way that the parity of status between the two parties is acknowledged. In internal wars, the battle is for symmetry. Maintaining symmetry is a primary consideration and is based on military parity. The CFA is based on the line of control established by the LTTE. The total land areas which comes under the line of control is about 10% of the land mass of the country. Any effort by either side to change the balance of power would be interpreted by the other as an act of war. It should also be borne in mind that the CFA does not have much to say about arms control by either side thereby recognizing the right of either side to rearm at will.

The essence of the CFA is that it upholds the line of control of the LTTE in demarcated territories.. This means that the government writ does not hold in these areas. Moreover, the CFA takes no position on the question of violations committed in the sea. In effect it asserts the

sovereignty of the Sri Lankan state with regards the entire coastal belt of the country. It is in the sea that many dangerous confrontations have occurred between the GoSL and the LTTE.

The main features of the CFA

The most significant feature of the CFA is that it was signed with the facilitation of the Norwegians, a single country that has been arduously engaged in taking forward the peace process in Sri Lanka despite a number of accusations leveled against it by the southern political parties. Unlike in many other conflict situations Norway bears the single responsibility for the negotiations with some support from the Co-Chairs and the international community. The CFA continues to face criticisms but it has been endorsed by President Kumaratunge and President Mahinda Rajapakse, both of who had been critical of the CFA.

Another significant feature is that the CFA was self imposed as opposed to externally imposed agreements signed in countries such as Bosnia. Therefore, this agreement required self regulation rather than externally enforced compliance.

The Sri Lanka Monitoring Mission (SLMM) was established as a monitoring mechanism to verify and inform both parties as well as the Norwegian facilitator. The monitoring mission is drawn from Scandinavian countries and consists of about 60 persons deployed in the North East. The SLMM is neither a peace enforcement force nor a police force as is sometimes mistakenly believed by critics of the CFA. Its only weapon is to name and shame the parties. The fundamental assumption of the CFA is that it is the parties who are solely responsible for the implementation of the CFA.

Implementation of the CFA

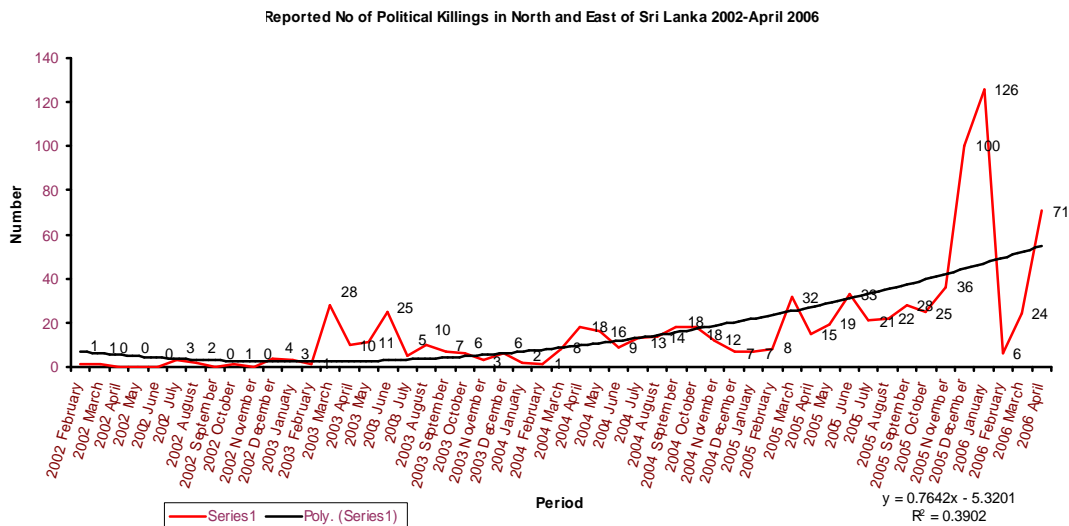
The CFA has entered its fifth year with no direct military confrontations. However, violations of Article 2 of the CFA and clandestine violence for which rulings were not given were seen throughout the period. The most disturbing feature of the clandestine violence was the escalation of political killings during the 2004-2005 periods. The total number of political killings that took place from 2002- March 2006 was 820. However, the SLMM records only 22 cases of killings as violations of the CFA out of a total of 182 complaints. Given the mandate of the CFA the SLMM is seriously handicapped with regards verifications of a particular violation.

The gap between the total number of killings reported and the total number recorded as violations indicates the problem of verification or identification of the perpetrators of these killings. It is the responsibility of the police to investigate the violations but to date not one of the perpetrators has been apprehended. The capacity of the police is weak since only a small percentage of police in the North East speak Tamil. It is also difficult for them to obtain evidence from the civilian population.

There were 127 killings in total during the 2002-2003 which can be largely attributed to political killings of intelligence personal of the government and members of Tamil political parties apposed to the LTTE. The number of killings during 2004-2006 shows a dramatic increase with over 600 killings. From January 2006 up to March 2006 there have been 250 killings.

Out of the total, more than 600 killings took place after the Karuna split in 2004. January 2006 recorded the highest number of killings (126) for a month since the signing of the agreement. This scenario is well captured in Fig 1.2.

Most of these killings took place in Batticaloa whilst both Trincomalee and Jaffna recorded a significant number of killings during the latter part of the year 2005 and the beginning of 2006. However, in February with the determination of the venue for the next round of talks, violence went down significantly as observed in Fig 1.2. This indicates the ability of both parties to control violence at their own free will. But there has been a dramatic rise in killings during the month of March and April.



During the four year period, the killing of GoSL security forces personnel and police personnel allegedly by the LTTE became prominent. The total number of such killings amounted to 138 by the 17th April 2006. The number of informants and intelligence cadres of the SL security forces and the police who were killed was approximately 67, including two high ranking military intelligence officers. These killings of the intelligence personnel were committed in the North East as well as in the Western Province.

However, until mid 2005 the ability of both parties to avoid direct confrontations enabled them to sustain their relationship with each other and continue ground level discussions. But with the killing of Dikkan (LTTE commander of the Sea Tigers) in Trincomalee in June 2005 the LTTE unilaterally backed away from ground level discussions. This ultimatum was also a result of a series of killings of LTTE political cadres and leaders starting with the killing of the Amparai/Batticaloa political wing leader Kausalyan on the 07th February 2005 within the government controlled areas of Batticaloa. Among the number of political killings that took place since then, there were also the killings of two high ranking SLA intelligence officers and Mr. Lakshman Kadiragamar who was the former foreign minister of the GoSL.

Article 1.8 and the role of armed groups

The observance of article 1.8 was widely discussed especially after the breakaway of Koruna. The LTTE accused the government of keeping paramilitary cadres within the region which the government declined to accept. Evidence of paramilitary forces in action was provided by the LTTE at the Geneva talks. Since Geneva 1, operations of the armed paramilitary cadres continue to be in evidence in Government controlled areas but most of the violence has occurred in areas controlled by the LTTE. According to sources, there were 11 such incidents reported mainly in Batticaloa, Trincomalee and Vavuniya districts. Some of the incidents reported included attacks

on LTTE camps and cadres in Trincomalee and Batticaloa districts, threats made to people, abductions and armed movements in the government controlled areas of Batticaloa.

Violations of Article 2

Child recruitment was the most frequent violation recorded in the SLMM statistics. Out of 3519 violations committed by the LTTE 1802 were of child recruitment which was 51% of the total violations committed. These occurred mostly in the Jaffna and Batticaloa districts with Jaffna heading the list.

However, during the recent discussions held in Geneva it was stated by the LTTE that child recruitment is not discussed under the CFA. Here, it should be pointed out that this is an inaccurate assumption. The agreement under article 2.1 clearly states that both parties “shall in accordance with international law abstain from hostile acts against the civilian population”. The international law regarding recruiting civilian personnel for warfare essentially speaks of child recruitment. This is being discussed both under the four Geneva Conventions and the Convention on the Rights of the Child (1989). Under both these International laws it is observed that children under fifteen years of age should not be recruited for warfare. Therefore, child recruitment if practiced is a breach of the above international laws and qualifies as a Ceasefire violation. The argument that children are hired as domestic servants and the existence of child labor does not in any way absolve the parties from this international obligation.

There has been a tendency to fight a verbal war on the basis of violations of the CFA. The GoSL tends to focus on child abduction and political killings whilst the LTTE tends to focus on article 1.8 of the CFA referring to the existence of paramilitary forces in the cleared areas of the North East. Other violations committed are the denial of the right to return of those displaced by the High Security Zones, the denial of livelihood of fishermen in many areas of the North and the denial of the rights of the war displaced to return. The continued denial of the right of return of those displaced by the High Security Zones should be seriously examined and remedies sought.

Alleged violations after Geneva 1

There have been 72 apparent CFA violations incidents in the North Eastern Province since the Geneva talks in February 2006. 95 political killings were reported, 58 of them from the Eastern Province. Among these deaths were 36 GoSL Security personnel and 12 LTTE cadres. Most of these political killings took place in the Trincomalee district, 50 in total. Meanwhile, several incidents took place in the seas. On the 25th of March 2006 an alleged LTTE craft, disguised as a multi - day fishing trawler with explosives blew itself up destroying a naval craft off Kudiramalai, between Mannar and Kalpitiya. There had been 6 LTTE cadres onboard the LTTE trawler whilst 11 SLN persons were rescued and 8 others went missing in the incident.

Strengthening the CFA

The question arises as to why the CFA is difficult to implement. It is not difficult to implement if there is the political will to implement the agreement. It is the two parties who are bound to implement the agreement and not the SLMM or the Norwegian facilitators. The parties can control the violations. The problem has been that both parties has either blatantly violated the CFA or have used other means to undermine the CFA.

The agreement reached during Geneva 1 that armed groups and paramilitary forces should be disbanded has become difficult to implement. Recently statements have been made by the

military that such groups do not exist in the cleared areas. However, this assertion has been challenged by the SLMM which has provided evidence that the SLMM had come across persons belong to the Karuna faction and heavily armed in Government cleared areas. There is no reason why even the most powerful factions of the armed groups could not be absorbed into the military. The LTTE should refrain from assassinations and political killings of intelligence officers and cadres of the police and military.

The Police should be transformed from a 'Civil War police' to a 'Ceasefire police'. Their investigative capabilities should be improved by the introduction of the latest scientific and forensic techniques. Their capabilities to maintain law and order, including crowd and riot control should be strengthened by introducing 'weapons' and tactics which employ the minimum of force. An intense effort through education, training and inducting Tamil speakers into the Police to improve police community relations will also compliment this process positively.

The capacity of SLMM to verify and investigate should be enhanced to meet the present challenges. This may perhaps be complimented through inducting International Police personnel with investigative skills.

Restoring ground level discussions between the LTTE military commanders and the GoSL security commanders is an integral part of confidence building. These meetings were very important and useful and should be revived immediately.

The CFA should be translated into Sinhalese and Tamil, widely distributed and communicated.

Beyond the CFA

The LTTE should take special measures to reconcile their differences with the Muslim community. There have been efforts to reconcile the differences with the Muslims. The agreement reached between the LTTE leader and the SLMC leader should be immediately implemented. One option might be to appoint a special Land Commission with powers to resolve the land question. Such a committee should recommend the implementation of land problems affecting the Tamils, Muslims and Sinhalese. Further steps should be taken to resolve the right of return of the Muslims who were expelled from the North and who are languishing in Puttalam and elsewhere. It is also important to resurrect the joint committees established in Berlin during the negotiations between the GoSL and the LTTE to look at the land questions of the Muslims and Tamils in the East. .

Ian Martin's recommendations to deploy international human rights monitors in the country to ensure "the fundamental rights of everyone living in Sri Lanka" and to strengthen the Human Rights Commission of Sri Lanka to enable it to develop the capacity for effective monitoring of human rights violations throughout the country should be implemented.

Towards a framework agreement which goes beyond the CFA

The CFA does not outline a clear road map or value frame upon which the talks would be continued. It may be worthwhile to start thinking of a set of principles which can help to govern the peace process in the future. To enable such a process to take place a set of documents similar to those arising from other peace process should be made available to the delegates. One example could be the Mitchell Principles which could go a long way towards providing such a framework.

The Mitchell Principles were six ground rules agreed by the Irish and British governments and the political parties in Northern Ireland. All involved in negotiations had to affirm their commitment:

- To democratic and exclusively peaceful means of resolving political issues;
- To the total disarmament of all paramilitary organizations;
- To agree that such disarmament must be verifiable to the satisfaction of an independent commission;
- To renounce for themselves, and to oppose any effort by others, to use force, or threaten to use force, to influence the course or the outcome of all-party negotiations;
- To agree to abide by the terms of any agreement reached in all-party negotiations and to resort to democratic and exclusively peaceful methods in trying to alter any aspect of that outcome with which they may disagree; and
- To urge that “punishment” killings and beatings stop and to take effective steps to prevent such actions.