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LTTE's Flexibility in the Current Peace Process

The current ceasefire was initiated by the LTTE declaring a unilateral ceasefire and calling for a negotiated settlement between the Government of Sri Lanka and it in December 2000. This was ten months prior to September 11, 2001. It was a manifestation of LTTE's commitment to give peace and diplomacy a chance to bring normalcy to the island.

Prior to the commencement of talks, LTTE repeatedly stated that the immediate goal of the talks is the establishment of an interim administration, with the objective of addressing the urgent humanitarian existential problems of the people of the Northeast, the area affected by the prolonged war. Indeed, the Sinhala political party that won the parliamentary elections in 2002 ran on a platform of establishing an interim administration in the Northeast. However, during the initial stages of the talks when the Sinhala political party that represented the government of Sri Lanka indicated the lack of consensus in the South, on the issue of the establishment of an interim administration and its fear of being removed from power by the then president, if it entered into talks on the proposal to establish and interim administration. In response the LTTE showed flexibility and dropped its call for an interim administration for the sole reason of ensuring that the negotiating process did not breakdown.

As and alternative solution, Subcommittees, comprising equal membership from the LTTE and the GOSL were established in lieu of the interim administration. It should be noted even though the purview of the subcommittees was the Northeast, the traditional Tamil homeland, the LTTE magnanimously accommodated equal membership of the GOSL and thus thereby gave them a veto over the affairs of the Northeast. However, the GOSL, invoking various excuses, including constitutional obstacles, failed to complete the formation of all the subcommittees and also failed to implement the decisions taken by the subcommittees that were formed. It should be acknowledged that the reason for the parties to enter into negotiations under the auspices of the foreign government is evidence, that the current conflict cannot be resolved under the existing Constitution of Sri Lanka. Having acknowledged that, and then invoking the Constitution as an obstacle is an act of ingenuity.

As a result of the above situation, an asymmetrical peace existed and continues to exist in the island of Sri Lanka. While the South has been enjoying the dividends of the peace that now exists, the Northeast – the area most affected by the war – has not seen the return of normalcy. Reconstruction, development, relief and resettlement of people, who have been made refugees or are internally displaced by the war, has not taken place in the Tamil areas.

The failure of these subcommittees is the reason the LTTE sought another model to meet the urgent humanitarian needs of the people living in the Northeast and revived its call for an interim administration. On October 31st, 2003 the LTTE submitted a proposal for Interim Self-Governing Authority.

ISGA did not envisage power to the administrative body for an indefinite period. The LTTE proposed to have a limited period of five years to intensely work on reversing the effects of war to be followed by elections. The five years suggested by the LTTE was half the time period offered to the LTTE to run an administration by the then Sri Lankan president in her interview with Time Magazine.

The interests of our Muslim brothers and sisters in the Northeast are protected in the ISGA in accordance with international human rights norms.

After LTTE submitted its proposal for ISGA, it called for resumption of talks on the basis of the ISGA. I would like to emphasize the fact, the LTTE's position is that it was open to discuss and entertain any modification of the ISGA. It did not adopt the policy of take-it or leave-it, but rather presented the ISGA as the basis for the resumption of talks. However, the then president of the GOSL responded by using her massive power to derail the peace talks. She took over the ministries of the government that were representing the GOSL in the peace process and dismissed the ministers. This created confusion and lack of clarity, and led to the Norwegians to suspending their facilitation role. It should be highlighted here, that during the peace process of the last five-years, it was the intransigency of the GOSL that led to the suspension of the Norwegian's role.

In December 2004, the tsunami devastated the island of Sri Lanka. Many hoped that this nature's havoc would create an opportunity for the antagonist in the conflict to work together as both their people were affected. However, even in this tragic and urgent situation the GOSL was not prepared to set up a mechanism in cooperation with the LTTE to address the needs of the tsunami-victims. However with the assistance and insistence of the international community the post-tsunami operational management structure was proposed and accepted by the government of Sri Lanka and the LTTE. This entity was without any political power and the LTTE showed great flexibility and accepted hoping that the spirit of co-operation might compensate for the power vacuum and the structural infirmity. However in the aftermath of signing this agreement, the world witnessed the ugly face Sinhala chauvinism again in the form of vocal opposition and streets demonstrations leading to the negation of this agreement by the judicial branch of the Sinhala dominated government of Sri Lanka. As a US Congressman pointed out, the Sri Lankan government's judiciary is one of its three branches of government.

The salient point that I would like to stress at this juncture is that the LTTE's patience and commitment to the cease-fire agreement, in spite of the government of Sri Lanka's repeated failure to implement agreements it made with the LTTE.

With respect to ceasefire violations, as the SLMM stated, that we have to look beneath the surface. Removing the Government of Sri Lanka flag from a building cannot be equated with the continued occupation of Tamil homes and displacement of thousands Tamils from their homes by the armed forces of the government or denial of livelihood Tamils by restriction on fishing and farming, and patronage of paramilitaries who engage in assassinations. The government of Sri Lanka is claiming that the LTTE has violated the ceasefire more frequently than the government. But how does one count the violations of thousands of Tamil people being denied normalcy over the course of 4 years that is 1460 days. If each of these days is added up, the numerical violations of the ceasefire agreement by the Government of Sri Lanka would be massive.

The CFA requires that both sides to the conflict work to "normalize" life in conflict areas, and Article 2 contains specific provisions barring the harassment of civilians and requiring the return of religious sites, schools, and "all other public buildings" with the aim of normalizing civilian life. Yet, at present, the Army occupies roughly on third of the area used for housing by the Jaffna Peninsula residents. These people simply cannot return to their normal lives while the Army continues to occupy their homes.

Various human rights instruments require that the Army return the land it has taken to the rightful owners, despite security constraints.

It has been suggested that in order to preserve the balance of military power, civilian homes can be occupied. However, international human rights law establishes that only the highest degrees of military necessity can justify the forcible movement of civilians who are not themselves parties to the conflict. For example, Article 17 of the second Additional Protocol II to the Geneva Conventions,

prohibits the forcible movement of civilians, stating that "The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or *imperative military reasons* so demand".

Given the four year ceasefire, it cannot be said that there is an imperative military reason to occupy civilian homes. Additionally, as the above demonstrates, the government cannot occupy homes just to maintain the balance of power.

Moreover, Article 46 of Paragraph 2 of the 1907 Hague Convention on Land Warfare, which is considered customary international law, also prohibits confiscation of private property.

No peace agreement, whether it be in Burundi, or Georgia, or Bosnia, or Cambodia, or Kosovo, or Guatemala, or El Salvador, or Macedonia, or Sierra Leone, or Liberia, indicates a serious concern that the return of refugees and IDPs to certain areas will affect the balance of military power between the warring parties.

While it is customary for final peace agreements to include regimes for demobilization, disarmament and decommissioning of organized military units, no peace agreement provides that such actions must occur before refugees and IDPs may return to their homes.

Another major obstacle to the continuation of the peace process is the Sri Lankan government's patronage of paramilitary forces.

Article 1.8 of the Ceasefire Agreement states:

> Tamil paramilitary groups shall be disarmed by the GOSL by D-Day +30 days at the latest. The GOSL shall offer to integrate individuals in these units under the command and disciplinary structure of the GOSL armed forces for service away from the Northern and Eastern Province.

The existence of the paramilitary group has been acknowledged by newspaper reports, SLMM observations, and even by the U.S. 2006 State Department reports. As the International Court of Justice observed in Nicaragua v U.S., public reports can contribute to the establishment of facts. I would like to emphasize that negotiations between the Government of Sri Lanka and the LTTE are not proceedings before the Court. The parties across the negotiations table are not engaging in adversarial proceedings. They come in good faith to resolve issues. Thus in this forum, for the GOSL to deny the existence of the paramilitaries not only shows their lack of good faith, but also insults the common sense of the international community.

It is argued that the CFA, covers only paramilitary groups that were in existence when the Ceasefire Agreement was signed. However, the Ceasefire Agreement is a living document, meant to address existing as well as new situations to ensure the continuation of the ceasefire. All ceasefire agreements have generally been considered to be living since if they apply only to the types of organizations operating at the moment, the CFA is signed then both parties would immediately create new organizations to carry out hostilities.

Article 1.3 prohibits the Sri Lankan armed forces from engaging in offensive operations against the LTTE. Therefore, to allow the Sri Lankan armed forces to provide military support to any group engaged in offensive operations against the LTTE is contrary to the intent of this provision, to maintain a ceasefire. Although the GOSL alleges that they neither condone nor support paramilitaries, the ceasefire is clear in placing an obligation on the GOSL to prohibit offensive actions which are under its control or within its government-held territory.

In 2003, three separate incidents at sea took 26 LTTE members. The Sri Lankan Navy sank an LTTE merchant ship in international waters. Even in spite of that, the LTTE has shown great restraint in

their actions. The government has justified its action by claiming that the LTTE ships were carrying arms.

Arguendo, the LTTE ships were getting arms, it does not entitle the GOSL to attack those ships.

The relevant language of the CFA states in Section1.2:

> Neither Party shall engage in any offensive military operation. This requires the total cessation of all military action and includes, but is not limited to, such acts as:
>
> a) The firing of direct and indirect weapons, armed raids, ambushes, assassinations, abductions, destruction of civilian or military property, sabotage, suicide missions and activities by deep penetration units;

Thus, the importation of weapons and ammunition can only be considered proscribed if such action is specifically included in the above paragraphs. Clearly the importation of weapons and ammunition is a not "an offensive military operation" and clearly there is no prohibition in the CFA.

The fact that a prohibition on rearmament is not included in the CFA is not inconsistent with general state practice. A review of cease-fire agreements and subsequent peace agreements indicates that prohibitions on rearmament are generally included in the final peace agreements as part of a comprehensive program on demobilization, disarmament, and decommissioning of weapons.

It is clear from the diplomatic debate surrounding the negotiation of the CFA and the history of the conflict that the parties were well aware of the act of importing armaments via the sea. The failure to include a restriction on such a key point of contention can only be interpreted as a decision by the parties not to proscribe the action by the terms of the CFA.

Moreover, the LTTE is a national liberation movement. Thus, it can be argued under U.N. General Assembly Resolution 3034 and 3314 that the LTTE has a right to import arms for the realization of the right to self-determination. Also, under the international law concepts of self-defense and self-help, the LTTE can import arms.

I also would like to emphasize that part of the blame, for the impasses of the negotiations, should be placed on the shoulders of the international community. The international community's action has given a perception that it is not a neutral player in the peace process when the Sri Lankan leadership repeatedly claim that they had established an "international safety net" designed to surround and contain the Tamils' struggle for self-determination and the international community's failure to repudiate these claims and disassociate itself from the stated partisan goals of such a "safety net". The most damaging aspect of the international community's action was its insistence that a solution should be found within a unified Sri Lanka. Such a position is not only contrary to the law of self-determination, which states that self-determination can be exercised *intra alia* through the establishment of an independent state. It is also contrary to the current international practice with respect to national conflicts in other parts of the world.

The Machakos Protocol, signed with the facilitation of the US, the UK, Norway, and Italy recognized the South Sudanese people's right to form an independent state. The Protocol provides for a referendum in South Sudan after six years on the question of remaining within the state of Sudan or forming a separate state. Similarly, the Good Friday agreement allows the people of Northern Ireland to determine their political future through a referendum every seven years. Along these same lines, the Serbian – Montenegrin Agreement recognizes the Montenegrin people's right to form an independent state and provides for a referendum on this matter after three years. The Papua New Guinea-Bouganville Agreement allows Bouganville to hold a referendum between ten and fifteen years hence to ascertain the political aspirations of the Bouganville people.

South Sudan, Northern Ireland, Montenegro and Bouganville are not relics of colonialism. The above conflicts arose in non-colonial contexts. The international community did not oppose the Machakos Protocol on the grounds that it infringed on the sovereignty or the territorial integrity of the United Kingdom. It did not oppose the Serbia – Montenegro Agreement on the grounds that it infringed on the sovereignty or the territorial integrity of Serbia. It did not oppose the Papua New Guinea - Bouganville agreement on the grounds that it violated the sovereignty or the territorial integrity of Papua New Guinea. The international community did not set any pre-negotiation parameters on what the outcome of peace negotiations should be in any of the above-mentioned conflicts. Recently, the UN Secretary General Kofi Annan stated that "Talks on whether Kosovo should remain part of Serbia or be given independence should start soon." Thus, although the international community employs concepts such as "earned sovereignty," "phased out sovereignty" and "conditional sovereignty" in the above conflicts, its insistence that the Tamil – Sinhala conflict on the island of Sri Lanka be resolved within a united country creates a perception that the international community is applying a double standard.

Even purely from the point of view of negotiation, leaving the options of "earned sovereignty," "phased out sovereignty," and "conditional sovereignty" off the negotiation table will reduce the incentive for the Sinhala Nation to put forward a meaningful power-sharing proposal or even to take the peace process seriously. On the other hand, having these options on the table will increase the confidence of the Tamils in the fairness of the current peace process. As Arend Liphart argues, the best way to avoid partition is not to resist it.