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**REFLECTIONS ON SRI LANKA'S POLITICAL
AND SECURITY DILEMMAS;
ADVOCATING AN INNOVATIVE LEGAL
APPROACH TO SECURING TSUNAMI RELIEF**

LAW & SOCIETY TRUST

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Editor's Note

The first paper that the Review publishes in this Issue is a crisp detailing of the status of Sri Lanka's peace process as it was during 2005 when *Chandra Lekha Sriram*, a senior academic now based in the United Kingdom, engaged in field research in the country. The paper combines lucid academic analysis with a refreshingly balanced practical look at the complexities of the post tsunami, post ceasefire political scenario.

Sriram's grim foreboding of the breakdown of the ceasefire agreement has now been realised in all its dire consequences. However, what is useful for current analysis is the dispassionate manner in which she flags many of the weak points in this process. The problematic role of the Norwegians as both facilitator and monitor, the bypassing of Muslim concerns and sharply divided political cleavages during the acrid 'co-habitation' between the Peoples Alliance Presidency of Chandrika Kumaratunge and the United National Front (UNF) administration of Ranil Wickremasinghe are some of the concerns that have been outlined.

Kumaratunge being disregarded in respect of the signing of the ceasefire itself and her humiliation at the hands of some of the UNF ministers was undoubtedly to vest her actions in dissolving key UNF ministries and propelling her party's return to government within a short period, with the flavour of sweet vengeance. The events thereafter with the gradual acceleration of tensions between the Liberation Tigers of Tamil Eelam (LTTE) and the government were predictable. The one significant gain from this period when the ceasefire was active, namely the Karuna factor in providing an important 'spoiler' to the hitherto monolithic power image of the LTTE is particularly noted.

In looking at the issues raised by Sriram, it is without question that a human rights monitoring mechanism should have been central to the post ceasefire discussion process rather than relegated to the background at that time. The preliminary drafting of a human rights road map was fated to be an exercise in futility given the lukewarm warmth with which such a mechanism was pursued domestically. This was notwithstanding the fact that no better person could have been tasked with this objective than the United Nation's Ian Martin who was able to mould the UN mission in Nepal to be an effective force in bringing an end to conflict in that country.

This lack of a sufficiently critical response on the part of NGO led civil society in the South to continuing atrocities by the LTTE in the North/East during the post ceasefire period, had manifestly unfortunate consequences. At one level, it provided a useful lever by which radical political forces such as the Janatha Vimukthi

Peramuna (JVP) and the Jathika Hela Urumaya (JHU) as well as some quarters of Sri Lankan public opinion were able to castigate civil society for condemning only human rights brutalities committed by government troops.

At a far more serious level, the inability to seize this opportunity to address the grave concerns of civilians in the war affected areas as well as bring about a comprehensive evaluation of Sri Lanka's human rights protection regime, including a re-writing of its draconian emergency and public security laws had a bitterly resounding impact when conflict resumed in all its intensity, as is evident now.

Meanwhile, the extremely unfortunate manner in which the distribution of tsunami aid, without providing an opportunity for intercommunal cooperation and even understanding, "itself became a political flashpoint, exposing old political cleavages and generating new ones" is central to Sriram's analysis. The flaws in the P-TOMS MOU, the nature of conflict insensitive humanitarian aid and indeed, of international engagement itself in Sri Lanka are examined.

The second paper that is written by a practising lawyer, *Chrishmal Warnasuriya* looks at the development of Sri Lanka's foreign policy in the post 1977 era, focussing particularly on security dilemmas in this regard. Personality factors of successive political leaders in shaping this policy and in particular the conflictual attitudes adopted by Sri Lanka's governments towards the country's "closest and arguably her strongest neighbour" (in which 'threat perceptions' were paramount) is an important element of his discussion. He concludes as follows;

".....the many lessons learnt from its past has taught the Sri Lankan leadership that Sri Lanka cannot ignore geo-political realities of its presence in the Indian Ocean and seek solutions from the international system itself; that ignoring those realities only lie to its detriment.

India too seems to have realised that rather than adopting the aloof stand it resorted to at one time (whether justified or not - as argued above), that it is not in its best interests to allow the escalation of an armed conflict so close to its borders; especially with its own geo-political concerns of Tamil Nadu situated close to the North and East of Sri Lanka, with many connections between the peoples of these two areas, both geographically and culturally. "

The final paper by *A. Mohammed Farook* would perhaps be of most interest to legal practitioners and suggests a practical approach in utilising existing provisions of the law to ensure the due performance of public officers, particularly in the context of tsunami aid distribution.

Kishali Pinto-Jayawardena

Sri Lanka after the Tsunami: Opportunities lost?

*Dr. Chandra Lekha Sriram**

Introduction

The brutal assassination of Sri Lanka's Foreign Minister Lakshman Kadirgamar, in August 2005, was a wake-up call to many in the international community: the conflict in Sri Lanka was far from over.

Many had perhaps been lulled into believing that this was after several years of a relatively successful cease-fire: the situation had been popularly described as 'no war- no peace'. Others perhaps placed their faith in the cooperation and coordination amongst ethnic groups dictated by the disbursement of assistance following the devastating tsunami that affected Sri Lanka and countries across the region in late December 2004.

However, rather than providing an opportunity for intercommunal cooperation and even understanding, distribution of tsunami aid itself became a political flashpoint, exposing old political cleavages and generating new ones. Unfortunately, many opportunities to revive the peace process were lost, and the country's conflict has been renewed to the point that the cease fire is one in name only.

Background of the conflict

In Sri Lanka, internal conflict has raged for over two decades, encompassing both a radical movement of nationalist (majority) Sinhalese, the Janatha Vimukthi Peramuna (JVP) in the south of the country in the early 1980s, and a separatist movement of (minority) Tamils in the north and east of the country through today.

The JVP has since largely abandoned its violent tactics and turned to engagement in democratic politics. This article will thus focus primarily upon negotiations with the latter movement, the Liberation Tigers of Tamil Eelam (LTTE) in the north and east. However, because the JVP remains a political force and strongly opposed to peace negotiations, and the small Muslim minority has also objected to what it perceives as exclusion from the peace process, these parties and their dynamics will be dealt with in the discussions of the negotiations.

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Ed Note: This working paper was written consequent to research undertaken by the author in 2005 and does not extend to analysis of developments consequent to the election of the current holder of the Executive Presidency, Mahinda Rajapakse and the ongoing high-intensity conflict. Nonetheless, the perspectives that the paper offers in relation to the manner in which historic opportunities of re-building a fractured nation were lost, remains extremely relevant for us at this point in time.

Peace negotiations have centered upon broadly territorial concerns, such as autonomy or devolution, and constitutional reforms to support any territorial devolution. Less emphasis has been placed upon inclusion in future security structures and governance, at least by contrast with other peace negotiations. In this article, drawing upon fieldwork conducted in the country in the summer of 2005, I will consider the prospects for the peace process and the degree to which the incentives offered have had significant influence with the LTTE.¹

Sri Lanka is a multi-ethnic and multi-religious society. The majority of the population is ethnically Sinhalese (about 74%), Tamils are about 18% of the population and Muslims constitute about 7%.² Prior to independence in 1948, the island was colonized by the Portuguese, the Dutch, and, finally, the British. The history of the conflict must be understood in the context of the legacy of British colonialism.³ The British had created a single island-wide administration for the first time, and Tamils were perceived to have received preferential treatment in education and official employment.

At independence, then, Sinhalese resentments rose to the surface, resulting in the passage of 'Sinhala only' language legislation in 1956. While it was later rescinded, the rise in Sinhalese Buddhist nationalism and chauvinism, and discrimination against Tamils in the education system, provoked Tamil nationalism and movements for independence. Ethnic tensions and violence turned to war in 1983, with the taking up of arms of the leading Tamil militant group, the LTTE.

The conflict and attendant political violence have killed some 65-70,000, and more than 20,000 more have been 'disappeared' while about one million have been displaced. Both the government and the LTTE have engaged in human rights abuses, with the LTTE responsible for the vast majority.⁴ The LTTE is also responsible, most notoriously, for its use of child soldiers and terrorist tactics such as suicide bombings. The LTTE has also been responsible for political assassinations of Sri Lankan politicians, including a president, prominent moderate Tamils, and an Indian prime minister. It is proscribed as a terrorist organization in the US, Canada, the UK, and a number of European countries, as it was until the most recent peace negotiations banned as a terrorist organization in Sri Lanka.⁵

A number of attempts to resolve the conflict have occurred, notably, in 1965, the Bandaranaike-Chelvanayakam Pact, the Indo-Lankan accord and the Indian Peacekeeping force in 1987, and

¹ The author is grateful for the support of the British Academy, Small Grant SG-39303, the Carnegie Trust for the Universities of Scotland, Grant, and the hospitality of the Law and Society Trust, which acted as my sponsor in the country.

² See generally Stanley Tambiah, *Levelling Crowds: Ethnonationalist conflicts and collective violence in South Asia* (Berkeley, CA: University of California Press, 1997); Sumantra Bose, *States, nations, sovereignty: Sri Lanka, India, and the Tamil Eelam Movement* (New Delhi: Sage, 1994). See also Foreign and Commonwealth Office, "Country Profile: Sri Lanka," at www.fco.gov.uk; US Department of State, "Background Note: Sri Lanka," (February 2005) at www.state.gov/r/pa/ei/bgn/5249.htm; US Department of State, "Country Reports on Human Rights Practices, 2004," (28 February 2005) at www.state.gov/g/drl/rls/hrrpt/2004/41744.htm. These numbers are contested by many parties, and accurate numbers, particularly for the North and East, are difficult to obtain.

³ Elizabeth Nissan, "Historical Context,"; Kumudini Samuel, "Straining Consensus: Government strategies for war and peace in Sri Lanka, 1994-98,"; Sachithanandam Sathanathan, "Self-determination: A Ceylon Tamil Perspective,"; Alfred Jeyaratnam Wilson with A. Joseph Chandrakanthan, "Tamil Identity and Aspirations," at <http://www.c-r.org/accord/sri/accord4/>.

⁴ US Department of State, "Country Reports"; FCO, "Country profiles: Sri Lanka"; Chandra Lekha Sriram, "Dilemmas of Accountability: Politics, the Military and Commissions of Inquiry in an Ongoing Civil War: The Case of Sri Lanka" *Civil Wars*, vol. 5, no. 2 (2002), pp 96-121.

⁵ US Department of State, "Country Reports"; FCO, "Country profiles: Sri Lanka."

negotiations in 1988-89. In 1994, the People's Alliance (PA) was elected, and its leader, Chandrika Kumaratunga, subsequently became president. The party had run promising to seek peace negotiations, and did indeed initiate negotiations with the LTTE. Four rounds of talks were held, with moderate success, including easing of the economic embargo on the Jaffna peninsula.

However, the government and the LTTE disagreed about the sequencing of discussions, with the government seeking to address terms for a cease-fire, political elements, and reconstruction and rehabilitation simultaneously, and the LTTE preferring to address elements in a step-by-step manner, beginning with a cease-fire and humanitarian elements. The peace talks ultimately broke down, despite government concessions on several issues, and the LTTE withdrew from the process in April 1995. The government then pursued a two track strategy, indicating preparedness to engage in negotiations and constitutional reform *and* a so-called 'war for peace', with military engagements seeking to weaken the Tigers and compel them to negotiation. Its constitutional proposal included provisions for devolution of power to regions, but was ultimately defeated by UNP opposition.⁶

The political landscape

The political landscape in Sri Lanka is, to say the least, complicated, with many noting that the real obstacle to a solution to the peace negotiation is political maneuvering in the South. Thus while former President Chandrika Kumaratunga's PA party came to power in 1994 on a peace platform, failed campaigns on both the negotiation and military front weakened its commitment, particularly when under fire from the United National Front (UNF) party of former Prime Minister Ranil Wickremasinghe and from Sinhalese nationalists.⁷

While the history of the rivalry of these parties, personalities, and indeed family dynasties, is beyond the scope of the article, the basic constitutional structure and political events since 2002 are of interest here.⁸ First and foremost, Sri Lanka's electoral system is one of proportional representation (PR), enshrined in the Constitution of 1978. This replaced the previous first-past-the-post system, and was expected to moderate the influence of ethnic politics by ensuring minority party representation and making it likely that majority parties would need to form coalitions with them.⁹

While indeed coalition-building has resulted, this has resulted in unstable coalition politics, with majority parties catering to the demands of extremists, or losing control when minority parties defect. The instability of the political system has arguably been exacerbated by the Executive Presidency, enshrined in the Constitution of 1978, which provides the president with wide-ranging powers to declare states of emergency and dissolve Parliament.¹⁰ These dynamics have meant that it is difficult, if not impossible, for any party that runs and wins on a peace platform to actually implement it, as the minority party which challenge every decision taken.¹¹

In December 2001, the UNF party won a majority of seats in Parliament, running on a peace platform. Ranil Wickremasinghe became Prime Minister, and the government was divided. Then President

⁶ Samuel, "Straining Consensus", pp.3-4. See also Rohan Edrisinha, "Trying Times: Constitutional attempts to resolve armed conflict in Sri Lanka" and Article XV of the proposed 1997 Constitution, at the same website.

⁷ Sriram, "Dilemmas of Accountability".

⁸ Welikala and Rampton, "The Politics of the South".

⁹ Sunil Bastian, "Electoral Systems and Political Outcomes," *Law and Society Trust Review* vol. 15, issue 210 (April 2005), pp. 18, 23-5.

¹⁰ Sriram, "Dilemmas of Accountability".

¹¹ This tendency of opposition parties to undermine progress on peace negotiations, as well as the absence of a genuine tradition of bi- or multi-partisanship, was noted by Mark Silva of USAID. Author's interview with Silva (Colombo: 5 July, 2005).

Kumaratunga was to be a bitter foe, not of the commitment to peace espoused by the UNF, but of the specifics of the negotiations, in particular the cease-fire agreement.

From the 2000 unilateral LTTE ceasefire to the 2002 Cease-fire Agreement

In early 2000, then Sri Lankan President Chandrika Kumaratunga and the LTTE leader, Vellupillai Prabhakaran, requested that the Norwegian government act as facilitator for peace talks. This move occurred even as fighting continued and the LTTE launched new offensives and retook significant territory. In December of 2000, the LTTE announced a unilateral cease-fire, which it extended month after month until April 2001, when fighting began again. In June of that same year, the LTTE attacked the only international airport, damaging civilian and military aircraft, hurting tourism, and perhaps most importantly, demonstrating that organization's military capacity.

These moves triggered a crisis in the government, resulting in dissolution of the ruling coalition and new elections, which were won by the United National Party (UNP) of Ranil Wickremasinghe, which ran on a platform seeking peace and rebuilding the economy. This resulted in a government of "cohabitation", with the President of one party and the Prime Minister of another, for the first time in Sri Lanka's history, resulting in "an uneasy and sometimes confrontational relationship" between the two.¹²

The UNP-controlled government and the LTTE were able to reach a Cease-Fire Agreement (CFA), brokered by the Norwegians, in February 2002. While the government interest in seeking an accord is apparent, the LTTE's interest was perhaps twofold. First, the airport attack helped it to demonstrate its military prowess, and meant that it could negotiate on a relatively equal basis. Perhaps equally important, the LTTE was perhaps motivated by the fallout from the attacks on the US on September 11, 2001. With the 'global war on terror', the LTTE perhaps became more concerned about being treated as a proscribed terrorist organization than it had been previously, and stepped up its pursuit of legitimacy domestically and internationally.¹³ For both the government and the LTTE, further, battle fatigue had set in--there was ostensibly what Zartman has termed a "hurting stalemate."¹⁴ Each finally recognized the costliness of the war, and the need for negotiation; in short, the conflict was thought to be 'ripe for resolution.' This was thought to be the case in part because of the military situation, but also because of the political needs of the government and the LTTE, to appeal to their war-weary populations.¹⁵

The mediators, the government, and analysts also hoped that the CFA and negotiations might help push the LTTE to reform, and to transform itself from a violent armed group to a viable democratic group. Thus a strategy of using both carrots and sticks was developed, although it has been criticized as offering too many of the latter.¹⁶ However, the rapid deterioration of the conflict since the tsunami

¹² Welikala and Rampton, "The Politics of the South," p. 12.

¹³ Jonathan Goodhand and Bart Klem with Dilrukshi Fonseka, S.I. Keethaponcalanm and Shonali Sardesai, "Aid, Conflict, and Peacebuilding in Sri Lanka, 2000-2005 (15 June 2005, draft on file with author). On the war on terrorism, US policy, and the LTTE, see Teresita Schaffer, "Sri Lanka's Peace Efforts: The View from a Distance," (Paper prepared for conference, *International Dimensions of the Peace Process in Sri Lanka*, 8-9 July 2005).

¹⁴ ACCORD, "Engaging armed groups in peace processes, Sri Lanka" at www.c-r.org/accord.

¹⁵ Liz Philipson, "Breaking recurring themes in the cycles of war and peace in Sri Lanka," (Centre for the Study of Global Governance, London School of Economics, Research Paper 3, December 1999), pp. 13-15.

¹⁶ Interviews in Colombo, not for attribution, July 2005; several compared the LTTE to the IRA, suggesting a legitimate political wing akin to Sinn Fein might be encouraged to develop. Others countered the criticism that international strategies were more carrot than stick, pointing out that an armed group cannot easily or rapidly transform to a political party.

suggests that, if the conflict was ripe for resolution, the opportunity to resolve it has now passed.¹⁷

The CFA was reached relatively quickly and secretively, preventing an open discussion of it, but also preventing political machinations that might have defeated any agreement. According to many reports, the agreement was reached by the former Prime Minister and the LTTE without consulting then President Kumaratunge. Indeed Kumaratunge is said to have been showed the agreement only after it was completed.¹⁸ More critically, the negotiations that followed not only included only two parties, but did not broadly engage the populace on the peace process, resulting in relative ignorance about its content, which could be manipulated by extremists.¹⁹

The Cease-fire Agreement (CFA) had several components--the halt to military operations, the separation of forces of the two sides, measures to restore normalcy, confidence-building measures, and the creation of a Sri Lankan Monitoring Mission (SLMM), which would report to the Norwegian government.²⁰

The SLMM

This created an unusual situation in which the Norwegians had a role both as a facilitator and as a monitor, a dual function that some would suggest eventually hampered it in both.²¹ The mission itself was quite small, about 60 observers, drawn from five Nordic countries. The mission was authorized to engage in on-site monitoring to ensure compliance with the CFA, but had no mandate to compel compliance, through force or otherwise. The preamble to the status of mission agreement even noted that “[i]t is, however, understood that the effect of the SLMM will depend upon the parties’ willingness to abide with recommendations from SLMM.”²² As Helen Olafsdottir, the spokesperson for the SLMM, noted, this meant that the mission had to rely heavily upon diplomatic skills.²³

The 2002-2003 peace negotiations

Following the completion of the CFA, the parties engaged in six rounds of talks, facilitated by the Norwegians. The peace negotiations that proceeded in the coming months saw the lifting of the ban on the LTTE by the government, the lifting of checkpoints, halting of harassment of civilians, and a re-opening of roads and railways, notably the re-opening of the A9 road running to Jaffna,

¹⁷ As Brian Smith, the post-conflict analyst for the Asian Development Bank, suggested, while P-TOMS might have been the LTTE is extremely cynical about the politics of the South and the capacity of the government to deliver on agreements. The window of opportunity he thought was closing now appears to be firmly shut. (Author’s interview with Smith, speaking in his personal capacity, 13 July 2005).

¹⁸ Author’s interviews with diplomatic officials and NGO actors in Colombo, not for attribution; accusing Norway of bypassing the President and harming the country’s sovereignty, see Susantha Goonatilake, “Norway, a 25 Year Odyssey: From Sympathizer to Colonial Intruder,” in WAPS, ed., *Peace in Sri Lanka* pp. 14-16.

¹⁹ Author’s interview with Fareeha Jaleel of the Consortium of Humanitarian Agencies (Colombo: 7 July 2005), saying that in a CHA survey, most people demonstrated ‘lack of knowledge and fear’ and that there was little or no propaganda offered to counter JVP anti-peace process propaganda.

²⁰ *Agreement on a Ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam* (22 February 2002) at <http://www.peaceinsrilanka.org/insidepages/Agreement/PV.htm>.

²¹ Author’s interview with Kethish Loganathan, Centre for Policy Alternatives (Colombo: 4 July 2005).

²² *Status of mission agreement (SOMA) on the establishment and management of the Sri Lanka Monitoring Mission (SLMM)* (18 March 2002) at www.peaceinsrilanka.org/insidepages/Agreement/SOMA.asp.

²³ Author’s interview with Helen Olafsdottir, Colombo, 5 July 2005.

humanitarian action such as mine removal, rehabilitation and resettlement of internally displaced persons (IDPs), and addressing the concerns of concerns for human rights and security of all three communities (Tamil, Sinhalese, and Muslim) in the North-East.²⁴

The emphasis upon humanitarian concerns and separation of forces, as well as the ensuring of basic security, prior to dealing with issues of constitutional, legal, political, and administrative changes was intentional. The phased approach differed from earlier rounds which had sought to address territorial and political concerns along with humanitarian concerns, and sought to bring stability to people's daily lives as a precursor to broader talks.²⁵ The hope of the facilitators was that by engaging with these issues before taking on more sensitive political issues, the parties could learn to communicate with and trust each other. This was an especially important issue given the history of failed peace negotiations and serious mistrust on both sides.²⁶

Most of those interviewed for this study agreed that a phased approach was the best one given the prevailing attitudes of mistrust, but also suggested that it was in some way bound to fail in the absence of serious effort or planning for overcoming a 'hurdle' to reach negotiations on core issues.²⁷

The talks, it must be emphasized, were bilateral talks between the government and the LTTE only, and did not include members of the significant Muslim population in the east. This may have been justified on the grounds that having multiple parties would complicate negotiations, however the perceived exclusion of Muslims did lead to suspicion and resentment by that community. It was certainly necessary to satisfy the Tigers, who sought negotiating 'parity' with the government, parity they felt they had earned through battle, and that they believed that the Muslims had not earned. Further, a Muslim member of parliament was present on the government negotiating team, and he was argued to therefore represent the community.²⁸

As talks progressed, in late 2002 the parties agreed to initiate discussions on sensitive political issues

²⁴ See "Statement of the Royal Norwegian Government, Sri Lanka Peace Talks," (16-18 September 2002), at <http://www.peaceinsrilanka.org/insidepages/Pressrelease/RNG/19statementRNG.asp>; "Statement of the Royal Norwegian Government, Agreed measures to improve the security situation in the East," (1 November 2002), at <http://www.peaceinsrilanka.org/insidepages/Pressrelease/RNG/RNG1stNov.asp>; "Statement of the Royal Norwegian Government, Significant steps to restore normalcy, improve security, and address political matters," at <http://www.peaceinsrilanka.org/insidepages/Pressrelease/RNG/RNG3dNov.asp>;

²⁵ "Significant steps to restore normalcy".

²⁶ On earlier attempts at confidence-building, as well as the lack of trust felt by both sides, see Philipson, "Breaking recurring themes," pp. 20-22. Further confirmation of the need for a phased approach comes from Jehan Perera and Willie Senanayake of the National Peace Council (Colombo: 6 July 2005). Brian Smith, the post-conflict specialist for the Asian Development Bank, agrees that such a phased approach was a good strategy to help address the mistrust, particularly of the LTTE, of Southern politicians, but that there was no strategy to move to the more difficult core issues. (Author's interview with Smith, Colombo, 13 July 2005). By contrast, Ambassador Javid Yusuf of the Muslim Peace Secretariat criticized the strategy, suggesting that while confidence-building is important, core issues ought to have been taken up earlier, and that a phased approach could only have made sense in the context of a clear strategy, which was lacking. (Colombo: 12 July 2005).

²⁷ This was a common observation. In particular, Kumar Rupesinghe, Chairman of the Foundation for Coexistence, argued that the UNF engaged in serious confidence-building measures, in a sense the negotiations themselves became no more than confidence-building. He further observed that confidence-building itself became a contested issue, with many measures becoming the subject of 'attrition' on the ground. Author's interview with Rupesinghe (Colombo: 13 July 2005).

²⁸ This of course is a matter for debate. The MP, Rauf Hakeem, was present as a representative of the government, and was not present as a formal representative of the community. I am grateful to Professor Bertram Bastiampillai for this observation (Author's interview, Colombo, 8 July 2005).

such as power sharing, human rights protection, administrative mechanisms, public finance, law and order, and geographical arrangements.²⁹ A key element was the acceptance by both sides, in a departure from earlier positions, of the need for a federal solution, including, potentially, asymmetrical federalism.³⁰ The government and the LTTE each set up peace secretariats. In late 2004, the two major Muslim parties, seeking a greater inclusion in the peace process, signed a memorandum of understanding to work together and set up a peace secretariat for Muslims.³¹

Further talks in early 2003 resulted in agreements to take steps to address human rights issues, including an agreement to appoint a human rights adviser to the peace process.³² While some were concerned that dealing with human rights issues at this stage in the process was premature, the adviser ultimately appointed, Ian Martin, disagreed, emphasizing the vulnerability of civilians as LTTE forces were 'cleared'.³³ Martin was a respected UN diplomat, having been Special Representative of the UN Secretary-General in East Timor. He would develop a human rights roadmap, to develop a human rights monitoring mechanism. The primary dispute over it was whether it ought to be a national or international monitoring mechanism, with a preference for a national one. While the roadmap was well-received at talks held in Hakone in March 2003, it was never formally adopted as talks were suspended shortly thereafter.³⁴

Collapse of negotiations

In April of 2003, the peace talks broke down when the LTTE announced that it intended to 'suspend its participation in the negotiations'.³⁵ In a letter to the then Prime Minister, Anton Balasingham, the LTTE negotiator, offered three reasons for LTTE withdrawal. The first was that the government had acted to 'marginalize' the LTTE in approaching international donors. This was in reference to a donors' meeting in Washington, DC, which the government attended but the LTTE could not, as it remains designated a banned terrorist organization in the United States.

²⁹ "Statement of the Royal Norwegian Government, Parties have decided to explore a political solution on internal self-determination based on a federal structure within a united Sri Lanka," (5 December 2002), at <http://www.peaceinsrilanka.org/insidepages/Pressrelease/RNG/RNG5thDec.asp>.

³⁰ See Lakshman Marasinghe, then the legal adviser to the government's peace secretariat: "An outline for a constitutional settlement in Sri Lanka," (International Centre for Ethnic Studies, Colombo, 24 February 2003). See also Yash Ghai, "Internal Self-determination: An International and Comparative Perspective," (International Centre for Ethnic Studies, Colombo, 11 March 2003).

³¹ "Press release: Establishment of a Peace Secretariat for Muslims," (15 December 2004, on file with author).

³² "Statement by the Royal Norwegian Government, Accelerated action on resettlement and humanitarian action, progress on human rights," (9 January 2003) at <http://www.peaceinsrilanka.org/insidepages/Pressrelease/RNG/RNG09Jan.asp>.

³³ Ian Martin, "Human Rights in Sri Lanka after the Ceasefire," Report for the International Working Group on Sri Lanka (April 2002); Martin, "Human Security: Sri Lanka," Address to the Federal Department of Foreign Affairs, Switzerland (9 September 2003, on file with author).

³⁴ Author's interview with Ian Martin, New York, (5 April 2005); "Royal Norwegian Ministry of Foreign Affairs, Consolidation of Ceasefire Top Priority, Sri Lanka Monitoring Mission Strengthened," (21 March 2003), <http://www.peaceinsrilanka.org/insidepages/Pressrelease/RNG/RNG21March03.asp>; these talks also began to address conceptual aspects of power-sharing and devolution, but again these discussions ceased when the talks broke down, see also "Political matters discussed at length on 3rd day of peace talks," (20 March 2003), at <http://www.peaceinsrilanka.org/insidepages/Pressrelease/WebRel/March03/WebRel2003>; "Rehabilitation and human rights issues addressed," (19 March 2003) at <http://www.peaceinsrilanka.org/insidepages/Pressrelease/March/PressRel19March03.asp>.

³⁵ Letter of Anton Balasingham to the Prime Minister, "LTTE suspends negotiations with Sri Lanka pending implementation of agreements reached," (21 April 2003) at www.jamilnet.org; "Peace talks on pause," *Himal South Asian* (May 2003), at www.himalmag.com/2003/may/commentary_sl.htm.

The second was the alleged government failure to have the security forces vacate certain civilian premises. The third was that the donors' Poverty Reduction Strategy Paper (PRSP) and associated government program, entitled 'Regaining Sri Lanka,' did not take sufficient account of the 'devastation' in the North-East. Some have suggested that while the reasons offered were partially the motivators behind the LTTE withdrawal, it was also concerned about the potential constraints of the human rights roadmap.³⁶ The government response sought to refute these arguments, emphasizing progress that had been made and, in particular, arguing that the government was not responsible for LTTE exclusion from the Washington meeting, as it could not control US law.³⁷

Several alternative explanations have been offered for LTTE withdrawal from the peace negotiations. One was that Anton Balasingham, the LTTE negotiator, had 'given too much away' in the Oslo round of negotiations, offering greater agreement on federalism in principle than was acceptable to Prabhakaran. Another was that rifts within the LTTE were growing and that it preferred to negotiate only from a position of strength: advocates of this explanation point to the split by 'Colonel' Karuna, although it occurred well after the LTTE suspended talks. A final interpretation was that the LTTE withdrew precisely because of the content of the negotiations—the presentation of the human rights roadmap and the initial foray into concepts of future administrative arrangements led to LTTE concern that the talks were moving too quickly.

Some have gone a step further, suggesting that the LTTE was fearful of concluding agreements that would begin to seriously limit its own freedom of action, preventing it from engaging in further child recruitment or other human rights abuses, and forcing it to begin to accept administrative arrangements and principles of democratic governance that could weaken its control over the North-East.³⁸

This is however, a contested position: others argue strongly that this is mere speculation, and that the primary reason for the LTTE withdrawal was its sense that it was being treated as a 'junior partner', and that the course of negotiations, and increasing conditions placed upon it, exposed the imbalance of power between the two negotiating parties.³⁹

While the LTTE had withdrawn from the talks it did, however, offer its own proposal for an agreement on an Interim Self-Governing Authority (ISGA).⁴⁰ This agreement, while welcomed by Japanese envoy Yasushi Akashi, provoked a strong reaction in the South, perhaps greater than that expected by the LTTE.⁴¹ The precise intent of the proposal is unclear: while some believe that the LTTE offered it in good faith, albeit as a maximalist negotiating demand, and was surprised by the

³⁶ Discussed below in more detail.

³⁷ "Letter of Prime Minister Ranil Wickremasinghe to Dr. Anton Balasingham," (29 April 2003), at www.peaceinsrilanka.org/insidepages/Archive/April/AB290403.asp.

³⁸ Author's interview with Dr. S. I. Keethaponcalan, University of Colombo (1 July 2005); author's interview with Kethish Loganathan, Centre for Policy Alternatives (Colombo: 4 July 2005); author's interview with a Western diplomat (Colombo: 1 July 2005). This view is challenged by Rory Mungoven, Senior Human Rights Adviser, UN Country Team (Colombo: 22 July 2005).

³⁹ Author's interview with Smith. Kumar Rupesinghe, Chairman of the Foundation for Coexistence, argues that the LTTE felt it must escape the "peace trap" whereby, as they perceived it, they made concessions without corresponding responses by the government.

⁴⁰ "The Proposal by the Liberation Tigers of Tamil Eelam on behalf of the Tamil People for an Agreement," (31 October 2003) at <http://www.ltteps.org/list.ltte?folder=6>.

⁴¹ "Akashi: 'ISGA The Base for Future Peace Talks,'" at www.tamilnet.com/art.html?catid=13&artid=12039.

reaction to it, one observer has suggested that it was a "suicide" text, "that was meant to provoke Sinhalese extremists."⁴²

Those who support the former interpretation believe that while the proposal contained many elements that the government would not accept, it could have been the basis for serious negotiations, and that the UNP government made at least two serious tactical mistakes: they did not seek to include the President in the process, and they did not send clear signals to the public that there was room for negotiation.⁴³

The proposal sparked strong reaction in the South in part due to its content, which would formalize LTTE administrative control over the North-East, but in part due to the language, which referred to the government, and to the 'island' of Sri Lanka, but not to the state of Sri Lanka, which was interpreted as a rejection of the integrity of the Sri Lankan state.⁴⁴ Kumaratunga took the opportunity, pointing to instability, to take control of three government ministries, and dissolve the parliament. It has been suggested that both the LTTE and the UNP miscalculated, failing to predict a strong response by a President with such strong executive powers.⁴⁵

Notwithstanding these developments, an 'informal' process continued outside of official talks, and in May 2004 both the government and the LTTE made public commitments to resuming negotiations.⁴⁶ The LTTE continued, however, to insist that the ISGA must be the basis for resuming any future peace talks.⁴⁷ The situation in Sri Lanka was widely described as one of "no war, no peace": while killings took place in the East of the country, and numerous violations of the CFA were also committed, the country did not return to war. It was suggested that each side preferred this situation: neither had to make costly compromises, yet relative stability allowed economic growth and reconstruction.⁴⁸

⁴² Interviews with embassy and government officials, not for attribution, July 2005. Professor Bertram Bastiampillai suggested that no government could have accepted the proposal as written, but that it was nonetheless a mistake that its general terms were not discussed. Author's interview with Bastiampillai (Colombo: 8 July 2005). A.J. Canugaratna argues that the ISGA was in essence a blueprint for a separate state, and thus that the reaction was unsurprising. (Jaffna: 20 July 2005). Vasuki Nesiah of the International Center for Transitional Justice also notes that the ISGA would result in a functionally separate state (New York: 5 April 2005).

⁴³ Author's interview with Smith (Colombo: 13 July 2005)

⁴⁴ "The Proposal by the Liberation Tigers of Tamil Eelam," interview with a Western diplomat (Colombo, 1 July 2005).

⁴⁵ Author's interview with Fernando.

⁴⁶ US Department of State, "Country Report". The informal process has seen fluctuating tensions: see "Norway ambassador to meet with Sri Lanka rebels as tensions escalate," (4 March 2005) at <http://asia.news.yahoo.com/050304/ap/d88k0mlo7.html>; see also "Sri Lanka President Warns Stagnant Peace Process May Erode Tamil Rebels' Patience," at www.theacademic.org/stories/10748783440/story.shtml; "Sri Lankan President Tells Washington She will Resume Peace Talks Soon," at www.theacademic.org/stories/10817667240/story.shtml; "US Asks Sri Lanka Leaders to End Power Struggle," at http://story.news.yahoo.com/news?tmpl=story&u=/afp/20040103/pl_afp/srilanka_us_tamil_040103175910; "What Now for Sri Lanka Peace?" at http://news.bbc.co.uk/2/hi/south_asia/3680511.stm.

⁴⁷ "Tigers Insist On Self-Rule Before Peace Talks," at www.outlookindia.com/pti_news.asp?id=217515.

⁴⁸ Author's telephone interview with Shonali Sardesai, World Bank Conflict Prevention and Reconstruction Team (21 June 2005); author's interview with Loganathan.

Government strategy and the peace process: a note

It is worth noting that the UNP/UNF government, while it ran on a peace platform, emphasized the importance of peace for pragmatic reasons. Specifically, Wickremasinghe emphasized the importance of stability for economic development, and drew heavily upon the support of the business community to promote peace negotiations as a means to prosperity. Many thus described his interest in peace as 'pragmatic', with good and bad effects. The positive effect of this pragmatism was an engagement in a peace process.

The negative side, however, according to some, was a lack of a real commitment to the process *per se*, viewing it as a mere means to an end. Some argued that the government Secretariat for the Coordination of the Peace Process (SCOPP) was relatively ineffectual, as the chief government negotiator drew upon his own networks rather than relying upon the secretariat.⁴⁹

With the change in government in 2004, new staff entered the peace secretariat, and off-the-record discussions indicate that the new staff did not debrief the old staff for lessons learned from negotiations with the LTTE.⁵⁰ It has also been argued that the government failed to publicize the CFA and try to convince Sinhalese that it was worthwhile, and counter JVP propaganda; similar concerns have arisen regarding the political debates surrounding the P-TOMS.⁵¹

Coalition politics and dissolution of government

As already discussed, the PR system required the formation of often unstable coalition governments. In response to the crisis triggered by the ISGA announcement, the President declared a state of emergency and took over control of three key ministries (Defence, Finance, and State Media) and called new elections for April 2004. The move was viewed by many as mere political opportunism on the part of Kumaratunge, an attempt to consolidate her power and prevent renewed negotiations by the UNP.⁵² The political uncertainty this generated was seen by many as a threat to the future of peace talks.⁵³ It surely must have served to further deepen LTTE mistrust of government capacity to engage in peace negotiations in a unitary fashion, or deliver upon its promises.⁵⁴

Nonetheless, there may have been an unintended positive effect, which is that while presenting herself as defending the country, Kumaratunge also recommitted to the CFA, creating in essence a forced bipartisanship for the CFA.⁵⁵ In February of 2004, Kumaratunga formed an alliance with the JVP forming the United People's Freedom Alliance (UPFA), which won the April elections, but not with

⁴⁹ Author's interview with Silva.

⁵⁰ Author's discussions, off the record. (Colombo, July 2005).

⁵¹ Author's interview with Kishali Pinto-Jayewardena, public interest lawyer/media columnist & Deputy Director/head, Civil & Political Rights Unit, Law and Society Trust (Colombo: 15 July 2005), suggesting that the strength of JVP and JHU objections was increased because the government failed to seriously counter them.

⁵² Fernando, among others, notes that the President's move prevented a likely response from government negotiators offering counter-proposals.

⁵³ US Department of State, "Country Report," "Sri Lanka's Power Struggle Continues Despite Fresh Talks," at www.theacademic.org/10710720060; "Lawmakers, Analysts, Say Elections Could Block Solution of Sri Lanka Ethnic War," at www.theacademic.org/stories/10762384570/story.shtml.

⁵⁴ Jehan Perera suggests that this move added to the LTTE's fear of being cheated, made them wish to seek more guarantees, and made them more wary of giving up arms. Author's interview with Perera (Colombo: 6 July 2005). Author's interview with UN official on the condition of anonymity (New York: 6 April 2005).

⁵⁵ Author's interview with Perera.

an outright majority. As a result, it formed an unstable coalition government. This shaky coalition faced further challenges in 2005 with rifts over the P-TOMS, discussed below. The new government rejected the ISGA proposal, while inviting the Norwegians to resume facilitation of peace negotiations and recognizing the LTTE as the sole representative of people in the North-East.⁵⁶

Rifts in the North-East

There are at least two serious cleavages of concern in the North and East, a unit that until recently was viewed as a monolith controlled by the LTTE: the division between Tamils in the North and East, and the division between Tamils and Muslims in the North-East. Even this account of the cleavages is too simplistic, for there are further divisions at the local level, as well as localities in which these divides do not exist or are less salient. However, for the purposes of the current analysis these rifts are significant enough, as they indicate significant sets of actors who were not included, or not formally included, in the formal peace process or tsunami relief measures (see discussion below) and may well prove to be significant spoilers of any future peace agreement unless their grievances are dealt with seriously.

Tamil-Muslim relations in many parts of the North-East are tense, as many Muslims resent the fact that they are treated to a significant degree, by the government and the international community, as being represented by the LTTE in the region. They argue that they have, historically, supported the Tamil cause, yet find themselves the victims of suspicion and reprisals, including killings, as they are often accused of being government collaborators or informants. Not only have significant killings occurred, but clashes involved attacks on mosques, and Muslims created a Home Guard. Notwithstanding this Guard, some 90,000 Muslims were forced out of the Jaffna peninsula in 1990.⁵⁷

Some Muslim leaders argue that they have not only supported the Tamil struggle, but have their own population to protect, and should have been equal parties in the peace process. They therefore object to the fact that the CFA was signed between the government and the LTTE only, and the peace process proceeded with only those parties in any formal capacity, although the LTTE and the SLMC did sign an agreement to re-establish normalcy after the CFA was signed. While there was a Muslim MP included in the government negotiating team, he was not present as a representative of Muslim communities per se, and his presence in the government team was merely interpreted by some as implying that Muslims were simply in collusion with the government or that the government was capable of speaking for them.⁵⁸

In some instances they seek autonomy, although, given the relatively dispersed nature of the Muslim population in the region, largely seek non-geographical autonomy, or some form of representative federalism.⁵⁹ There have also been tensions with Tamils over access to land. Muslims resent what they see as a condescending attitude by the LTTE towards them, while the LTTE argue that they do

⁵⁶ International Institute for Strategic Studies, "Timeline on Sri Lanka-LTTE Peace Process."

⁵⁷ M.A. Nuhman, "Understanding Sri Lankan Muslim Identity," (International Centre for Ethnic Studies, Colombo, 10 August 2002); Nissan, "Historical Context"; "Sri Lankan Muslims want parity participation in power sharing," *Xinhua News Agency* (8 July 2003); "SLMC Reiterates Need for Separate Muslim Delegation Once Peace Talks Resume," at www.theacademic.org.

⁵⁸ Author's interview in Colombo, not for attribution (July 2005).

⁵⁹ Jonathan Goodhand, "Draft 2"; Author's interview with a Western diplomat, (Colombo, 1 July 2005); author's interview with Dr. Keethaponcalan.

not have the same claim to participate in negotiations or the political process, as they have not engaged in the same type of military battles as the LTTE have.

Some analysts raised concerns that Muslim resentment may give rise to greater militancy, comparing disaffected Muslim youth today with Tamil youth in the 1970s. Such militancy could give rise to greater violence, particularly if Muslims learn the apparent lesson from both Tamil and JVP militancy--that violence brings attention to the problems they wish to highlight.⁶⁰ Moderate Muslims, and they are the majority, do not express such fears directly, but do suggest that insofar as the negotiations are about a re-constitution of the Sri Lankan state, any solution that excludes Muslims while reaching agreement only with the LTTE is likely to substitute one problem for another.⁶¹

Should peace negotiations or the joint mechanism, the Post-Tsunami Operational Management Structure (P-TOMS) for distribution of tsunami aid, discussed below, move forward without significant Muslim involvement, there is likely to be a backlash.⁶² While Muslims have been given significant representation in the national P-TOMS authority, they remain concerned that they were not included in the negotiating process, and that they are not adequately represented at the regional level.⁶³

Muslims are not the only population that has objected to Jaffna-based LTTE dominance over the entire North and East. Many Tamils in the East have resented what they view as the control of the region by elites in Jaffna and Kilinochchi, and a failure to take their needs into account, and of compromising with Muslims too much. They believe that Jaffna Tamils have had dominance in politics and education, and many have questioned the LTTE claim to be sole representative of the entire region.

While defections have been attempted previously, the split by 'Colonel Karuna' and his cadres in March 2004 posed perhaps the greatest threat to the LTTE and to stability.⁶⁴ Karuna and his cadres argued that the LTTE was not the sole representative of the region, sparking fighting between the northern and eastern factions. Amidst the fighting, the LTTE accused the Karuna faction of receiving aid from the government, an accusation some observers give credence. Others have suggested that India may also have provided support to Karuna.⁶⁵ Whether the government initially supported Karuna's split or not, there appears to be agreement that once it had occurred, the split in the LTTE was too great a temptation for the government not to support it.⁶⁶ The government subsequently denied involvement with the Karuna faction while admitting some military personnel might have

⁶⁰ Goodhand "Draft 2".

⁶¹ Author's interview with Ambassador Javid Yusuf, Muslim Peace Secretariat (Colombo: 12 July 2005).

⁶² However, one embassy official in Colombo suggests that these fears are overstated--that issues of inclusion matter a great deal more to Muslim politicians than to the population, many of whom would still wish to return to the areas in Jaffna from which they were displaced in 1990. (Author's interview, not for attribution, July 2005).

⁶³ Thus while there is general concurrence that Muslims do not object to the P-TOMS in principle, or even largely in content, they remain concerned about being sidelined. Author's interviews with Ambassador Javid Yusuf, Muslim Peace Secretariat (Colombo: 12 July 2005) and Smith (Colombo: 13 July 2005).

⁶⁴ "Sri Lanka Crisis," at http://news.bbc.co.uk/2/hi/south_asia/2405347.stm.

⁶⁵ While rumors of India's involvement are relatively frequent, no source was able to cite definitive evidence of it.

⁶⁶ Author's interview with Fernando.

sheltered Karuna, an admission Karuna himself denied.⁶⁷

The Karuna faction's impact was significant, highlighting as it did the weakness of control the LTTE held over the East, and putting the lie to its claim as 'sole representative'.⁶⁸ The LTTE sought to dismiss the importance of the faction, referring to Karuna as a 'paper tiger', but as one observer noted, Karuna's defection was a shock to the LTTE, particularly as he has apparently managed to stay alive while previous defectors have been killed.⁶⁹ The event undermined the LTTE's projected and self-image as invincible, and have complicated its operations in the East.

The LTTE remains, apparently, virtually unable to operate in the East, and it is reported that most operations are carried out now by the Tamil Rehabilitation Organization, separate from the LTTE. The LTTE thus has a stake in the functioning of the P-TOMS (discussed below) which would allow it to deliver aid to the East and perhaps rebuild support.⁷⁰ However, the potential for the Karuna faction, or other similar factions, to become spoilers in any future peace agreement should not be underestimated.

Military opposition is not the only challenge to the LTTE's claim to be the sole representative of the North and East, or of the Tamil people, in Sri Lanka, as it variously claims. There is also serious opposition to the LTTE's dominance and military tactics by moderate Tamil politicians, groups, and parties. In particular, the Eelam People's Democratic Party, a formerly violent faction that has now entered mainstream politics, the Tamil United Liberation Front, and the NGO University Teachers for Human Rights (Jaffna) contest this claim.⁷¹

Rifts in the South

Just as the Karuna faction demonstrated the power of spoilers in the East, the JVP demonstrated its own power in southern politics.⁷² The JVP emerged in 1966-7, splintering off from the communist party. It was able, utilizing both Marxist and nationalist rhetoric, to mobilize Sinhalese youth, particularly students, and sought in an insurrection in 1971, to take control of the state. It was then outlawed, but in the early 1980s sought to pursue a more democratic path. However, in the late 1980s it returned to violence. After the 1994 election, the JVP returned as a political force, becoming a recognized party, and winning 10 seats in parliament in 2000, a number that rose to 39 in 2004.⁷³

⁶⁷ International Institute for Strategic Studies, "Timeline on Sri Lanka-LTTE Peace Process since February 2002," at: <http://www.iiss.org/showdocument.php?docID=428>; interview with Dr. Keethaponcalan.

⁶⁸ "Tigers defeat Breakaway Faction," at http://news.bbc.co.uk/hi/south_asia/3621415.stm; "Sri Lanka's Tigers: Down but Not Out," at www.atimes.com/atimes/South_Asia/FC17DF05.html; author's interview with Fernando, noting that the Karuna split cast a 'long shadow' in the East.

⁶⁹ Author's interview with Selvy Karthikeyan, LTTE Peace Secretariat (Kilinochchi: 18 July 2005). Interview with embassy official in Colombo, not for attribution, July 2005. Lakshman Marasinghe, the Legal Director of the Government's Secretariat for the Coordination of the Peace Process, sees the Karuna split as having had significant impact on the LTTE, both militarily and politically. Author's interview with Marasinghe (Colombo: 5 July and 13 July 2005).

⁷⁰ On the importance of the P-TOMS to the LTTE in order that it might offer something to the East, and on the damage to its prestige caused by the Karuna split, I thank an anonymous source.

⁷¹ Shantha K. Hennayake, "Is LTTE the Sole Representatives [sic] of Tamils?" in WAPS, ed., *Peace in Sri Lanka*.

⁷² See Asanka Welikala and David Rampton, "The Politics of the South. A Thematic Study Towards the Strategic Conflict Assessment: 'Aid, conflict, and peacebuilding in Sri Lanka'," (draft on file with author).

⁷³ Welikala and Rampton, "The Politics of the South", pp. 14-15.

Thus the SLFP viewed it, despite political differences, as a viable political partner. The JVP has moved steadily away from its Marxist roots, emphasizing Sinhalese nationalism, and the importance of maintaining the unity of the Sri Lankan state.

Not only was the SLFP dependent upon it in coalition politics, the JVP demonstrated its desire and capacity to derail the peace process. The JVP contested many elements of the CFA,⁷⁴ and subsequently the P-TOMS, persistently objecting to any steps towards autonomy for the North-East or legitimating of LTTE control over the region. Its objections, in fact, to the P-TOMS would result in a fracture in the ruling coalition in mid-2005. The JVP, from its violent roots in nationalist uprisings, has transformed itself into a participant in the political process. As such, it is able to challenge the LTTE to similarly give up violent struggle, and to act as an outlet for Sinhalese protest. It nonetheless operates as something of an opposition party, even while in power, thus its opposition to any form of federalism means that it stands to be a significant spoiler in any revived peace process.⁷⁵

The JVP is also by no means the only significant force of Sinhalese nationalism. A rival party, the Jathika Hela Urumaya (JHU), shares similar political stances. I do not discuss them in detail here as they do not hold the same degree of political power, having won far fewer seats than the JVP in parliament. However, it does espouse a radical nationalist position, one that also strongly opposes the peace process.⁷⁶

No war, no peace?

At the time of the research visit for this paper, many observers described the current situation in Sri Lanka under the CFA as one of 'no war, no peace'. The fighting had formally stopped thanks to a cease-fire and this, depending upon whom one speaks to, suits the government, or the LTTE, or both, just fine. The LTTE continued to engage in repeated violations of the cease-fire, as reported by the SLMM, numbering over 3000 as of July 2005.⁷⁷ These violations, including targeted political killings, were sufficiently pervasive for one observer to argue that Sri Lanka was not in a situation of 'no war' but in fact of low-intensity conflict.⁷⁸ The LTTE was able to retain control over the North, and to a lesser degree the East, administering the territory and extracting taxation. A pertinent observation at that time was that while the LTTE continued to seek full autonomy, it was unlikely to find any peace agreement, even a federal one, that involves less control than it now has, very appealing. Indeed, as some observers noted, the LTTE has every reason to fear a full peace deal and international pressure for human rights and democracy, as this would expose it to real competition and force it to refrain from some of its current practices.⁷⁹ As the conflict between the LTTE and the government, and the violence in the East, has increased, Sri Lanka has clearly returned to a state of civil conflict, with

⁷⁴ "S.Lanka's JVP to stage protests against power sharing with Tamil rebels," *Xinhua News Agency* (29 July 2003)

⁷⁵ Goodhand and Klem, *et al.*, "Aid, Conflict, and Peacebuilding in Sri Lanka". The JVP is not the only potential Sinhalese spoiler; as the report notes, the Jathika Hela Urumaya and other groupings of Buddhist monks also offer strong objections to key elements of the peace process.

⁷⁶ Weikala and Rampton, "The Politics of the South," pp. 28-37.

⁷⁷ Regular updates are available at the SLMM website, at <http://www.slmm.lk/>.

⁷⁸ Comments by a Sri Lankan academic, not for attribution, (Colombo, July 2005).

⁷⁹ Indeed, Dr. Keethaponcalan notes that the development of the 'Human rights roadmap' by human rights adviser to the peace process, Mr. Ian Martin, was one reason that the LTTE withdrew from the peace process: it feared that adherence to such a plan before completion of the agreement would undermine its capacity to fight and control the region. This interpretation appears to be supported by Pinto-Jayewardene.

prospects for LTTE concessions towards a peace agreement extremely limited.

Conversely, some observers note that the government, even if it could be viewed as a unitary entity, stands little to gain from a full peace agreement. Any party in power that reaches an agreement with the Tigers involving significant autonomy can expect a backlash from the JVP, possibly a violent one. It has been suggested that the government was only interested in reaching a 'no war' status, such that most of the south is no longer affected; it is less interested in the complicated and costly process of reaching a solution to the ethnic divides, or more positive peace.⁸⁰

The SLMM and the Norwegian representatives and facilitators, became the subjects of increasing criticism. This was, in part, a result of their dual role as facilitator and monitor. Critics charge that in its efforts to revive the peace process, the Norwegians temper responses to the massive LTTE violations of the CFA. Some critics even charge that the Norwegians, in an effort to help the LTTE become technically more capable of engaging in peace negotiations with the better-equipped government, have offered material support, although this seems more a matter of rumor than fact.⁸¹ The JVP in particular has been a harsh critic, organizing hostile demonstrations outside the Norwegian embassy in Colombo.⁸²

The criticism of the Norwegians and the SLMM is but one element of a broader criticism of the so-called internationalization of Sri Lanka's peace process. Not only Sinhalese nationalists have noted this trend with concern, however. While nationalists are concerned about sovereignty, and about the putative pro-LTTE bias of certain international actors, local NGOs and academics have also expressed concern. They note that international actors have their own agendas and preconceptions, promote conditionalities that may prove problematic, create local dependencies, and otherwise be insensitive to local conditions. They do not argue that the international community should withdraw, but do note the hazards with concern. In particular they worry that international actors may push for unrealistic agreements too quickly.⁸³

A return to war

With the collapse of peace talks, the split by the Karuna faction in the East, vocal criticism by the JVP and political maneuvering by the president in the south, and Muslim objections in the North-East, some suggested that by late 2004, the country was about to return to war. Specifically, analysts cite Prabhakaran's November 26 Heroes' Day speech, in which he suggested that 'there are limits' to what

⁸⁰ Author's interviews in Colombo, not for attribution, July 2005.

⁸¹ It is worth noting that provision of negotiating skills and other training has been made, justified by concern that the LTTE might otherwise not be equipped to negotiate in a situation that was asymmetric not only militarily but in terms of political capacity. (Author's interview with Helen Olafsdottir, the spokesperson for the SLMM, Colombo, 5 July 2005). On the need for an equitable negotiating field in asymmetric conflicts, see Philipson, "Breaking recurring themes," pp. 36-38.

⁸² On a demonstration held in Colombo in early July, Helen Olafsdottir observed that the protest singled out the Norwegians, but was also explicitly a demonstration against the SLMM, which is staffed by officials from six Nordic countries. (Author's interview with Olafsdottir, 5 July 2005), Alan Keenan, "Have international donors failed Sri Lanka's most vulnerable?" *Boston Review* (Summer 2005).

⁸³ Mirak Raheem and Kethesh Loganathan, "Internationalisation of the Sri Lankan peace process," (background paper for conference, *International dimensions of the peace process in Sri Lanka*, 8-9 July 2005, on file with author). Keenan notes this internationalization as well, suggesting that it may have both overly legitimated the LTTE and inadvertently strengthened the hand of JVP hardliners. Keenan, "Have international donors failed".

the Tamil people would tolerate.⁸⁴ Off the record, observers suggested that a date had even been set for the LTTE to withdraw from the CFA and re-initiate fighting, 14 January 2005.⁸⁵ Others dismissed such arguments as mere 'speculation'.⁸⁶ However, subsequent increases in violence demonstrate that the country is no longer in a state of 'no war, no peace' but has returned to serious conflict.

The tsunami and relief efforts: a lost opportunity?

On 26 December 2004, an earthquake off the coast of Indonesia triggered a tsunami wave that hit not only that country, but India, Thailand, Sri Lanka, and even the east coast of Africa, killing approximately 200,000 people.⁸⁷ Some 31,000 people were killed in Sri Lanka, and another half a million displaced by the tsunami, devastating a country already hard hit by nearly two decades of armed conflict. The international response was unusually swift and generous, with \$3 billion pledged for Sri Lanka.⁸⁸ Some suggested that this crisis averted a return to fighting by the LTTE,⁸⁹ and many hoped that the coordination between the government and the LTTE necessary to deliver humanitarian aid in the North and East might act as a confidence building measure.⁹⁰ They hoped that it would draw the LTTE back into formal discussions and dispel historical mistrust.⁹¹

Observers also suggested that in the immediate aftermath, average Sri Lankans responded by helping neighbors regardless of religion or ethnicity, in contrast to the frequent ethnicization of politics.⁹² However, this appears now to have been a failed opportunity, both because the influx of aid was, arguably, not conflict sensitive, and because of the mistrust and the rifts already outlined, which I will discuss in the context of aid delivery shortly.

Mistrust meant that the coordination mechanism, the P-TOMS, for humanitarian aid delivery in the North and East took about six months to conclude, only to be rejected or criticized by the Muslim community and the JVP.⁹³ Muslims observed that they sustained the greatest losses in the East, and thus had to be included in discussions about any mechanism.⁹⁴ The JVP and the JHU both filed legal

⁸⁴ Author's interview with Dr. S. I. Keethaponcalan, University of Colombo, Department of Political Science (1 July 2005). Other accounts suggest Prabhakaran implied that he had reached the limits of his own patience. Priyath Liyanage, "Sri Lanka: No Peace, No War," at http://news.bbc.co.uk/1/hi/world/south_asia/4059857.stm (2 December 2004).

⁸⁵ Author's interviews in Colombo, not for attribution, July 2005.

⁸⁶ Author's interview with Nilan K. Fernando, Representative, The Asia Foundation (Colombo: 15 July 2005).

⁸⁷ "Tsunami remembered six months on," at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4623345.stm> (26 June 2005).

⁸⁸ Ethirajan Anbarasan, "Sri Lanka Leader Gambles on Tsunami Aid," at http://news.bbc.co.uk/1/hi/world/south_asia/4628125.stm (27 June 2005).

⁸⁹ Author interview with Dr. S. I. Keethaponcalan, University of Colombo Department of Political Science, 1 July 2005 [clear]. Other observers suggested that it may not have only averted a return to war by creating a crisis for the LTTE to cope with in the areas it controlled, but also by damaging its military, particularly sea, power.

⁹⁰ Interviews with bilateral donors, Colombo July 2005, and Goodhand and Klem, *et al*, "Aid, Conflict, and Peacebuilding," noting the optimism but also the failure for aid delivery to help build trust.

⁹¹ Author's interview with Lakshman Marasinghe, Legal Director, Government Secretariat for Negotiating the Peace Process (Colombo: 5 and 13 July 2005).

⁹² Author's interview with Fareeha Jaleel of the Consortium of Humanitarian Agencies (Colombo: 7 July 2005).

⁹³ "Muslims to 'boycott' Lanka deal," (25 June 2005), at

http://news.bbc.co.uk/1/hi/world/south_asia/4621981.stm. Shantha Perera, "Why the JM would serve the purpose," *Daily News* (30 June 2005); Avanti Amarasinghi, "P-TOMS and Eelam: to be or not to be?" *Daily News* (1 July 2005).

⁹⁴ Author's interview with Jaleel.

challenges to the P-TOMS in the Supreme Court; while Muslim leaders suggested that they might do so as well, they had not done by mid-July 2005.⁹⁵ The LTTE made clear that its engagement in the P-TOMS did not mean its 'acceptance' of the sovereignty of the Sri Lankan state, thereby highlighting its continuing desire to achieve an independent state and further inducing southern concerns.⁹⁶ Thus while donors expected the mechanism to be separate from but potentially contribute to the informal peace process and the revival of a formal one, it appears to have done the reverse.⁹⁷

Conflict-insensitive humanitarian aid?

The influx of relief organizations and assistance to the island was rapid and massive. Unfortunately, this did not have purely positive results. The speed and volume of aid was difficult for the government and local actors to absorb, resulting in inefficiency and aiding corruption.⁹⁸ It resulted in competition and resentment within some villages, which sometimes took on ethnic dimensions, reversing the positive multi-ethnic relief efforts that immediately followed the tsunami.⁹⁹ It also risked creating aid dependencies where they did not previously exist.¹⁰⁰ They also distorted the local economy by renting accommodations at many times the local price, further limiting housing for the displaced, and by hiring local experts at international salaries.

Further, many of the humanitarian actors had not previously worked in Sri Lanka, and were not familiar with the conflict, or the ways in which aid could exacerbate it. Many believed that aid could be disaggregated from politics, that it could be neutral and they could work 'around' conflict.¹⁰¹ This, as many donors who had been active in the country for some time had concluded, was simply not feasible--all aid, whether development or humanitarian, needed to be conflict-sensitive. Not surprisingly, then, the delivery of assistance to tsunami victims provoked controversy. In particular, many of those who had been displaced by the armed conflict, sometimes repeatedly, and who still awaited assistance, were resentful of what was referred to as 'five star' accommodation being provided to tsunami victims.¹⁰² And the rift over the joint mechanism further exacerbated existing cleavages.

Rifts over the joint mechanism

The joint mechanism, now referred to as P-TOMS, was structured to distribute some but not all post-tsunami aid to the country; it could not deliver all aid, as it allowed for LTTE administration of some

⁹⁵ Kelum Bandara, "Muslims yet to Challenge P-TOMS," *Daily Mirror* (11 July 2005), on the legal challenges. The legal basis for the challenge appears weak, although there may have been procedural errors in the authorization given for government signature of the document. Information regarding this authorization is as yet unclear, and could pose a basis for challenge. Author's interview with Smith (Colombo: 13 July 2005).

⁹⁶ Chris Kamalendran, "No acceptance of sovereignty: LTTE," *The Sunday Times* (3 July 2005).

⁹⁷ See, for example, the comment of the Swiss Embassy welcoming the mechanism: "Switzerland shares the view expressed by President Chandrika Kumaratunga that this administrative arrangement 'would be a foundation to find a final solution to the protracted national conflict'" while observing that the cease fire agreement remained the cornerstone for a future peace. (Statement on file with author).

⁹⁸ Multukrishna Sarvananathan, "Swindlers hold sway?" *Economic and Political Weekly* (20 June 2005).

⁹⁹ Tim Sullivan, "Perspective: jealousy, competition ruin Sri Lankan village," *AP Newswire* (21 June 2005).

¹⁰⁰ Jonathan Goodhand "Draft 2".

¹⁰¹ Author's interview with a Western diplomat (Colombo, 1 July 2005), Cite SCA1 2000.

¹⁰² Goodhand, *et al*, "Aid, conflict, and peacebuilding". See also Goodhand, "Draft 2", noting that war victims live in shacks built years ago for about 5,000 rupees (\$10) while temporary shelters being built for tsunami victims cost about 40-50,000 rupees.

funds in the North and East, which is not permitted by the laws and regulations of some donor countries, such as the US.¹⁰³

The regional committee for disseminating funds in the North and East was to be controlled by the LTTE and sited in Kilinochchi, where the LTTE's governance structures are located; the JVP and JHU strongly objected to these features as first steps towards an independent state. Funds from countries who do not wish to provide monies to the LTTE would be separately administered through the government.

The negotiation and structure of P-TOMS, which had been expected to help build trust, instead triggered mistrust along ethnic and political cleavages, and along the lines that peace negotiations had. Specifically, Muslims, who had objected to being excluded from the formal peace negotiations between the government and LTTE, objected that they were not treated as equal partners in the creation of the joint mechanism. While Muslims would have equal representation on the mechanism at the national level, they were not included in the actual negotiation process of the mechanism. They also raised concerns that they were not adequately represented at the regional level, particularly in the East.¹⁰⁴ Thus the spokesman for the SLMC, Rauf Hakeem, argued that over half of the tsunami victims were Muslim, yet they were not being included, and that this would affect their chances for autonomy in any future peace deal. "They are looking at us as bystanders and this is not acceptable," according to Hakeem.¹⁰⁵ While these objections point to genuine concerns of many Muslims in Sri Lanka, it is worth emphasizing that the representation of Muslims in the projected P-TOMS mechanism was a significant step.¹⁰⁶

At the same time, the JVP objected that the mechanism, by allowing the LTTE a share in the foreign assistance, would legitimate them and help them to establish a separate Tamil state. They rejected Kumaratunga's suggestions that the mechanism would help re-start the peace process, and instead pulled out of the ruling coalition, turning that coalition into a minority in government. The JVP and the JHU filed petitions in the Sri Lankan Supreme Court to have the P-TOMS mechanism declared unconstitutional.

On 15 July^{*}, the Supreme Court held that the P-TOMS was constitutional, and also held that the CFA was constitutional. The Court did, however, issue a temporary order limiting some provisions of the agreement. The JVP and JHU thus celebrated the ruling as a victory, although they had lost their constitutional claim. The LTTE similarly greeted the decision as a defeat of the P-TOMS. In particular it objected to the Court's holding that the regional mechanism for the North and East could not be permanently sited in Kilinochchi. The leader of the LTTE's political wing, Tamilchelvan,

¹⁰³ Author's interview with Perera (Colombo: 6 July 2005).

¹⁰⁴ Author's interview with Yusuf.

¹⁰⁵ "Muslims to 'boycott' Lanka deal".

¹⁰⁶ Author's interview with Rory Mungoven, Senior Human Rights Adviser, UN Country Team (Colombo: 22 July 2005).

^{*} Ed Note: The Court's order was in relation to an application for interim relief by the Petitioners in the course of which, it was ruled that there was no illegality in entering into the MOU and that the Ceasefire Agreement continues in 'full force and effect.' It was ruled therefore that interim relief cannot be awarded as to the entirety of the (P-TOMS) MOU. Such relief was however granted in regard to some aspects of the P-TOMS, *inter alia* staying the location of the Regional Committee to be in Kilinochchi and prohibiting the depositing of funds in a Regional Fund. Hearing of the substantive application has been laid by due to the changed political context, which has resulted in the P-TOMS being relegated to a question of purely academic interest.

declared this a defeat of the P-TOMS, and further affirmation that the government was not acting in good faith.¹⁰⁷ However, observers have suggested that despite LTTE rhetoric, it might be prepared to accept a rotating seat for the regional mechanism, rather than demanding a permanent seat in Kilinochchi.¹⁰⁸ As of this writing, the P-TOMS structure has been abandoned, the future of aid distribution processes remains uncertain and the impact of these developments on any peace process remains unclear.

International engagement in Sri Lanka

While Sri Lanka's conflict has sometimes been described as an 'introverted' conflict, with relatively little international involvement or impact, save for the intermittent role of India, the invitation of the Norwegians as mediators constituted a deliberate decision by the UNF to internationalize the process.¹⁰⁹ The LTTE, too, welcomed the internationalization, as it did not trust the government to fulfill its promises, and hoped that the presence of internationals would help them demonstrate the government's bad faith to the world.¹¹⁰ The subsequent negotiations and the response to the tsunami further internationalized politics in the country, with a significant rise not only in humanitarian presence, but also in international bilateral and multilateral donor presence.¹¹¹

Donors developed increasingly conflict-sensitive programming, particularly between 2000 and 2005;¹¹² their programming has increasingly been described as following a liberal approach to peacebuilding. This has entailed, not surprisingly, an embrace of liberal economic reforms--here the donors found it easy to partner with the UNF, which was promoting just such economic reforms.¹¹³

Donors have also increasingly engaged, directly or indirectly, with the LTTE. While donors clearly promoted liberal economic principles, they were less united on political principles. While western aid agencies more actively promoted engagement with civil society and political liberalization, some observers have noted that Asian donors such as the Asian Development Bank and the government of Japan, more comfortable with centralized state authority, have not promoted political liberalization as strongly. The latter continue with a more traditional, state-centric, approach to aid; this is significant as Japan and the ADB are two of the top three donors to Sri Lanka, the World Bank being the third.¹¹⁴

¹⁰⁷ Author's interviews with Selvy Karthikeyen of the LTTE Peace Secretariat, LTTE Justice Minister Parajasingham, and Dr. N. Malathy, North East Secretariat on Human Rights (Kilinochchi, 18 July 2005). Further email correspondence from Dr. Malathy reinforces this LTTE objection; she argues that the P-TOMS has effectively been eliminated, as it was authorized for one year and subsequent court rulings have extended the temporary restraining order, so the mechanism will never function. Email on file with author, 21 September 2005.

¹⁰⁸ Author's interview with Mungoven.

¹⁰⁹ Goodhand and Klem, *et al* "Aid, conflict, and peacebuilding"; Sunil Bastian, "The Economic Agenda and the Peace Process," (draft on file with current author) [clear]. But compare Jayadeva Uyangoda, "Sri Lanka's Conflict and Peace Processes: The International Dimension," (paper prepared for Conference on International Dimensions of the Sri Lankan Peace Process, Colombo, 8-9 July 2005, on file with author), arguing that the conflict has been internationalized from the outset. On India's role, see another paper prepared for the same conference, V.R. Raghavan, "India and the Sri Lankan Peace Process".

¹¹⁰ Author's interview with Karthikeyen.

¹¹¹ Adam Burke and Anthea Mulakala, "Donors and Peace-Building in Sri Lanka 2000-2005," (draft, 25 May 2005, on file with current author).

¹¹² Burke and Mulakala, "Donors and Peace-Building".

¹¹³ Bastian, "The Economic Agenda and the Peace Process"; Burke and Mulakala, "Donors and Peace-Building". Saman Kelegama, "Transformation of a Conflict via an Economic Dividend: The Sri Lankan Experience," (draft, forthcoming in *RoundTable*).

¹¹⁴ Burke and Mulakala, "Donors and Peace-Building"; Goodhand and Klem, *et al*, "Aid, conflict, and peacebuilding."

As already noted above, the engagement of international actors in Sri Lanka has not been without critics. Not only has the SLMM been accused of being too weak, or soft on the LTTE in negotiations, the Norwegians have been accused of offering material aid to the LTTE. They have been accused of funneling funds and material goods, as well as military training, to the LTTE, although the accusers are often rather light on evidence for their accusations.

The accusations have nonetheless struck a chord, at least among Sinhalese Buddhist chauvinists, who accuse the Norwegians of being colonialists pursuing their own biased agenda in the country. Further, while Norway is a popular target, it is not the only one. Further accusations are directed at NGOs, both domestic and international, that promote human rights, peace, or democracy in the country. INGOs are accused of being colonialists by indirect means, and local NGOs their tools. The London-based International Alert, and local group the National Peace Council, have in particular been subjects of such accusations. Some have even challenged former Prime Minister Wickremasinghe, implying his collusion with the LTTE in an 'asymmetrical' agreement.¹¹⁵

The LTTE is said to have encouraged perceptions that the Norwegians were biased in their favor, manipulating the process but also provoking Sinhalese extremists in the process.¹¹⁶ Both the government and the LTTE, in fact, sought to use the internationalization of interest in the conflict for their own ends, even seeking to split the international community, with the government seeking to develop an 'international safety net' with support of the US and India, and the LTTE seeking to use European support as leverage.¹¹⁷

Prospects for the peace process

While it is difficult to predict the future of the peace process, a number of trends are apparent. First, that while the risks of a return to conflict remain, the endurance of the CFA, despite numerous violations by the LTTE, indicates the desire of many Sri Lankans for peace. Further, the relative calm and stability that has resulted, as well as its facilitation of economic recovery, may further embed desires for peace.¹¹⁸

The Karuna split, Muslim and extremist Sinhalese objections to the P-TOMS, and jockeying among the major political parties to the detriment of peace negotiations all indicate the risk of spoilers undermining the informal peace process and any future formal peace talks. The proliferation of parties demanding the right to participate in any process, and the uneasy political situation within the government, may limit the prospects for any future peace talks.¹¹⁹ The final obstacle, the political

¹¹⁵ For a sampling of these views, see F. Rovik, "Norway: A Terrorist Safe Haven?"; Susantha Goonatilake, "Norway, a 25 Year Odyssey: From Sympathizer to Colonial Intruder," pp. 21-42; Asoka Bandarage, "Peace, Justice, and Democracy in Sri Lanka,"; Susantha Goonatilake, "Eric the Viking: Deconstructing Solheim,"; H.L.D. Mahindapala, "The Political Timing of the Tiger Bombs," in WAPS, ed., *Peace in Sri Lanka*. Norwegians are variously accused of being LTTE and Nazi sympathizers, and *ad hominem* attacks are made upon Eric Solheim, the Norwegian negotiator. The LTTE are also compared unfavorably to former Yugoslav Slobodan Milosevic, who is said to have done nothing as serious as the LTTE.

¹¹⁶ Author's interview with an embassy official of Western European government, not for attribution (Colombo: July 2005).

¹¹⁷ Author's interview with Rupesinghe; author's interview with Fernando.

¹¹⁸ Centre for Policy Alternatives, "An Opinion Poll on Peace," at http://www.cpalanka.org/research_papers/PCI_19_toplevel_results.pdf (June 2005).

¹¹⁹ Author's interview with embassy official of Western European government, not for attribution (Colombo: July 2005).

instability and manipulations by both major parties in the South, is perhaps the greatest obstacle, according to many.¹²⁰ Some suggest that there are really two conflicts that must be addressed: the conflict in the North and East and the political conflict in the South. Unless the second is resolved, so that the opposition party, whomever it may be, does not seek to undermine any agreements made by the party in power, it is unlikely that negotiations can be put back 'on the rails' because the LTTE will not have faith in implementation of agreements.¹²¹ The dispute over the P-TOMS and other perceived failures of the government to implement agreements led one LTTE official to state that "all activities taken by the government encourage the war situation".¹²²

There appears to be no Southern politician with sufficient credibility to promote a serious peace process: as more than one observer put it, there is no Sri Lankan Mandela.¹²³ Thus many have suggested that only a serious change in Southern politics--constitutional reform, including elimination of the Executive Presidency, as well as behavioral change in the two main political parties, including promotion of multi-partisanship.¹²⁴ So long as parties use ethnic outbidding as a tool to obtain power, it appears unlikely that a peace process can succeed.¹²⁵

Prospects for peace were further undermined with the assassination of Lakshman Kadirgamar, the foreign minister of the country, and a prominent Tamil opponent of the LTTE, in August 2005. He had been a strong proponent of the banning of the organization as terrorist, not only in Sri Lanka but also in other countries. His killing is attributed by many to the LTTE; if they were responsible it would be a serious violation of the ceasefire.¹²⁶ The LTTE has denied responsibility, and while the assassination of a Tamil moderate clearly has been a blow to the peace process, Kumaratunga vowed to 'redouble' efforts and also to initiate a review of the peace process.¹²⁷ However, indications are that the situation is likely to worsen. The President requested a state of emergency be declared, giving police powers to conduct searches without a warrant and detain people without charge. In part of the Tamil held north, a mob of people tore down a UN flag flying at half mast in respect for the slain politician, and the UN lodged a formal complaint.¹²⁸

¹²⁰ Karthikeyen suggested that a necessary precondition for re-opening of successful peace talks would be a majority, rather than a 'cohabitation' government, because otherwise any agreements reached by a government would simply be undermined by the opposition.

¹²¹ Author's interview with Smith (Colombo: 13 July 2005).

¹²² Author's interview with Minister Parasingham. On the other hand, the ramifications of the dispute may be minimal, as it is unclear that the LTTE had significant expectations of the mechanism in any event. Author's interview with Dr. Malathy.

¹²³ Author's interview with Smith (Colombo: 13 July 2005).

¹²⁴ Author's interview with Silva, noting that perhaps what is needed is training to strengthen the political parties.

¹²⁵ Author's interview with Fernando, noting however that there is some hope as the UNP, in opposition in 2005, has not taken the opportunity to leverage support by opposing the P-TOMS or the continuance of the CFA.

¹²⁶ Priyath Liyanage, "Killing puts Sri Lanka Peace at Risk," at http://news.bbc.co.uk/1/hi/world/south_asia/4147766.stm, (13 August 2005).

¹²⁷ "Thousands at minister's funeral," at http://news.bbc.co.uk/1/hi/world/south_asia/4152250.stm, (15 August 2005).

¹²⁸ "Peace Process Focus After Killing," at http://news.bbc.co.uk/1/hi/world/south_asia/4155436.stm (16 August 2005).

Power sharing, ethnic politics, and conflict resolution: a murky future

The importance of power-sharing and a federal solution to Sri Lanka's ethnic conflict is clear, yet the acceptability of each to the government and the LTTE also remains unclear. While both sides committed to exploring federalism in principle in the Oslo agreement, it is unclear that either really 'wants' federalism. Many in the South critique it as nothing more than a step towards an independent Tamil state, and thus reject it as undermining the territorial integrity of the state. There also remains speculation that the LTTE was never truly committed to federalism, and that Balasingham overstepped his authority, and that, further, the organization will ultimately accept nothing less than full independence of the North and East.

The position of the LTTE is in fact unclear: it agreed in the Oslo negotiations to consider federalism, but while some officials indicate that it still an option, one suggested that the "time for federalism has passed".¹²⁹ If the LTTE is not committed to serious consideration of federalism, then the prospects for peace are dim, as neither the international community nor the Sri Lankan state will accept such an outcome.

One observer suggests that both may be the case--the LTTE would prefer a separate state, but would probably accept significant autonomy instead, particularly because it is aware that the international community would be unlikely to treat a separate state as legitimate.¹³⁰ If the LTTE is prepared for federalism and power-sharing in principle, then the reforms to Southern politics are urgently needed, as without them it is unlikely that the LTTE would have faith that any power-sharing deal could be implemented. Indeed, power-sharing runs the risk of being inconsequential if it can be upended by the acts of an executive president.¹³¹

Conclusion

At the time of field research in Sri Lanka, during the summer of 2005, it remained unlikely that peace talks could be re-started. More troubling, opportunities presented by the 2002-2003 peace process and by post-tsunami humanitarian action appear to have been lost. Rather than being 'ripe for resolution', the situation appears to be 'rotten', with each lost opportunity engendering further mistrust. Rising violence in the East, renewed killings and suicide bombings, and battles at sea mean that the CFA is in essence a dead letter.¹³²

¹²⁹ While Karthikeyan indicated that federalism remained a viable option, Parasingham suggested that the government had missed many opportunities for agreeing to federal arrangements and that the time for it had passed. The anonymous professor at the University of Jaffna noted that many doubted that the LTTE was ever really committed to federalism, and suggested that they were committed to establishing a *de facto* state militarily.

¹³⁰ Author's interview with a Western diplomat.

¹³¹ As Pinto-Jayewardena notes, the LTTE has an easy response to challenges from the South--that so long as Southern political/constitutional structures are in a 'shambles', they are unlikely to respect any demands for the LTTE to cede power or become more democratic.

¹³² The anonymous professor at the University of Jaffna argued that while the population in the North East do not want to see war again, it seems increasingly likely, and that further the leadership on both sides benefit from conflict. He further noted that the population in Jaffna would be too afraid of reprisals to openly oppose any LTTE moves towards war.

Sri Lanka's Security Dilemma in the Post 1977 Era: [A Geo-Political Perspective – up to 2004]

*Chrishmal Warnasuriya**

1. Introduction: Sri Lanka's Standing in International Affairs

During almost the entirety of its comparative history commencing from its declaration of independence in 1948, the cornerstone of Sri Lanka's foreign policy has been its security concerns; the substance having varied understandably over the years, from initial worries over defending a newly formed nation from external aggression to the present concerns of trying to defend its unitary nature under threat of secession; nevertheless the theme security remaining the constant factor, thereby compelling successive framers of its foreign policy to address those concerns as a priority in formulating policy.

It has been argued that Sri Lanka's introduction to foreign diplomacy lies in epic environs, in the introduction of Buddhism to Sri Lanka; which was a result of the friendship between the powerful emperor Asoka of the *Mauryan* dynasty of India and his Sri Lankan counterpart, King Devanampiyatissa of *Anuradhapura*, as far back as the 3rd Century BC.¹ There is also wide consensus amongst historians that Sri Lankan emissaries were sent and received by many early civilisations of the world, including the mighty Augustus Caesar of Rome.

There have also been compelling reasons for Sri Lanka's relatively dominant presence in the International fora, such as its geographical location which rendered it an almost inescapable stop in ancient trade routes, be it for Arabic seafarers or others from the West of '*Serendib*'² or for those from her East, including many recorded diversions from 'silk route travellers'; whose significant socio/political intercourses with the administrative apparatus of this island nation have been documented and established. Deshamanya Dr. Vernon L.B. Mendis, a formidable Career Diplomat of Sri Lanka's more dominant days in international affairs, presents the significance of Sri Lanka's geographical location from 3 vital geopolitical dimensions; namely contiguity to the Indian Subcontinent, equidistance between East Asia and East Africa and its presence in the East/West sea lanes.³

Immediate Post Independence Foreign Policy

Proclaiming a significant presence on the international stage over the ages, Ceylon was therefore amongst the first of Britain's former colonies to gain independence immediately upon the conclusion of the 2nd World War. Though British sovereignty over the Island ended in 1948 however, Ceylon did not see its entrance to the UN until 1955, despite having become a member of the Commonwealth also in 1948.

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¹ Deshamanya Dr. Vernon L.B. Mendis - *Sri Lanka in Foreign Affairs* (F/Ministry Publication, 1998)

² As Sri Lanka was named by the ancient Arab traders,

³ Deshamanya Dr. Mendis, Vernon L.B. - *Sri Lanka in Foreign Affairs* (Foreign Min. Publication, 1998)

Up to 1956 Ceylon did not have diplomatic relations with any communist countries,⁴ mostly due to the perception of a potential threat to her security through the rise of communism internally, *via* the highly active local agencies of global communist parties. When Ceylon was seeking UN membership, the former Soviet Republic continued to exercise its veto in the Security Council⁵ against it, branding Ceylon a 'puppet of Britain'.⁶ Even certain contemporary Ceylonese leftist parliamentarians accused its independence of 1948 to be a 'fake independence.'⁷

These criticisms, however 'harshly' worded and *ex facie* repugnant to Ceylon's new found independence and its corresponding status as an independent sovereign state, stemmed from the fact that although having been declared a sovereign, she yet depended on Britain for the formulation of her foreign policy and the safeguarding of her external defence, which was of course explained by the first Hon. Prime Minister D.S. Senanayake as having been the only option available to him,⁸ without which arrangement he firmly refused to be saddled with the responsibility of heading this new State.

The Early Years of the Bandaranaikes

With the advent of the 'Bandaranaike factor' thereafter, led by the Oxford educated S.W.R.D. who succeeded three UNP Prime Ministers, [which Asian dynasty continued with his wife succeeding him as Prime Minister and comparatively recently his daughter as an executive president] into the Ceylonese *body politick* and especially into Sri Lanka's interactions *vis-à-vis* other actors in the international system; a major shift was witnessed from the pro-western outlook that had been synonymous with UNP led governments.

The importance of Foreign Policy to the defence affairs of state during these initial periods of post independence evolution was manifested by successive Heads of State, opting to hold both Defence and Foreign Relations portfolios together under their personal purview; until in around 1977 when president Jayawardene created a separate Minister in charge of that portfolio.

One may find an ideal example of *Idiosyncratic Variables* identified by *James Rosenau* when looking at Sri Lanka's variable behaviour in International Affairs under different leaders. Principles of 'Non Alignment', 'Positive Neutrality' *etc* were trademarks of Bandaranaike politics, which are noticeably in contrast to the western alliances that continuous UNP regimes have been driven to form with major capitalist forces of the world. Both with its connected repercussions in the internal affairs of state. Both under the caretaker regime of W. Dahanayake as well as during the short tenure of Dudley Senanayake in 1965 there was not much interaction noticed in the international sphere that was to dramatically contribute to the present dilemma; not so however in the era to follow.

Sirima R.D. Bandaranaike, widow of the slain S.W.R.D. acceded to the helm of state power as the first woman prime minister of the world in July 1960 and ironically for one who was criticised as having arrived 'straight from the kitchen', guided Sri Lanka through a world of activity in the international arena placing Sri Lanka firmly on the world map; with the most notable of her

⁴ Kodikara S.U. – *Security dilemma of a small state* Vol. 1, p211

⁵ Hameed, A.C. Shahul - *Collection of Speeches of ACS Hameed.*

⁶ *Ceylon Daily News* - 18/8/1948.

⁷ Jayawardene, J.R. – *Selected speeches 1944-73*

⁸ Karunadasa, W.M. – *Sri Lanka and Non-Alignment, A study of foreign policy from 1948-1982*

achievements being her involvement with the establishment of the Non Aligned Movement [NAM] and active participation thereafter. As discussed in greater detail below, this active role continued even in her subsequent tenure from 1970-77 and many argue that her movements in most areas of activity were meticulously formulated and carried out in order to keep India firmly on 'our side'; thus reducing the 'threat perception' or even possible acts of aggression on Sri Lanka that actually manifested itself in 1987 directly.

The Dudley Senanayake Period

The intermittent era of 1965 – 70 in comparison however, which once more fell under the leadership of Dudley Senanayake, saw Sri Lanka taking a low key profile in foreign relations and except for perhaps the invitation to join ASEAN which Sri Lanka rejected surprisingly and perhaps to its later detriment as seen by many; there was nothing significant added to the theme of the present discussion, with the exception of a close personal relationship between Dudley and the Indira Gandhi government which was markedly varied to the other UNP regimes.

The 'Threat Perception' in the Early Years

Siriweera argues [based on historical recordings] that "centres of power in the extreme south [in India], namely Tamilnadu, posed an intermittent threat to the stability and security of Sri Lankan Sinhala states from the very early times."⁹ It may be a trifle unfair therefore to cast the blame over this threat perception only on post independence Sri Lankan leaders, and we must appreciate such sentiment at least to an extent; by understanding that history too has encumbered this island nation with its share of the problem. Equally the strategic dimension cannot be ignored in this equation, since Sri Lanka being placed where it is in the Indian Ocean, her actions in the region have always been a cause of concern for India in its security outlook. A good example is the Trincomalee harbour which is one of the finest of natural harbours in the world, which many nations would like to have use of, as indeed many have attempted; thus causing natural concern for India's security.

It may be said in conclusion of this precursor to the periods under study, that if there were attempts to have strong relations with India during the foremost years after independence, it was certainly not continuous and there was a manifested disdain entertained by some governments towards India that was not entertained and/or diplomatically averted by others.

2. The Chain Reaction - 'Dual-Policy' in International Affairs as a Response to Security

The aforementioned significant and very noticeable shifts in Foreign Policy hitherto experienced under UNP and SLFP led governments, can also be attributed to their different political ideologies, in relation to what friendships they sought, which in their opinion may have been consonant with their politics. It could equally be argued that these notably different alignments [or even non-alignments] with the various geopolitical forces was the best method they saw to handle what was originally a security concern, which after 1987 manifested as a dilemma. What then were these concerns?

A newly formed nation is inevitably faced with the situation of maintaining and protecting her

⁹ *Siriweera W.I. – Security dilemma of a small state* Vol. I, p21

sovereignty from external as well as internal forces; the latter of which is not experienced by the bigger and more older nation states. Moreover these smaller states that suddenly erupted in the new international system¹⁰ were faced with limitations in security measures as a method to resolving conflicts, thus creating a genuine problem. Upon close study of Sri Lanka's early years in international affairs as well, examples of this common problem to any 'new nation' can be discerned. In the markedly variable state interactions in its formulation and implementation of foreign Policy under different regimes, one can notice how this problem was sought to be tackled then and more importantly what effect such behaviour may have had on the dilemma we are faced with now.

Relations with UK

This was a significant characteristic of variance in our primary years as a new-born democracy. Most of this period revolved around security issues, although at times those measures were hidden behind other more diplomatic moves; perhaps mostly due to the immediate aftermath of the 2nd World War and developing cold war tensions.

Mendis in his inimitable style of writing sets the scene around which the *status quo* changed from that of dominion to independence¹¹. According to him even more important than the advent of the Labour government in 1945¹² were the rising voices threatening the security situation in the sub-continent and Asia. A yearning for an end to the 'old order' and visions of a new birth were simmering in the embers with sparks of flame becoming more and more frequent. He claims that movements for independence were heightened by post world war tensions, with claims for partition in India, communist subversion in Burma; with Sri Lanka too showing some security concerns with the election of 18 members out of 95 from the leftist combined parties at the 1947 elections.

Although Ceylon was ostensibly one with "*fully responsible status*" and "*in no way subordinate in any aspect of domestic or external affairs*",¹³ by the granting of its independence, as a *quid pro quo* for the assumption of such status and almost simultaneously; Prime Minister D.S. Senanayake and Sir Henry Monck Mason Moore endorsed and ratified the 'Agreement on Defence' and the 'Agreement on External Affairs'; together with which Ceylon was also granted membership of the 'Commonwealth of Nations'. These have been termed the '*two pillars on which the then F/P lay*'.¹⁴ In terms of these it was agreed between the 2 countries in regard to training of military personnel, military assistance *etc* from the UK, the UK to be availed 'base facilities' which resulted in the air and naval bases in Ceylon, Ceylon to observe Commonwealth practices and exchange High Commissioners with UK and the UK to act for Ceylon where it was not represented and canvass those countries, as well as for its membership in the UN;

Many have adduced various considerations, as possible reasons for this close affiliation with the UK that Senanayake opted for. Some see it as a 'window to the outside world' whilst others see the non-acceptance by the UN as a major consideration; claiming that it gave Ceylon the feeling of being '*part*

¹⁰ Kodikara S. U. – *Security dilemma of a small state* Vol. I, p206

¹¹ Deshamanya Dr. Mendis, Vernon L.B. – *Foreign Relations of Sri Lanka* (1983) p 356-358

¹² Election of Clement Atlee as Prime Minister of Britain succeeding the Tory government,

¹³ Ceylon's Independence Act of 1947 and connected House of Representatives debates,

¹⁴ Kodikara, Shelton U. – *Foreign Policy of Sri Lanka* (1992)

of a larger community',¹⁵ of democratic forms of government. There were further noticeable characteristics of such affiliation with the UK, under succeeding UNP leaderships of Dudley Senanayake and Sir John Kothalawala, which contributed to the general consensus that Ceylon was pro-western in its outlook. Mendis names this era a 'Commonwealth Phase'¹⁶ citing several examples for such categorisation; which period he contends paved way for what he refers to as the 'Regional Phase', under S.W.R.D. in 1956.

Contrary to this stand of his predecessors it was articulated by S.W.R.D. on many occasions that membership of the Commonwealth did not, mean association with 'colonial sentiment'. He advocated a policy of 'dynamic neutrality' in responding to situations and not aligning oneself to either side; thus emphasising more importance on the UN and its mandate. There was a background to S.W.R.D.'s policies. He was a convert to Buddhism from an Anglican family and was heavily influenced by the 'Swadeshi' movement of India. Perhaps also the fact that his British counterpart was his oxford colleague paved way for more cordial and diplomatic dialogue in resolving issues; however some major variances were seen in contrast to the previous regimes. These were the non recognition of Imperial Honours whilst at the same time asserting that no disrespect was intended at the Queen, the removal of British naval and airbases and expression of the sentiment that Ceylon should be a Republic (though this did not in fact materialise until much later under his wife's administration).

As emphasised before, the underlying thrust behind all these new policies were in tune with the public sentiment of the time and attempted to identify a difference from the past yokes of colonialism. It is argued by some however that with these attempts and especially due to his heavy emphasis on the Sinhalese vote base [such as the 'swabhasha bill'], there were other repercussions to follow in terms of the aspirations of other ethnic communities, that may have led them to be subsequently marginalised; thus forming the foundations of the present ethnic struggle. The merits or demerits of these arguments however are not the subject matter of this discussion and are better left therefore, for discussion under an appropriate theme.

Fear of Communism, the Economy and other factors:

Kodikara states¹⁷ that although some attempts have been made to equate the F/P's of 1953-56 era with that of 1956-60 and proclaim that there has not been a significant alteration between the two; in fact when comparing the attitudes held towards Communism and Communist countries alone during the two periods, there has been much variation between the two policies.

It would be seen that D.S.S., Dudley and Sir John's premierships have always been at dispute with Communists, both universal as well as their local agencies. During D.S.S.'s period, there was a fear that the local manifestations of the global communist movements, such as the Trotskyites, the CP and LSSP, may attempt to topple the government by crippling its economy through inciting workers *etc.* Some authors see this very fear as reasons for seeking closer solidarity with Britain. In comparison however, the Bandaranaike's even formed an alliance with the local socialists although that may have been their own diplomatic way of countering the threat posed to national security by the communists.

¹⁵ Prasad, D.M. – *Sri Lanka's F/P under the Bandaranaike's (1973)*

¹⁶ Deshamanya Dr. Mendis, Vernon L.B. - *Sri Lanka in Foreign Affairs* (Foreign Ministry Publication, 1998)

¹⁷ Kodikara, Shelton U. – *Foreign Policy of Sri Lanka (1992)*

This era also witnessed successive UNP administrations looking at easy access to the sterling region in order for it to conduct its trade. An exception to this general rule was the rice/rubber agreement between Ceylon and China. There was also an unsuccessful attempt to compel Ceylon to adhere to the trade embargo on China; which failed since Ceylon was not a UN member at the time and as such was not bound by its resolutions.

During S.W.R.D.'s premiership there appeared to be more emphasis on economic considerations than in power politics or security issues, in the formulation of F/P.¹⁸ There were numerous trade and other agreements entered into as a result of his policy of being 'friends of all' and 'dynamically neutral', which saw Ceylon gaining much in the field of International Affairs; thus making it an era of unmatched diplomatic activity, realising therefore his notion that '*even small nations could make significant contributions in world affairs*'.

The downside to all this whirlwind activity in the international sphere is the question as to whether the heightened activities of playing an active state globally, marginalise or ignore more important and pressing issues at home, *vis-à-vis* Sri Lanka's internal security concerns or those in the region? Should we have been wiser in building more alliances with the 'right people', so that we would have had the means to quell any possible security threat as a result of the non-settlement of these grievances?

Relations with India

The above question is an appropriate threshold from which to launch the following important introductory paragraphs. Sri Lanka's decision-makers after independence had an ambivalent attitude towards India, nursing a form of a love hate relationship.¹⁹

Although the 1948-56 regime maintained cordial relations with India and both Prime Ministers D.S.S. and Sir John had substantive discussions on the Indian Tamil Labour issue, there was always a lurking suspicion entertained of possible future threats of aggression on Ceylon by India. Many argue this to be a primary reason for D.S.S.'s close affiliations with the British and membership of the Commonwealth, the latter with the perception that being equal members would reduce the seriousness of threat. This not too pleasant relationship was further manifested by D.S.S.'s rejection of India's declaration of a Republic, where a clear difference was S.W.R.D.'s intentions of even following in those very footsteps with Ceylon. Even under the subsequent premiership of Sir John his relations with Nehru were not as close and fruitful, as can be amply demonstrated by the famous [or infamous] dispute at *Bandung* where Sir John defended Pakistan's wish to join SEATO.

A visible difference in UNP policies towards India are manifest in one prime minister in Dudley Senanayake, who endorsed his support for India over the Indo-China border conflict [1962]²⁰ and maintained cordial relations with the Indira Gandhi government. In the light of this marked variance, general references to the aloof attitude of UNP governments towards India in this study are exclusive of the Dudley eras as head of state.

¹⁸ Prasad, D.M. – *Sri Lanka's F/P under the Bandaranaike's* (1973)

¹⁹ Kodikara S.U. – *Security dilemma of a small state* Vol. I, p214

²⁰ *Ibid.* - 224

Kodikara argues²¹ that a major shift in Ceylon's F/P towards India was greatly evident during the *Suez Crisis*. He comments that Indo-Sri Lankan communications were very close during this period with close contacts maintained between S.W.R.D. and Nehru, where Ceylon proceeded to differ substantially with UK and not only stated that she would remain militarily neutral in any issue arising therefrom; but also diplomatically opposed UK's policy against Egypt, thus earning itself a close future alliance with Nasser of Egypt as well as the Middle East. The obvious influence of Nehru's '*panchshila*' on S.W.R.D.'s policies are also clearly evident although not precisely the same; one can discern similar characteristics of maintaining cordial relations with all countries with the fulfilment of Ceylon's national interests as a paramount concern, whilst preserving the freedom to criticise any country on any issue; also promoting world peace by attempts to bridge the two power blocs and also building up of Afro-Asian solidarity.

It must also be said however that the present dilemma of the internal ethnic issue and external relations with India also had a dominant precursor by the unresolved Tamil repatriation issue of the estate Indian labour that continued to haunt many leaderships over these years. Although at the time of S.W.R.D.'s premiership this had grown to sizeable proportions [with the election of 7 Indian Tamils at the previous election], many argue that he did not exert any real or apparent pressure on India to repatriate its citizens though he had continuously advocated this. The result was the subsequent disenfranchisement of the estate Indian population, which is all too familiar now in the ethnic dialogue.

Wielding the NAM influence

No one could deny that Sri Lanka's presence in the Globe has been accentuated by its synonymity with the Non Aligned Movement [NAM]; as well as the diplomatic mileage the country gained in facing its strategic concerns in the region by the influence wielded through NAM. Its advent and growth has been responsible to a major degree of placing Sri Lanka in the midst of international relations in the era of cold war and bi-polar geo-politics. In appreciation of her initial attempts at establishing NAM, Sirima Bandaranaike was invited to the preparatory meeting in Cairo by both *Nasser* and *Tito* jointly. This could also have been due to the sentiments expressed previously by her late husband and his friendships with these leaders. In his address at a reception to welcome Marshall *Tito* in 1959, S.W.R.D. stated that:

"We are not neutralists. We do not adopt a negative attitude. Our attitude is a very positive one in following our different ways of life in non-alignment with power blocs.... I do not like the word 'uncommitted'-we are committed to the hilt...."²²

According to *Karunadasa*, this seemed to be the common sentiment amongst many leaders of the time, including Nasser of Egypt, *Tito* and Nehru and also, whom he identifies as neutralist ideologues; Sukarno, Sihanouk, U Nu, Nkrumah.²³ Whatever the genesis was, NAM saw Sri Lanka gaining considerable influence with India and thus addressing its own security concerns in the region, especially through its involvement during the *Sino-Indian* border conflict. In 1974 Sri Lanka also managed to settle its own prolonged border conflict with India over the *Katchathivu* islands and

²¹ Kodikara, Shelton U. – *Indo Ceylon Relations since Independence (1965)*

²² Karunadasa W.M. – *Sri Lanka and Non-Alignment*, p47

²³ *Ibid.* – p47/48

during this second term in office for Sirima Bandaranaike, with an extremely capable prime minister in Indira Gandhi at the helm of power in India, cordiality between the two countries as indeed the two ladies personally were seen to be high; though Bandaranaike too in her own way counter-balanced the threat perceptions of India by maintaining close relationships with those hostile to India, like China and Pakistan.

The sinister dichotomy however of the 'on-off' relations with Sri Lanka's closest and arguably her strongest neighbour is that, this estrangement which developed thereafter into an apparent dilemma following India's involvement signified by the now infamous 'dhal drop', could have been better managed and even used to Sri Lanka's advantage in tackling its internal security concerns; by maintaining a closer and undisrupted dialogue despite changes in domestic political structures, and certainly avoided its escalation to the uncontrollable proportions it reached during the late 80's.

In fairness to subsequent regimes, it must be said however that there has been an apparent attempt to do this by consecutive PA and UNP governments post 1994 era [as would be discussed below]; however, many argue that these efforts came too late and by this time too much damage had been caused between the two nations that still have not been fully forgotten and put away - the embers yet remain.

3. Manifestation of Current Dilemmas

Era after the 2nd Republican Constitution – An economic boom and a new 'grundnorm':

The 'Oxford'²⁴ defines a dilemma as a situation in which difficult choices must be made; a 'spot' in which one is placed. What then is this dilemma in the Sri Lankan context? Security entails the preservation of independence and sovereignty in a state and problems associated with this are mainly discussed at state or global level. However identifying regional level of security relations also has been recognised.²⁵ The externalisation of Sri Lanka's internal conflict would then, within that definition, be Sri Lanka's security dilemma; though explaining it requires more than this simple definition. This part of the paper would seek to identify manifestations of the dilemma at various intervals through events that transpired during this period.

This era too was to change Sri Lanka dramatically. Jayawardene too was a dynamic leader and a statesman and what the Bandaranaiques achieved at external affairs, he was to equal internally with massive development projects and an unparalleled economic boom; tilting himself naturally to the richer capitalist West in order to obtain funding for his economic plans, thus earning himself the pseudonym '*Yankee Dickey*'. He too faced his own dilemma in implementing his foreign policy, which he decided to wield economically with development interests in mind rather than with political motivation. The first republican Constitution was repealed and the 2nd [the new grundnorm²⁶] set in place, seen by many as a hybrid of the French and American systems [albeit their checks and balances], thus creating Sri Lanka's first and very powerful executive president. Whilst attributing more prominence to economic development, the lesser importance Jayawardene displayed towards diplomacy and external relations [or his economically motivated foreign policy as contended by

²⁴ Oxford dictionary

²⁵ Buzan Barry – *A framework for security analysis in South Asian Insecurity and Great Powers*, 1988

²⁶ Kelsen Hans – *Pure theory of Law* (all state laws emanate from one primary source - the Grundnorm')

some] can be amply manifested by his action to place a separate Minister in charge of foreign affairs, a portfolio that had continuously been held by heads of state till then; which some argue was also strategically exercised to woo Arab investors by nominating a Muslim minister in A.C.S. Hammed.²⁷

Personality Variables

We can once more identify a behavioural pattern by reference to personality variables. Jayawardene was Sri Lanka's delegate to the Colombo plan in 1950 under DS, which was an Asian derivative of the Marshall plan for Europe, which was also aimed at thwarting the communist aggression in region. Continuing with that same communist antipathy, he adopted an 'open economic policy' that included reliance on western sources for economic assistance. The relationship with India therefore was more sour with the pronounced tilt towards America and the anti Indian overtones that overtook the non-aligned rhetoric he continued to advocate as the foreign policy of his new regime.²⁸

He ended the Chairmanship of NAM in 1979 on that note, which had begun under Sirima Bandaranaike in 1976. His relations with India during his early stages (1977-79), during the *Janatha* rule in India was a marked contrast from after the return of the Nehru/Gandhi dynasty to state power in 1980. Thereafter Jayawardene pursued a traditional UNP foreign policy with a pro western tilt in an environment where India was looking upon US involvement in South Asia as detrimental to its interests. This western allegiance was also being spotted by observers. Policy makers during this period are criticised for ignoring the constraints placed on the country *ipso facto* its regional placing and assuming, that its security could be safeguarded by forces of the international system itself.

More important though are the idiosyncratic variables²⁹ in these relations, which are more apparent when one compares the visible mutual dislike entertained between Jayawardene and Indira Gandhi, the latter's admitted rejection of the imposition of civic disabilities over Sirima Bandaranaike who was a personal friend, as well as her dislike of many UNP acts against the SLFP during the campaign and thereafter, such as the using of the 'cow and calf' symbols during the election campaign (said to refer to the mother and son combinations in both countries), which are all manifestations of more personality clashes than policy concerns.

Reasons for Indian Apprehension

Kodikara states that the over 1 million migrant labour population of Indian ethnicity that remained in Sri Lanka had not been considered by successive Sri Lankan governments as having permanent status.³⁰ This too was to change during this era with the citizenship legislation of 1986 and 1988. However contrary to the hope of ending the continuous dispute with India, a more serious one was to arise; this time in the form of the ethnic minority Tamils also of Dravidian descent, escalating and not reducing the already estranged Indo-Lanka relations. Many agree that the following formed some of the fundamental criticisms formulated against the Jayawardene government's lack of understanding of geo-political implications in formulating its foreign policy, thus invoking India's wrath and forcing its hand:

²⁷ Nissanka H.S.S. – *Sri Lanka's foreign policy* p345

²⁸ Kodikara S.U. – *Security dilemma of a small state* Vol. 1, p226

²⁹ Rosenau James – *Introduction to IR [theories and approaches]* Jackson&Sorenson

³⁰ Kodikara S.U. – *Security dilemma of a small state* Vol. 1, p207

- the new open economy policy based on the free market and invitation to foreign private enterprise, most of it from western capitalist backgrounds with the US and UK taking precedence in dealings;
- the need to make the country conducive to such investment and therefore overlooking NAM principles at times for purposes of large foreign aided development projects;
- voting with Britain at the United Nations on the Falkland Islands issue;
- refusal to condemn the American naval bases at Diego Garcia which had been an issue with which both India and Sri Lanka had been very close;
- awarding of the Trincomalee tank farm tender to a western consortium overlooking the *Indian Oil* tender;
- permission for return of the US Peace Corp and installation of powerful VOA transmitters at a site outside Colombo;
- concern that the US may be granted base facilities in Colombo or even worse, in Trincomalee;
- attempts to join ASEAN;
- close ties with China, Japan and especially Pakistan and its president Zia-Ul-Haq.

It should be said with equal emphasis though that many of the above moves were in the backdrop of impending economic aid to the country and Jayawardene was not in a position to take an alternate and perhaps a more politically correct stand, without seriously jeopardising that foreign aid.

These Indian qualms remained with India even up to the time of its direct intervention in Sri Lanka's ethnic struggle. Already India had been using Tamil military cadres for the collection of intelligence information.³¹ With the Sinhalese uprising in the South and the infamous 'black July of 1983', in retaliation for the killing of armed personnel in the North by Tamil militants, there was a massive exodus of refugees to India and direct intervention by India was imminent, with the question remaining only when.

The 'dhal drop' and the 'Accord'

In the circumstances, India began to monitor Sri Lanka closely which led to allegations and counter allegations of 'self interests vs interventions and interference', with India making it clear to the Jayawardene government that it would not take kindly to military assistance from the West to quell the separatists and that it was directly in their interests to see a political and not a military settlement in the issue. As to whether Indira Gandhi would have used direct military power over Sri Lanka or toying with the idea of invading Sri Lanka and training armed cadres in the South of India for that purpose, would only remain subject to conjecture and therefore is best left at that; with no clear or cogent evidence to substantiate any such allegation.

Although negotiations ensued between the Jayawardene/Rajiv Gandhi governments [whose relationship with Jayawardene appeared much better than that of his mother's] in ostensibly an attempt to settle the internal problems, there is quite sound criticism even to date whether the Indo Lanka Peace Accord³² [the Accord] was in fact a bilateral agreement or whether Sri Lanka's hand was not 'levered' into signing it. The encroachment of Indian airforce fighter planes accompanying the

³¹ Daily News, 6th July 1987 – Tom Marks, 'Peace in Sri Lanka: India acts in its own interests'

³² India-Sri Lanka Agreement of 29/07/1987 signed in Colombo [Indo-Lanka Peace Accord].

transport aircraft that dropped the now infamous *dhal* over northern Sri Lankan airspace just one month preceding the signing of the accord, which was said to be intended at the Tamil civilians who were considered by India to be innocent victims of the armed clashes, did not do much to alleviate this mumbling that Sri Lanka was being somewhat 'bullied' by the bigger and obviously greater military power against its wishes.

An equally important subject of contention is whether the Indian intervention stood to solve the issue or escalate its complexity with an added 3rd factor in India, which was to come with the arrival of the Indian Peace Keeping Force [IPKF], with some who still maintain that India did a thankless job. In what turned out to be an emotional delivery, as indeed the entire dialogue was being the first of its kind, former Foreign Secretary to Indira Gandhi, Shri Rasgotra went on record stating that 'India was made to eat humble pie' and promptly withdrew its forces upon the directions of President Premadasa, despite having been 'invited' by his predecessor to intervene in the first place and that to that date, not a single Sri Lankan leader had so much as extended a formal sympathy for the Indian blood that was shed on Sri Lankan soil, towards maintaining of peace of a 'friendly neighbour'.³³ Nevertheless the record will not be complete unless mention is also made of the letters of exchange between India and Sri Lanka that formed part of the Accord, according to which Sri Lanka agreed on her part:

- Not to permit the military use of Trincomalee or any other harbours and ports by any country in a manner prejudicial to India's interests;
- That the restoration and operation of the Trinco oil tanks would be a joint venture between Sri Lanka and India;
- That public broadcasting facilities in Sri Lanka would not be used for military or intelligence purposes;
- That the employment of foreign military and intelligence personnel in Sri Lanka would not be:
 - Prejudicial to Indo-Lanka relations,
 - A violation of Sri Lanka's sovereign rights,
 - Interference in its internal affairs.³⁴

As regards the rest of the so called 'free world' and their actions [or more appropriately inaction] at this time of grave Sri Lankan need, can be amply described by echoing Jayawardene's reply to the journalists when he was asked soon after the signing of the Accord whether he felt '*a little bit abandoned*'; when he is reported to have said '*not at all, I am happy to be abandoned. I don't trust a single power*'.³⁵

Democratising Foreign Policy – the Premadasa era

It was in the above backdrop of an external force amplified by its physical presence in Sri Lanka, compounded by a Southern militancy growing in the form of the JVP that Ranasinghe Premadasa assumed power as the second executive president on 2nd January 1989. *Jayawardene* argues that Premadasa, unlike his predecessor did not accede to the position of head of state with similar

³³ Rasgotra, M.K.(Shri) – *paper presented at first S/L-India strategic dialogue, Colombo-4th Dec, 2003*

³⁴ In terms of 'the Accord' (above)

³⁵ Reported in the Sunday Observer, 16th August 1987

experience in foreign policy decision making³⁶ and more importantly to the present theme; even during his tenure as Prime Minister in the Jayawardene Cabinet he had been a harsh critic of India and of the peace accord.

Furthermore even in his days as Prime Minister, he had been a strong proponent of the concept of sovereignty and equal status of nations and this was his main argument against India and the 'accord'. He also came to power countering strong opposition from the main rival, the SLFP that they would 'send back the IPKF', by himself asserting that he would do the same and replace the 'accord' with an agreement on more friendly and equal terms; in view of the common view (as indeed his own) that the 'accord' was not such an agreement but an erosion of Sri Lanka's sovereign powers. Therefore, his stand against the IPKF and India was also motivated by these political factors, as much as they were matters of his policy.

It is also possible to identify Premadasa's policy in terms of the personality variables. Because of his 'self made' background even his foreign policy and interactions were aimed with a 'populist approach' rather than an 'elitist one', since he was 'more at home with the masses' and all his actions were 'people oriented'.³⁷ For instance he attempted to at least speak a few words in a popular language, as he did when addressing the VIIth SAARC summit in Dhaka, starting his speech with a few words in Bengali; thus winning himself many hearts and compliments. In similar fashion, he advocated removing foreign policy from 'privileged clutches' and 'democratising it'.³⁸ He wished to formulate his foreign policy in the 'full glare of media publicity',³⁹ thus invoking lamentations from his Indian counterpart that 'the gist of his messages to him (Gandhi) were available to the media before him'.⁴⁰

Premadasa used these same policies in his attempts to address the security issues with India and the internal terrorism in the North and East, which he maintained was being espoused in India; with many public references [albeit devoid of finesse and protocol] to 'terrorists living in and operating from Tamil Nadu soil'.⁴¹ With regular utterances and signals of this nature, it was not long before relations between the 2 countries were at almost breaking point, which was not seen by many as a feasible practice with many thousands of Indian forces stationed in Sri Lanka; but the climax came when he issued an ultimatum to India, to withdraw all IPKF troops before 29th July 1989, thus causing a diplomatic furore. *Weerakoon* suggests though that this style of confident and assertive foreign policy was not necessarily bad, and that contrary to the anxious perception of Premadasa's policy makers, that Sri Lanka being a small country must not tread on too many toes; he in fact wanted people to 'sit up and notice' it and gained a form of 'grudging respect' for himself with his boldness.⁴²

³⁶ Jayawardene Amal – *Security dilemma of a small state*, Vol. II p217

³⁷ Cooray, B. Sirisena – *condolence motion in Parliament*, reported in Daily News of 09/06/1993

³⁸ Convocation address at BCIS – September 1989, reported in Daily News, 23/09/1989

³⁹ Times of India – *enough is enough*, 14/07/1989

⁴⁰ *Ibid.*

⁴¹ FEER – (Asia 1987 yearbook) p246

⁴² Weerakoon, Bradman – *Foreign Policy under President Premadasa*, Sunday Observer 01/05/1994

Internal Turmoil on All Fronts

Premadasa's problems were exacerbated with a JVP insurrection in the South and the armed Tamil cadres waging war in most of the other areas; also with an unwelcome Indian army in control of 1/3rd of the country whilst our own forces were mostly not involved in operations. His foreign policy therefore was mostly made in the backdrop of these compulsions, as were his actions towards India. To counter attack the JVP argument of a 'foreign force' in the country and mounting support for this emotion from the masses, the populist Premadasa took upon himself the task of sending back the IPKF and 'regaining' what he perceived as Sri Lanka's lost sovereignty. His thinking can be amply manifested by his widely popularised comment that he '*had to send back the IPKF not because (we) loved India less... but love (our) sovereignty more*'.⁴³

Jayawardene argues that although there was consensus on the withdrawal of the IPKF in all quarters at the time, the manner in which Premadasa resorted to what he calls 'serving of a quit notice on India', was not the most diplomatic of approaches and that in so far as the de-induction itself is concerned, he theorises 2 main lines of thought:⁴⁴

1. that the IPKF would have 'wiped out' the LTTE completely had they been allowed to stay on and that the decision to issue India with an ultimatum for their withdrawal was not calculated on security premises but based more on political expediency;
2. that it was not in India's best interests geo-politically to completely rid Sri Lanka of terrorism and that the IPKF would have prolonged their stay and that therefore, though not seen as the most diplomatic of moves, it was Premadasa's acute sense of judgement that made the withdrawal possible.

There was another internal crisis that Premadasa had to face much closer to home when a group from his own party led by charismatic leaders, Gamini Dissanayake and Lalith Athulathmudali, brought an impeachment motion in parliament with the support of some of the opposition. Having closed down the Israeli interests section earlier in 1990 in an effort to woo local minority Muslims as well as West Asian investors (which also happened to be another of his election pledges) and having constituted a presidential commission of inquiry into allegations of former Mossad agent Ostrovsky,⁴⁵ Premadasa went on record accusing his political opponents of attempts to oust him with the support of Israel.⁴⁶ He continued this anti Israeli stand when Sri Lanka voted against the revocation of the UN resolution of 1975 equating Zionism with racism.

However despite this stand and also the expelling of UK diplomat Gladstone by declaring him *persona non grata*, there was no apparent mass boycott and wrath from the West as was expected; that was feared by many as possible repercussions of these actions. Premadasa appeared to continue cordial relations with the West and consecutive local press reports confirmed that he had allowed refuelling facilities to Western aircraft during the Gulf War⁴⁷ and granted permission for recommencing work on the VOA station despite heavy protests from India, who were also alleging

⁴³ President's speech at SLMC national convention – Island, 12/08/1991

⁴⁴ Jayawardene Amal – *Security dilemma of a small state*, Vol. II p221

⁴⁵ Ostrovsky, Victor – *By way of deception: the making and unmaking of a Mossad officer*

⁴⁶ Daily News – 25/09/1991

⁴⁷ Island – 07/02/1991

this to be a contravention of Sri Lanka's obligations under the accord.⁴⁸ The US and Sri Lanka also entered into 3 trade agreements in 1991 and foreign aid from the West did not seem overly undermined by Premadasa's behaviour; thus endorsing his one time foreign advisor's above view, of the 'grudging respect for his boldness'. The internal security situation of countering the vacuum created by the departure of the IPKF however was a situation he had not calculated to meet.

Failed peace talks and assassinations

In his presentation of the paper titled 'Sri Lanka – India, bilateral relations in the coming decade: political and strategic military dimensions', Prof. S.D. Muni reiterated the earlier stand taken by his colleague Shri Rasgotra, of India's friendly relations with Sri Lanka despite several compelling reasons for a more hostile attitude; mentioning the loss of 'one of India's favourite and much loved sons' to terrorists still at large in Sri Lanka.⁴⁹ He was referring to the 3rd generation leader from the Nehru/Gandhi dynasty Rajiv Gandhi, son of Indira and grandson of Pandit Nehru; who was tragically assassinated on Indian soil itself by those suspected to be LTTE cadres. Many agree that Sri Lanka could have used this situation of mutual concerns over terrorism to its advantage in rebuilding the lost friendships with India and enter into a more cordial working relationship; which *Rajapakse* argues turned out to be another missed opportunity.⁵⁰

Once more this was more 'Premadasa personality' and his outlooks rather than actual policy which was only secondary. He had never been considered and nor did he consider India a friend. He was a vociferous opponent to what he termed India's interventions in Sri Lanka's affairs and he had no qualms about making it public; in fact as argued before, being the populist he was, he attempted to gain political mileage with such comments as well as catering to the demand of the public, by for instance boycotting the reception held in honour of Rajiv Gandhi soon after signing the 'accord' in Colombo. Later he did not even attend Gandhi's funeral. These hostile perceptions of India led him to hasten with the attempts to de-induct the IPKF without proper plans to fill its vacuum.

Having done this, Premadasa then had to rush into a hurried and unprepared direct dialogue with the LTTE in an attempt to manifest that Sri Lanka could settle this issue internally, thus committing perhaps his biggest *faux pas*. The LTTE too was more than willing to accommodate these requests since it was in their direct interests to see the back of the IPKF as soon as possible. As a result of these hurriedly convened peace talks Premadasa got the LTTE itself to take over the security in the areas vacated by the IPKF, some argue with direct and physical assistance from the Sri Lankan forces even to build bunkers in the immediate vicinity of the forces; and when hostilities broke out thereafter, the forces were under orders not to retaliate and had to therefore surrender to the LTTE, which led to several losing their lives and many others becoming prisoners of war. This was clearly not a calculated move, since he was also later to become the fatal victim of a suicide bomb attack, suspected to be from the very LTTE that he sought peace with.

⁴⁸ Island – 01/07/1991

⁴⁹ First Sri Lanka-India strategic dialogue, BMICH – 4th and 5th December 2003

⁵⁰ Rajapakse, J. – Sunday Times, 20/09/1992

The South Asian Association for Regional Co-operation

The SAARC as it is better known also saw its advent in this era and it is worthy of being mentioned under a separate heading, because of its many implications on the topic under discussion. The early 80's saw efforts in South Asia led by Bangladeshi leader Zia-ur-Rahman to convene a gathering of countries in the region, to espouse and promote the cause of regional co-operation, which was strongly backed by Sri Lanka by inviting to host the first meeting at foreign secretary level; which finally took place in Colombo in April 1981. Though Sri Lanka had always been foremost in SAARC efforts, it has also been equally responsible for many attempts to 'rock the boat'. Some of these instances had been suggesting the discussion of contentious bilateral issues and not only economic ones at the 2nd summit in Bangalore, promoting (against the wishes of mainly India) a convention on the suppression of terrorism and finally achieving it at the 3rd summit in Kathmandu; and even at first refusing to participate at the 3rd Foreign Minister's meeting to be held in Thimphu over certain remarks made by an Indian minister regarding Sri Lanka's internal ethnic issue.

This abrasive Sri Lankan stand in the SAARC was only to grow stronger with the personality of Premadasa as the head of state and causing further dissension with India mainly. On many occasions he had insisted on the IPKF issue taking precedence over regional co-operation *etc.*⁵¹ He reiterated this stand further by refusing to allow Sri Lanka's participation once more at the 1989 foreign minister's meeting in Islamabad; over India's failure to withdraw the IPKF prior to his ultimatum. He refused to host the 1990 Vth summit in Colombo on the premise that Sri Lanka was not a sovereign nation with the presence of a foreign force inside it. The VIth one scheduled for November 1991 in Colombo could not proceed due to the inability of King Birendra of Bhutan to attend and India's refusal to attend the gathering without all seven heads of state; which was seen by many observers as a 'tit-for-tat' on Premadasa, since previous precedence had shown that there was no strict protocol with regard to attendance by only the head of state.

Though India was adopting a schoolboy attitude in this relationship in trying to embarrass Premadasa rather than taking a more responsible and senior role, Sri Lanka too was responsible for giving India many inexcusable reasons; as for instance the failure of Premadasa to attend the 1990 Male summit with no apparent reason. In any event Premadasa in his usual maverick style managed to come through at the end of the day, at least in so far as Sri Lanka was concerned when he managed to convince SAARC members to establish an independent South Asian commission on poverty alleviation, consequent upon his proposal to that context at the delayed reduced mini summit that finally took place in Colombo in December 1991. Also as a measure of promoting the preferential trade agreement which was greatly espoused by him, he made a unilateral declaration later of the removal of tariffs on some imports from the region; thus paving the way for a successful endorsement of SAPTA.

The end of an era that never quite began

Many agree that it was just prior to his assassination that Premadasa actually began 'blossoming out' and moving into his mould as a head of state, gradually learning the art of diplomacy and generally feeling more at ease in his position. During the first 3 years as president, he did not make a single visit

⁵¹ Convocation address at BCIS – September 1989, reported in Daily News, 23/09/1989

abroad, secluding himself in the internal affairs (which had plenty to take his time as elaborated above); but also almost avoiding the part of visiting statesman and feeling more at home with the masses who were always his refuge. However towards the end of his 4 ½ years of reduced tenure, he visited many states especially in his new role as Chairman of SAARC, captured many hearts on these visits with his natural outreach to the common man and even made amends with India; with an obviously renowned friendship with the new Prime Minister Narasimha Rao, who invited Premadasa to a private lunch following the latter's visit to *Bodgaya*.

Even at the expense of a minor deviation, justice must be done by placing the record straight, with reference to the great leader inside this common man that many accept had the capacity to lead Sri Lanka to great heights, notwithstanding his lack of finesse and diplomacy which on most occasions got the better of him. Having taken over a country that wreaked terror and violence on all fronts internally and externally, compounded by having to fight heavy criticism at every step he made, both from his opposition as well as his own party elitists; he delivered results (albeit in his own ruthless and prompt abrasive form) what most could have not even imagined. He took on India and managed to send back the IPKF, quell the JVP insurrection as well as put up massive development projects specially aimed at the lesser fortunate and underprivileged.

On the external front though misunderstood initially, he was gradually moving into a role more suited for a head of state and showing evidence of this by the continuous foreign aid from the West, when he too fell victim to a deadly blow of terrorism; leaving amongst other things, many unanswered questions as to where he would have led Sri Lanka had he been allowed to continue.

4. The 'Peace Dove' and the Future:

Alliances, Fronts and coalition phenomena

Making note of the difficulties in analysing this era extensively, (due to the lack of resource material in the post 1993 period), it is only intended to set down a descriptive commentary on the more notable events during this period, *vis-à-vis* the theme under discussion and conclude this study with a brief look at future prospects.

A new era of coalition governance dawned in Sri Lanka with the culmination of a 17 year UNP rule, where primary concerns of succeeding governments mainly fell in line with their coalition objectives, with the primary intention of retaining state power and safeguarding their coalitions. Foreign policy of such governments too therefore was naturally along similar lines. 17th August 1994 was political *de'ja' vu* for Sri Lanka when under a caretaker government, following the assassination of her husband Chandrika Bandaranike Kumaratunge assumed office as the head of a government made mainly of the People's Alliance (PA), the SLMC and the Up Country People's Front (UCPF). Soon thereafter she contested the presidential elections on 09/11/1994 and became the 3rd Bandaranaike to hold the office of head of state. Naturally it was expected that she would fall in line with her parent's foreign policy perspectives, which indeed she carried forward with slight modifications in tune with the demands of the period and her coalition.

She assumed office on one primary premise that she would usher in an era of peace to the long drawn ethnic conflict, symbolised on all corners by the dove of peace and that manifesto granted her a 65.2%

majority in a landslide victory. True to her commitment she attempted to soon place India's concerns at rest with an almost immediate visit in 1995 and extensive discussions on bilateral and regional issues with Dev Gawda; which she followed up in 1998 with another visit and discussions with Atal Behari Vajpayee. Relations were cordial and both leaders on this second visit symbolically laid a joint foundation at a pilgrim's rest for Sri Lankans in New Delhi, renewing hope for a better and stronger Indo-Lanka relationship.

Simultaneously she launched a massive global effort under the able hand of her strong ally and the then foreign minister, (late) Kadirgamar. Whilst ushering in an era of professionalism in the conduct of foreign policy, it was an attempt to 'set the record straight' and rectify Sri Lanka's human rights records which had not been the best over the previous years; primarily due to a strong and vibrant LTTE global media lobby, which was at times painting images that were far from reality and which was causing much damage to Sri Lanka's standing in the international system.

Strong personalities capable of standing up to any foreign pressure were sent as diplomatic appointees to the key missions and Sri Lanka managed to impress upon the rest of the world the realities of its problems with terrorism and the difficulties in curtailing it; without the assistance of others who were at times aiding the cause of the terrorists. Kumaratunge addressing the 49th general assembly of the United Nations, endorsed the call for the adoption of the declaration to eliminate global terrorism. She managed to build cordial relations on all fronts, not limiting herself to the capitalist West but also the new democracies behind the former iron curtain; managing to convince the international community of the sincerity of her efforts to reconcile and usher in an era of peace. She followed up by commencing negotiations with the LTTE through Norwegian facilitation with a high level delegation led by Eric Solheim (not devoid of criticism that they were the *Trojan Horse* of Euro American interests⁵²); which unfortunately were disrupted thereafter with an attempt on her life by the LTTE and other problems of mainly domestic politics that compelled a cessation of the Norwegian efforts.

Her above initial efforts though seen largely as genuine attempts at ethnic reconciliation during her first tenure in office, were not totally in vain, since world opinion gradually changed with regard to Sri Lanka's terrorist problem. Together with the efforts of the Ranil Wickramasinghe government that had an in between tenure in office between December 2001 and April 2004, which also launched extensive discussions with the USA and India (peculiar situation under the presidency of Kumaratunge), as well as the 9/11 disaster that brought terrorism very close to home for the developed world; Sri Lanka managed to convince many countries in the West including the US and UK to ban the LTTE as an international terrorist organisation.

There were many high level dignitaries that visited Sri Lanka during this period (which includes all 3 periods - the two Kumaratunge Cabinets as well as the Wickremasinghe government), including many from the USA. Amongst them were the former US first lady, the US Assistant Secretary of State for Asia during the same Clinton regime, Prof. Inderfurth and subsequently the direct involvement of US Secretary of State, Colin Powell and his deputy Richard Armitage; sending out a clear signal that the US would not have any dealings with the LTTE until it gives up terrorism.

⁵² White, Francisco Gill - *The Oslo war process*

What this multitude of international attention did for Indo-Lanka relations was that both countries realised (for their own particular interests) that India, which had by now turned out to be arguably the most powerful regional power, must also play an equally important part in Sri Lanka's attempts to quell its terrorism problem.

Immediately upon the changing of world opinion, the LTTE arrived at a cease fire agreement with the Wickremasinghe government and the stalled peace process from the Kumaratunge regime was recommenced. There is much argument on the merits and demerits of this agreement as indeed the whole peace process (which some argue was 'peace without a process'); however the instant theme does not allow benefit of such deviations.

What it has done though, especially with the advent of the JVP factor into the governing process with Kumaratunge's second Cabinet, is a renewed call for India to be more affirmatively involved in this equation; which appears to have been answered favourably by India with the clear proclamation by its Foreign Minister that the LTTE must give up its demand for Eelam and that a solution to the problem must be arrived at inside a unitary Sri Lankan structure.

How best can we face the dilemma from here onwards?

There is a clear departure in the present leaderships, both UNP and PA from the initial threat perceptions entertained by their predecessors and it is more now a question of what form of Indian intervention is best suited for the occasion. The post 1994 era has enlightened leaders on both sides and even the 3rd element now with the advent of the JVP, that Sri Lanka must work its problem together with India rather than attempting to work without it and seek assistance elsewhere.

This is indeed a good sign, that the many lessons learnt from its past has taught the Sri Lankan leadership that Sri Lanka cannot ignore geo-political realities of its presence in the Indian Ocean and seek solutions from the international system itself; that ignoring those realities only lie to its detriment. India too seems to have realised that rather than adopting the aloof stand it resorted to at one time (whether justified or not – as argued above), that it is not in its best interests to allow the escalation of an armed conflict so close to its borders; especially with its own geo-political concerns of Tamil Nadu situated close to the North and East of Sri Lanka, with many connections between the peoples of these two areas both geographically and culturally.

In addition to geo-political and regional co-operation considerations, there are also compelling internal ramifications to both countries in this issue. Insofar as Sri Lanka is concerned there does not appear to be an escape from coalition phenomena in the formation of governments. Although there are speculations of a new constitution taking into account the political realities and difficulties of forming a strong and powerful government with the existing electoral system, until such a document is promulgated, it is best to theorise on the *status quo* as it exists.

The reality under the present system is that neither the UNP nor the PA can build a government without their coalition partners, whether they be the TNA for the UNP or the UPFA or CWC for the

PA. This in turn brings about added considerations upon such governments to grant respectable appeasement of the aspirations of such minority constituents, most of whom bear strong cultural and even ethnic links to India. The situation in India too is not that much dissimilar with the Tamil Nadu factor in Indian politics and the strong LTTE lobby that exists there. The reality is therefore that both countries must face the problem together, since it is as much in their political interests to do so, as indeed the aforementioned regional and geo-political reasons.

Access to Justice – Advocating an Innovative Legal Approach to Securing Tsunami Reliefs

*A. Mohammed Farook**

Introduction

Many reliefs were promised to devastated persons by the Tsunami of 24.12.2004. Not very long thereafter, there was a public cry that reliefs promised by the State to affected persons were not made available to them by the state officers. It is a publicly acknowledged fact that, this still remains a lament on the part of most such affected persons.

This paper will briefly set out the clauses of the special law applicable to tsunami affected persons. Its focus however will be a suggested recourse to other innovative means of litigation, using existing provisions of the Penal Code and Code of Criminal Procedure in order to redress some of the outstanding grievances of affected persons in relation to public servants acting in disobedience to the law.

A Special Law to Address Concerns of Tsunami Victims

The special law to address concerns of the post tsunami period, namely the Tsunami (Special Provisions) Act, No 16 of 2005 has the following objectives; to recognize legal provision to overcome certain impediments and disadvantages to which those affected by the tsunami could be subjected to; to provide alternative care and protection to children and young persons left without adequate parental care; and to remove legal obstacles and existing legal barriers in order to ensure the protection and safeguarding of those affected.

In respect of the issue of death certificates in respect of persons missing consequent to the tsunami, it must be noted that the Births and Deaths Registration Ordinance does not contain provision to issue death certificates in the absence of a dead body. In that context, it is relevant that Part 1 of the Act recognizes a special procedure to enable surviving tsunami victims to obtain death certificates of their relatives who lost their lives in the tsunami, but whose bodies have not been recovered. Part 11 of the Act contains provision to prevent children and young persons being subjected to abuse as a result of being left as orphans due to the tsunami. The National Child Protection Authority (NCPA) is recognized as the guardian of every child placed under foster care in terms of the Act, and of every child who is left an orphan, whether or not such child is in the custody of any person, on the operative date of the Act, i.e. 13th June, 2005. Such guardianship is, of course, subject to the upper guardianship of court) Adoption of such children is permitted only after they have first been placed under foster care for one year.

* Attorney-at-law and notary public.

Ed Note; A legal strategy suggested to the proper securing of tsunami relief in this paper incorporates the practical experience of this writer in filing five private complaints under Section 162 of the Penal Code in the Magistrates' Courts of Kalmunai and Akkaraipattu. The paper has been comprehensively reviewed by consultant to LST, Dr J de Almeida Guneratne P.C.

The Act prescribes that all persons (other than a surviving parent) and institutions having custody of a child affected by the tsunami should register as current custodian of such child with the Commissioner of Probation and Child Care Services. Any person, including a current custodian of a child may apply to a Magistrate's Court, to become the foster parent of such child. A young person may also seek foster care. The suitability of these applications will be assessed by an Evaluation Panel appointed by the NCPA and the best interests of the child will be given primary consideration.

It is important that a foster care order granted by a court will initially be in operation for a period of one year, subject to renewal. Its renewal is subjected to monitoring by a designated officer, who is required to submit quarterly reports to court on the performance of the duties and obligations of the foster parents.

In so far as adoption orders are concerned, any person including a foster parent may make an application for adoption of a child under foster care after the expiry of nine months of foster care. An adoption order can be made only after the expiry of one year of foster care and will be subject to provisions of the Adoption Ordinance. Part 111 of the Act applies to the safeguarding of prescriptive rights and mandates that one year from the date of the tsunami will not be counted for purposes of prescription.

The Act also provides that where an action has been filed under the Primary Courts Procedure Act in respect of tsunami affected land between 26th December 2004 and 26th December 2005, the person who was in possession of such land on 26th December 2004 (or where such person is dead or missing, the persons who were in possession with that person) shall be declared by court order to be entitled to possess that land. Where such person or persons have been forcibly dispossessed of such land (i) before 26th December 2004 or (ii) before the date of filing of the action but after 26th December 2004, the Court shall order such persons to be restored back in possession of the land. Part V of the Act offers some measure of protection to tenants and lessees of tsunami affected premises in that it recognizes the tenancy or leasehold of a tenant or lessee, as the case may be, who was, on 26th December, 2004, in occupation of premises affected by the tsunami.

It is interesting that the Act, (see Part V1) stipulates that, on conviction for particular offences in relation to tsunami aid, the person found guilty should be liable to twice the punishment prescribed for those offences in the Penal Code. These offences are criminal misappropriation, criminal breach of trust, theft, extortion, robbery, cheating and retention of stolen property.

Proceeding Against Public Servants for Disobedience to the Law

Apart from the specific provisions of the above analysed Act which apply to particular situations only, what other remedies are available for tsunami affected persons to defend their rights? What are the other alternative legal remedies when public servants such as *grama niladharis* disobey directions of the law and thereby, further victimise tsunami victims?

Assuming that filing fundamental rights applications would be possible in terms of Article 126 of the Constitution if one were to read the several provisions in the fundamental rights chapter of the

Constitution¹ with the Directive Principles of State Policy² the same would prove to be of much cost to the Petitioner, given the legal culture of this country. The same would apply to Writ Applications. Even as regards a declaration under Section 217(G) of the Civil Procedure Code that an affected person is entitled to reliefs, filing such an application would not be feasible given the protracted nature of litigation in District Court trials. Thus, it is proposed to make out a case in this paper concerning the possibility and the viability of invoking the jurisdiction of the Magistrate's Courts under the Code of Criminal Procedure and the Penal Code particularly in regard to statutory duties imposed upon a public servant to act according to law and the penalties attaching to disobedience thereof.³

According to existing framework of the law comprising provisions of the Code of Criminal Procedure and the Penal Code, an action could be filed in the Magistrate's Court under Section 136(1)(a) known as a Private Complaint. The first information would comprise the Tsunami related documents. The subsequent charge sheet could charge the errant officer responsible, in most cases the *grama niladhari* of the area, for the denial of Tsunami reliefs under Section 162 of the Penal Code and/or for other acts of disobedience to the law and thereby causing injury to any person or, as the case may be, to the Government.⁴

Section 162 of the Penal Code reads as follows:

Whoever, being a public servant knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause or knowing it to be likely that he will by such disobedience, cause injury to any person or to the Government shall be punished with simple imprisonment or a term which may extend to one year or with fine or both.

The rationale for this section is that public servants may discharge their responsibilities only in a particular manner and in accordance with their statutorily conferred powers, which they hold in trust for the public. The principal constituent elements in this section may be briefly analysed and committed upon.

"Cause injury -

(i) to any person"

Provided that, the person claiming tsunami reliefs as an affected person is able to establish the same, the injury resulting to such person by the dereliction of duty by the public servant envisaged in Section 162 in failing to discharge his duty would stand proved.

¹ Article 12 and/or Article 14(1)(g).

² Chapter VI of the Constitution.

³ Penal Code and Code of Criminal Procedure, in Volume 11, LEC (1980).

⁴ N.B. Section 166 of the Indian Penal Code, which could be compared to the Sri Lanka Penal Code provision under consideration, omits reference to "the government."

(ii) “to the government”

The said dereliction of duty by the public servant concerned would *ipso facto* cause injury to the government among its domestic voter base as well as in the eyes of the international community, which has extended its hand of sympathy to the tsunami affected persons in regard to the utilizing of funds.⁵

“Disobeys any direction of the law”

The above requirement can be attracted in the following ways:

Judicial Notice

State initiated reliefs are given to devastated persons and this is a fact regarding which the Magistrate’s Court could take judicial notice.

The Evidence Ordinance

Section 57 of the Evidence Ordinance⁶ enacts:

“The Court shall take judicial notice of the following facts:”

It is true that, the situation under consideration is not mandatorily provided for expressly in this section. Nevertheless, the section does not prevent the Court from taking judicial notice of other facts in its discretion.⁷ It must also be acknowledged that, legislation cannot cater for exceptional contingencies such as those arising from *Vis maior*.

Given the fact that Section 57(9) decrees that, “The Court shall take judicial notice of

..... The ordinary course of nature,” without the need for legislative amendment, it is submitted that, the inherent discretion that any court possesses, to deal with “extraordinary” interventions in the course of nature⁸ is not to be regarded on having been ousted.⁹

Impact of Relevant Constitutional Provisions

When Article 3, read with Article 4(d) and Article 12 of the Constitution is considered in this regard, a distinct constitutional reasoning can be extracted as having a bearing on the issues discussed in this paper. Article 3 confirms the sovereignty of the People, the powers of government and Fundamental Rights. The judicial power of the people is exercised by parliament through the courts as per Article 4(c) of the Constitution. Article 4(d) mandates that fundamental rights have to be respected, secured

⁵The concerns expressed domestically and internationally in regard to inadequate distribution of aid so generously given and the corruption manifest in these processes are of wide public knowledge.

⁶Volume I, LEC (1980).

⁷ *Contra*: the use of the term “Shall” with the term “May”

⁸ For the Tsunami was indeed an extraordinary intervention of nature.

⁹ On the principle, what is not expressly excluded must be regarded as being permitted. Vide: Justice M.D.H. Fernando in *Peter Atapattu v. People’s Bank* (1997(1) SLR at pp 217-218.)

and advanced by the all organs of the government. Thus, it may be asserted without dispute that all organs of government including the Magistrate's Courts have to respect, secure and advance fundamental rights.

Article 12 decrees equality and equal treatment which postulates non-arbitrariness as judicially expounded by the Supreme Court.¹⁰ Justice MDH Fernando held in this case that:

“there is no doubt that Article 12 ensures equality and equal treatment even where a right is not granted by common law, statute, or regulation and this is confirmed by the Provisions of Article 3 and 4(d)”.....”

Thus, the Magistrate's Courts could and should be obliged to take notice of the plight of those who run the risk of being deprived of an entitlement and/or relief should it be found that, public servants who are charged with the duty of remedying their plight, are found to be in dereliction of their powers and/or duties.

Customs

It is also an accepted fact that, according to the modern democratic ethos, it is the duty of the government in power to render reliefs to its citizens when there is a calamity of the kind that was evident by the tsunami.¹¹

Conclusion – Need for Sensitive Interpretation of the Law

What is called for is public consciousness of the plight afflicting tsunami victims in respect of the lack of a properly working public administration structure addressing their needs and grievances. It is unfortunate that, civil society and community based organizations which boast of commitment to socio-economic concerns have not taken the issue of tsunami affected person to the forefront of the public debate and successfully used the law for that purpose.

Thus, given the said lack of initiative, it is opportune to make a clarion call that, the government takes the initiative to deal with the action and/or inaction of public servants who are obliged to deal with Tsunami funds, for the purpose of which it is further recommended that, a Special Investigative Unit be established independent of the ordinary police force to take action with or without formal complaints by tsunami affected persons and initiate proceedings under Section 136(1)(a) of the Code of the Criminal Procedure Act.

This should form the core of a conscious response to the outstanding problems of a segment of Sri Lanka's society devastated by a natural calamity of unprecedented severity such as the tsunami of 24.12.2004.

¹⁰ *WKC Perera v. Prof. Daya Edirisinghe* (1995)1 SLR at 158.

¹¹ See: Article 27(2)(b), (9) and (13).

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