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MISTAKING POLITICS FOR
GOVERNANCE

THE POLITICS OF
INTERIM ARRANGEMENTS
IN SRI LANKA 2002-2005

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2002-2005

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ICES

The authors have contributed equally to this book –
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Introduction

The concept of an interim administration first entered the parlance of Sri Lankan politics in 1987 with the establishment of an Interim Administrative Council for the Northern and Eastern Provinces as part of the Indo-Sri Lanka Accord. The council collapsed shortly afterwards. In February 2002, the newly elected Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) signed a Ceasefire Agreement (CFA), ending the third phase of major armed conflict between the two parties. In the ensuing peace process, the notion of interim agreements and processes as a precursor to a final settlement took on a pivotal role. This paper examines the origins, structures and outcomes of interim arrangements, proposed and implemented, in Sri Lanka between 2002 and 2005.

The use of the 'interim' as a means to guide a peace process towards a final settlement has become an accepted strategy in peace processes following its employment in attempting to bring about a solution between Israel and Palestine. The primary utility of an 'interim' approach over a 'one-shot' approach is premised on two realities. First, it facilitates an enhancement of trust through deliberately collaborative decision-making on key issues. The habit of cooperation thus alleviates the prevalent atmosphere of mistrust and mutual fear. Second, an 'interim' process builds in accountability and oversight to a wider peace process. Interim arrangements are those bodies and decisions made within such a framework. These arrangements can range from trust-building documents to quasi-legal decision-making bodies. In Sri Lanka, during the period studied, three types of interim arrangements can be identified – subcommittees and structures arising from the plenary of the peace negotiations, the negotiation over an interim administration for governance in the Northern and Eastern Provinces, and the proposed joint mechanism for tsunami reconstruction. A

matrix of the relevant interim arrangements is offered in Table 1.

The paper finds that the post-CFA politics of interim arrangements in Sri Lanka have been impacted upon by the politics of the wider peace process. Primary among these was a mistaken belief that successful negotiations could be predicated on a bilateral process involving the government (narrowly defined as the UNF) and the LTTE. Less obvious but as damaging was the inability of all stakeholders to clearly indicate a path for LTTE legitimacy, especially concerning the vexed issue of ‘parity’. Did parity begin at the negotiating table and end there? If so, this made a mockery of the LTTE belief that they were ‘equal partners’, at least where the concern of North-Eastern reconstruction and rehabilitation was concerned. This was also associated to the debilitating ‘expectations gap’ that maligned the peace process, especially with regard to development and reconstruction. Hence, the inherent problems with the peace process have also plagued the establishment and effective functioning of interim structures. In some instances, the ‘politics’ prevented any progress on more divisive discourses concerning the ‘interim’. Important here is the prevalent political culture of the South and the failure to involve President Kumaratunga and the SLFP, let alone constructively engage potential ‘spoilers’ like the JVP and the JHU. The results were seen clearest in the dissolution of the SDN largely due to the failure to make any progress on High Security Zones, a fundamental obstacle to normalization in the North-East.

Conversely, we would also underline that the misguided notion that ‘politics’ did not play a part in subcommittees and proposed power-sharing arrangements was a critical impediment to their successful functioning. This was particularly prevalent in the belief that the subcommittees were essentially structures that functioned within the larger milieu of the national bureaucracy. On the one hand, the subcommittees were ultimately creatures of the peace process and therefore vulnerable to their wider dynamics. On the other hand, once construed as essentially an element of the bureaucracy, they were at the mercy of a hierarchical and restrictive system. Red tape, delays and disinterest impacted upon efficient functioning and quick results. This was particularly true of SIHRN and it led to a rapid disillusionment on the part of the LTTE. Similarly, the UNF government approached the reconstruction of the North-East as a purely economic exercise which once again ignored its intrinsically politicized nature and the paramount need to position subcommittees with a limited and focused

Table 1: Matrix of Interim Arrangements in Sri Lanka 2002-2005

Name	Description	Endogenous Constraints	Exogenous Constraints	History
Hard				
Subcommittee for De-Escalation and Normalization (SDN)	Examine ways and means to ensure resettlement, the return of private property and the resumption of economic activities	Common vision No coordination Clash of personality High Security Zones	Militarization Politicization of High Security Zones	Set up – plenary, Nov 2002 2 meetings in Omanthai (Nov 2002) and Muhumalai (Dec) Suspended, Jan 2003
Subcommittee for Political Matters	Explore political issues	Lack of will	Pressure on arriving at political agreement	Set up – plenary, Nov 2002 No meetings
Apex-Body Proposals	Proposals submitted by the UNF for an interim administration in the N-E	Weak coalition govt. Lack of consensus Nationalist opposition	Pressure on arriving at political agreement Loosely imposed aid conditionalities	Proposals of May 2003 Rejected by LTTE
Provisional Administrative Structure (<i>July Proposals</i>)				Proposals of July 2003 No official LTTE response
Interim Self Governing Authority (ISGA)	LTTE proposal for interim administration in the N-E	Commitment to <i>Eelam</i> Focus on ensuring parity is recognized	Commitment to democracy; pluralism; renouncing violence Southern opposition	Submitted by LTTE, Oct 2002 Precursor to change in govt. SLFP mixed signals on negotiation; not as ‘basis’
Medium				
Subcommittee for Immediate Humanitarian and Rehabilitation Needs (SIHRN)	Short-term mechanism for responding to immediate needs of the population of the N-E	Lack of legal status Lack of political will Bureaucracy	Over-emphasis on economic dividend by aid community	Set up – plenary, Nov 2002 4 meetings at Kilinochchi (Nov & Dec 2002, Jan & Feb 2003) LTTE withdrew, April 2003
Post-Tsunami Operational Management Structure (P-TOMS)	Joint mechanism to disburse aid, speed up reconstruction efforts in tsunami-affected districts of N-E	Exclusion of Muslims Kumaratunga’s anti-peace track record	Opposition by JVP, JHU and Sangha	GOSL, LTTE signed, July 2005 Suspended by SC judgement
Soft				
Subcommittee for Gender Issues (SGI)	Ensure effective inclusion of gender issues in process	Lack of access to power Lack of formal status	Insufficient attention and weight to SGI Affected by vagaries of the peace process	Set up – plenary, Jan 2003 2 meetings in Kilinochchi (March & April 2003)

mandate in a wider discourse of constitutional reform.

Ultimately, each failure in the peace process diminishes the space available for negotiation and reduces the moral standing of parties, which in turn creates space for opposition to the peace process. In the final analysis, the interim arrangements path faced insurmountable obstacles and it is no surprise that even where some progress was made, it was limited and short-lived. It is hoped that in a future peace process, these lessons will be heeded. The interim approach *can* work but in the Sri Lankan instance, a loose set of guiding principles connecting the 'interim' to a vaguely defined final settlement is essential. In its absence, the pervasive politicization of Sri Lankan culture would denature and undermine any tangible progress. Most importantly, as brought out by this paper, *politics* play a fundamental role at every level and must be accounted for, tackled and indeed, incorporated.

We will approach the incorporation of interim power-sharing arrangements in the Sri Lankan peace process from both empirical and theoretical perspectives. The methodology employed for this paper has been based on primary and secondary research. Interviews were conducted with approximately twenty key actors including members of the government negotiating team, government officials, leaders of the Muslim community, Tamil parliamentarians, World Bank officials and members of both SIHRN and the SDN. This research was supplemented through three further avenues of research. Firstly, extensive research into documentary evidence related to statements and speeches made by members of the negotiating parties, the government opposition, the Sri Lankan armed forces, the Norwegian facilitator, the Sri Lanka Monitoring Mission, important international actors and civil society actors. Secondly, through the study of relevant agreements and proposals pertaining to interim governance structures and finally, the analysis of newspaper reports and analysis, policy documents, conference papers and academic texts. We also had the benefit of views put forward by a cross-section of relevant members of academia, civil society and government at a presentation of the first draft of this paper in June 2006.

The literature on peace negotiations, particularly related to parties' motivations in agreeing to cessations in hostilities, is clear that contending justifications can prevail. The work of William Zartman is the most thorough in this regard, and he has argued that parties are usually drawn to the negotiation table via a

'hurting stalemate' where the pain from continued warfare has outstripped any perceived gains from continued conflict. Nonetheless, this does not necessarily guarantee conditions for a durable peace. A ceasefire is often utilized as a period for 'limited strategic re-thinking' where the goals are maintained. However, a hurting stalemate can also create the conditions necessary for durable peace. It is often impossible to ascertain in the same time-space as the hurting stalemate in which direction events may ensue. This is especially true in a conflict case like Sri Lanka where mutual suspicions and a past history of broken promises colours judgement.

Throughout this paper, we have taken the view that both the UNF administration and the LTTE entered into the CFA and subsequent negotiations with the intention of arriving at a negotiated settlement. Given the difficulty of achieving a 'one shot' peace settlement at the outset, we feel that the two parties embarked on a series of interim arrangements that had the potential to build trust and pave the way for a final settlement. The counter-argument is that one or the other side (most commonly the LTTE) or indeed both, were merely indulging in negotiations while pursuing other goals and objectives. For the LTTE, this may have entailed a breathing space to re-arm and recuperate within an overall objective of carving out a separate state through decisive military means. Meanwhile, for the GOSL, it may have proven expedient to ensure relative stability while pushing ahead with socio-economic reform and economic regeneration. Given that decisively resolving this dilemma is virtually impossible, it is felt that the weight of evidence, ranging from public pronouncements, the relevant literature and personal testimonies, indicate that at the very least, the peace process was entered into with a positive mindset. Nonetheless, it is quite likely that both sides would have left open contingencies in the event of a return to conflict.

The first section of the paper will briefly discuss the wider conflict dynamics and structures in Sri Lanka, before going on to examine the concept of the 'interim' in peace processes in greater detail. The second section of the paper will outline the key events that led to the signing of the ceasefire agreement in 2002, and the subsequent evolution of the peace process. The third section will focus on interim power-sharing arrangements set up during the plenary of the peace negotiations, the failed attempt to constitute a joint mechanism to distribute funds for post-tsunami reconstruction and the debilitating debate

around normalization and demobilization. The fourth section will examine the proposals put forward by the GOSL and the LTTE towards the institution of an interim administration. The final two sections will address two key overriding factors – inclusivity and parity – that were fundamental contributors to the failure of attempted interim arrangements and ultimately the peace process itself. In conclusion, we will highlight key successes and failures, pinpointing potential lessons learned, and an agenda for progress in the hope that a subsequent peace process will take root.

1 Background

Few conflicts have been as protracted and seemingly intractable as that between successive Sri Lankan governments and the Liberation Tigers of Tamil Eelam (LTTE) fighting for a separate Tamil homeland, *Eelam*, in the North and East of the country. Its cumulative effects have been most visible in the deaths of more than 65,000 people and the displacement of millions more. Less visible has been the effect on the social fabric of the nation. Despite steady economic growth, with the exception of the year 2001, Sri Lanka remains the most unevenly developed state in South Asia with varying degrees of dissatisfaction in those districts outside the Western Province that have been unaffected by conflict. In the political sphere, from being projected as a success story in the developing world with vibrant democratic institutions and universal suffrage, Sri Lanka is presently characterised by deteriorating law and order, lack of accountability, corruption and the dominance of factionalised elites.¹

Conflict in Sri Lanka: A Brief Explanation of Origins and Persistence

Conflict in Sri Lanka can be attributed to a variety of sources – the failure of the British colonial power to leave behind a constitution that more accurately reflected the island's pluralistic nature thereby locking into place a misguided belief that the majority will rule with responsibility; the subsequent edicts that arose from that inaction which disadvantaged minorities, first the Tamils of recent Indian origin and subsequently the Sri Lankan Tamils through the 'Sinhala Only' Act, standardisation of university entry, and state-sponsored colonisation; the contending and fractious notions of 'historical homeland' put forward by

¹ See the Fund for Peace – Failed State Index 2007: http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=229&Itemid=366 [June 22 2007] Sri Lanka comes 25th.

both the Sinhalese and Tamils; the decision by the Tamil political leadership to demand a separate state and upon its refusal, the decision by mobilized youth to take up arms to fulfil that pledge; economic liberalization of the post-colonial state that arguably and unwittingly embedded social inequalities, factionalised elites, and promoted corruption, and the myopic and opportunistic decision-making of political elites in Colombo spurred by a system embedded in partisan and patronage politics, fuelled by nationalism and the effects of economic liberalization on the political classes and society as a whole. These and other factors are indicative of that fact that there is a complexity to the conflict that belies simplistic categorization.

John Richardson in his 2005 publication *Paradise Poisoned* posits that the “state of knowledge” on conflict in Sri Lanka had dwelled on seven fundamental causes which he encapsulates into four broad categories: ethnicity, identity and culture, political economy, effective governance and democratic governance, and leadership.² In the former category – ethnicity, identity and culture – it is worth looking at the argument made by the distinguished South Asian expert Stephen Philip Cohen, who has inscribed the Sri Lankan conflict within the category of one that is manifested by what he defines as a ‘paired minority’ syndrome.³ By this, he means that it is a conflict ‘rooted in perceptions held by important groups on both sides – even those that are not a numerical minority, and which may even be a majority – that they are the threatened, weaker party, under attack from the other side.’⁴ In Sri Lanka, the Sinhala majority constitutes approximately 74% of the population of 20 million.⁵ This considerably outnumbers the Tamil minority. Despite this, both ethnic groupings demonstrate the tendencies of a threatened ‘minority’, as the Sri Lankan Tamils fear for their security from the Sinhalese while the latter itself feels under threat from the 65 million Tamils that inhabit the South Indian state of Tamil Nadu just off the North-Western tip of Sri Lanka. A further complication is the belief manifest in many Sinhalese, and particularly the Buddhist hierarchy, the *Sangha*, that the

island constitutes the historical repository of Buddha and the philosophy he propagated. As a result, ceding territory to the Tamils cannot be countenanced under any circumstances. This has reinforced the strong belief that Sri Lanka must remain a unitary state. As a result of these factors, Sri Lanka is a perfect intra-state illustration of Cohen’s notion of a ‘paired minority’ conflict.⁶ In his perspective, such conflicts promote features such as insecurity and mutual suspicion that in turn, ensure longevity and intractability:

These conflicts seem to draw their energy from an inexhaustible supply of distrust. It is difficult for one side to compromise even on trivial issues, since doing so may confirm one’s own weakness and invite further demands. Furthermore, leaders entrapped in such conflicts are resistant to make concessions when they have the advantage, believing that as the stronger side they can bend the other party to its will. As if they were a teeter-totter, the two sides can take turns in playing the role of the advantaged/disadvantaged. They may briefly achieve equality, but their state of dynamic imbalance inhibits the prospect of long-term negotiations and tends to abort any effort to have an institutionalized peace process.⁷

In Sri Lanka, this zero-sum reality is accentuated further by two other factors. Firstly, where conflict revolves around contested notions of territorial homeland, intractability is heightened, and secondly, goaded by injustice, conflict becomes as Cohen puts it ‘morally charged,’ and therefore legitimated as the only route to ‘protect the threatened group’.⁸ This belief further constricts the space for alternate opinions as compromise is condemned on both sides. On the Tamil side, compromise has proven fatal for a number of moderate parliamentarians and intellectuals who have been assassinated. Ultimately, these factors have contributed towards both the failure of the state to implement decisions to ameliorate nascent conflict when it had been possible, and the inability of the two warring parties to arrive at a negotiated settlement once war broke out.

² John Richardson, *Paradise Poisoned: Learning about Conflict, Terrorism and Development from Sri Lanka’s Civil Wars* (Kandy: ICES, 2005): 39-44

³ Stephen Philip Cohen, *India as an Emerging Power* (London and Portland: Frank Cass, 2003): 32-34

⁴ Cohen (2003): 33

⁵ The 2001 Census recorded a population of 18,732,255. This, however, did not include parts of the Northern and Eastern Provinces under the control of the LTTE.

⁶ Further examples of intra-state ‘paired minority conflict’ are Northern Ireland and Cyprus whereas inter-state examples include Iran-Iraq, Israel and a number of its Arab neighbours, and Kashmir (India-Pakistan).

⁷ Cohen (2003): 33

⁸ Ibid: 33-34. Interestingly, he goes on to add that ‘the group sees itself as threatened because it is morally or materially *superior*. Even past defeats and current weaknesses are ‘explained’ by one’s own virtues, which invite the envy of others’.

Nonetheless, focusing purely on origins in comprehending protracted conflict is insufficient as elaborated by Winslow and Woost:

The post-ethnicity argument is the position that whatever the impetus for a war's development, whether rooted in the past or the consequence of twentieth-century political and ideological positionings in the language of ethnicity, an explanation of origins no longer serves as an explanation of persistence. This is because, over time, war produces a new social formation, one that is grounded in an economy that includes war and violence as a part of the reality to which people are fashioning their lives.⁹

This is, of course, intimated to in the multi-level categorization by Richardson. With regard to the economic causes for the persistence of conflict, the inspiration has been the work of Newton Gunasinghe, specifically his polemic essay on the correlation between economic liberalization and ethnic politics.¹⁰ Bastian has expanded on the correlation between the promotion of liberalization economics and the escalation of armed conflict.¹¹ Furthermore, a contemporary strand of conflict analysis in Sri Lanka has stressed that while the roots of conflict are multi-faceted – ethnic, societal and political – central to its intractability is the state.¹² This argument was strongly made by the 2001 Strategic Conflict Assessment and echoed by the 2005 follow-up.¹³ The latter made the point that while the roots of the conflict must be addressed, events over the last twenty years have fundamentally altered the nature of governance, and the extent of

⁹ Deborah Winslow and Michael D. Woost, "Articulations of Economy and Ethnic Conflict in Sri Lanka," in Winslow and Woost, *Eds, Economy, Culture and Civil War in Sri Lanka* (Bloomington: Indiana University Press, 2004): 8

¹⁰ Published in the *Lanka Guardian*, January 1984; reproduced as "The Open Economy and Its Impact on Ethnic Relations in Sri Lanka" in Winslow and Woost (2004): 99-114

¹¹ Sunil Bastian, *The Politics of Foreign Aid in Sri Lanka: Promoting markets and supporting peace* (Colombo: International Centre for Ethnic Studies, 2007)

¹² See for example Jonathan Goodhand, *Aid, Conflict and Peacebuilding in Sri Lanka* (London: The Conflict and Security Development Group, 2001), Jonathan Goodhand, Bart Klem et al, *Aid Conflict and Peacebuilding in Sri Lanka* (2005), Jayadeva Uyangoda, *Ethnic Conflict in Sri Lanka: Changing Dynamics* (Washington D.C.: East West Centre, 2007), Sunil Bastian and Robin Luckham, "Conclusion: The Politics of Institutional Change" in Sunil Bastian and Robin Luckham, *Eds, Can Democracy Be Designed: The Politics of Institutional Choice in Conflict-torn Societies* (London and New York: Zed, 2003): 303-320

¹³ Goodhand (2001), Goodhand, Klem et al (2005)

the response that is required to address a potential settlement. Conflict does not remain static and moves to address it, through force or negotiation, tend to re-define and reproduce conflict, its trajectory and dynamics.¹⁴ This is equally relevant whether we speak of the Sixth Amendment or the Thirteenth Amendment to the Sri Lankan constitution.¹⁵ Both were moves to address the conflict but would have impacted upon its ultimate resolution in vastly different ways. Transformation is impossible in the absence of continued and dedicated interaction with conflict. It can be argued that the realisation of a 'crisis of the state' has to a large degree resulted in the 'failure of leadership' argument cited by Richardson, and therefore, the failure to heed advice such as that offered here by Bastian and Luckham:

A great deal depends upon how decision makers use the political opportunities and spaces open to them at critical junctures of history, especially at moments of crisis or transition... They must respond to history in order to make history.¹⁶

These decisions can take a variety of forms, from constitutional reform to minute changes to 'the *failure* to make appropriate decisions when institutions are failing'.¹⁷ In Sri Lanka, the norm has been to crackdown or to abstain from making a decision, resulting in the failure of repeated governments to react to the opening of political opportunities. Sufficient empirical evidence is available to underline this point. In 1958 the strong opposition of his own government, the opposition and elements of the *Sangha* forced Prime Minister S.W.R.D Bandaranaike to publicly abrogate an agreement signed with the Federal Party

¹⁴ Jayadeva Uyangoda, "Federalism for Sri Lanka? Reconciling Many Solitudes" in V. R. Raghavan and Volker Bauer, *Federalism and Conflict Resolution in Sri Lanka* (New Delhi: Lancer and Centre for Security Analysis, 2006): 174-175

¹⁵ The Sixth Amendment to the constitution outlawed secession, including the advocacy of the establishment of a separate state within Sri Lanka's territorial boundaries, thereby disenfranchising the Tamil United Liberation Front (TULF), the major Tamil political party which had in 1976 called for the establishment of Eelam. The Thirteenth Amendment to the constitution made for devolution of power to the provincial level.

¹⁶ Bastian and Luckham (2003): 306

¹⁷ Ibid: 305. They note: 'Non-decisions may sometimes be as significant as decisions, as shown by the troubled history of Sri Lanka, which has been hamstrung for many years by its politicians' inability to agree on the constitutional reforms needed to make its polity more inclusive...' [305]

leader Chelvanayagam. The Bandaranaike-Chelvanayagam Pact as it was called would have restored Tamil as an official language and granted powers for a degree of self-rule in the regions. Similarly, in 1965, strident opposition forced Prime Minister Dudley Senanayake to scrap a similar accord with Chelvanayagam. In 1971, the Federal Party's submissions to the Constituent Assembly drafting a new republican constitution for Sri Lanka were summarily discarded. When J.R. Jayawardene came to power in 1978, he had a unique political platform from which to enact political change. Instead, the reform agenda to address Tamil grievances amounted to the inclusion of fundamental rights in the Constitution, and the devolution of powers to the District Development Councils, which was universally condemned as insufficient by Tamil parliamentarians. At the same time Jayawardene took a hard line to rising militancy by enacting a draconian Prevention of Terrorism Act (PTA) and ordering the armed forces to quell discord in the Jaffna Peninsula.

This history of decision-making has fed a process that reflects the trajectory of the conflict, from non-violent political agitation to full-blown conventional war. Cliffe and Luckham have noted that the discontent akin to the ethnic and societal antecedents of conflict in Sri Lanka are 'seldom sufficient to trigger widespread armed conflict until they penetrate the state itself, within which the contradictions and social tensions present in civil society tend to take especially concentrated and dangerous forms'.¹⁸ This analysis is echoed by the conflict assessments and a growing school of thought among active political commentators.

At the present time, two diametrically-opposed state-formation projects are competing for state power, focused on the self-proclaimed Tamil homeland.¹⁹ The LTTE, as the flag-bearer of Tamil nationalism, rests its claim on the existence of a historical Tamil homeland centred in the North-East, buttressed by the existence of a *de facto* state in areas it controls. The Sinhalese nationalist viewpoint aggressively countermands this with a discourse of a unitary state, embodying the right of the Sinhalese Buddhist majority to a position of pre-eminence.²⁰ The concept of an 'interim administration' has been a dominant

¹⁸ Lionel Cliffe and Robin Luckham, "Complex Political Emergencies and the State: Failure and the fate of the state," *Third World Quarterly* 20, 1 (1999): 35

¹⁹ Uyangoda (2007): 10-14

²⁰ See Ibid

factor in this discourse as the most visible aspect of the 'two-stage' approach with which the LTTE governs involvement in peace processes since 1995. This strategy was in direct contrast to President Kumaratunga's emphasis on 'core issues', a difference that ultimately fractured her efforts at negotiating with the LTTE.²¹ However, the UNF administration's trajectory towards peace coincided with the LTTE, if for different reasons, in perceiving a staged approach as the most feasible. It is the concept of interim arrangements coalescing on the issue of an interim administration that this paper is concerned with. At this stage, it is important to briefly address these concepts from a theoretical standpoint, drawing from their broad usage in the Israeli-Palestinian conflict.

Interim Arrangements in Theoretical Perspective

The use of 'interim arrangements' in post-conflict scenarios is driven by the belief that a staged, confidence-building approach with marked milestones offers better potential for success than a model premised on a 'big bang' single solution. The logic has been prominent in many twentieth century peace processes, most prominently between Israel and Palestine, where the first Oslo Accords of 1993 enshrined a Declaration of Principles on Interim Self-Government Arrangements. Subsequently, a plethora of interim agreements have been signed between Israel and Palestine. The approach is best used when addressing elements of final settlements, such as security or human rights. For example, the comprehensive peace agreement in Southern Sudan was importantly preceded by both a set of guiding principles (the Machakos Protocol) and interim agreements, even if some proved unsuccessful.²² Nonetheless, there is a worrisome feature where the interim process never fully graduates to negotiations on a final settlement, as has been the case in Palestine.

In the Sri Lankan instance, a number of factors in favour of this approach are immediately identifiable. First, is the impossibility of addressing a final

²¹ For an article addressing the 'stage-by-stage' versus 'parallel' approach, see Sathya, "Core Issues or ISGA? – A Classic Case of a False Question!" *Daily Mirror*, May 24 2004.

²² Most recently, the interim government of Somalia (based outside the country) signed an "interim agreement" with the Islamic Courts Council in control of much of the country's southern and central regions. This agreement, however, was said to have been minimal and brought the country no closer to any permanent resolution: Weinstein, Michael, "An Interim Arrangement Gives Islamists an Edge in Somalia" http://www.pint.com/report.php?ac=view_report&report_id=550&language_id=1 [October 13, 2006]

settlement in an environment of continuing insecurity. Second, such a final settlement is unattainable within the confines of the present Constitution. The relevant constitutional reform processes are also markedly untenable in the environment that the UNF found itself in, a situation that would have hamstrung any peace-minded government. The political system in Sri Lanka has engendered destructive political partisanship, virtually guaranteeing shaky coalition governments ensuring that even the lesser consensus is out of reach given that a two-thirds majority is required for any substantive constitutional reform. Third, the interim process would theoretically permit an environment of trust between the two sides through ongoing cooperation and interaction on important issues.

Notwithstanding this, perhaps the greatest attraction was the synchronization with the core goals of both the negotiating parties. The UNF, recognising the limitations of its position, and eager to embark on extensive socio-economic reform, and the LTTE, with its own desire to strengthen its state-building exercise in which progressive socio-economic reconstruction and resettlement in the North-East played a pivotal role, felt a staged approach would build trust while offsetting the potential mishaps inherent in negotiating on core issues. However, even the concept of an interim administration became too much for the UNF government to deliver, therefore giving way to the subcommittees for an interim period. As events unfolded, the process never returned successfully to that of an interim administration. At this stage, it is worth reviewing Malley and Agha's invaluable and persistent critique of the use of interim arrangements in the Israel-Palestine peace process.²³ One of three primary reasons for repeated failure was because:

It was premised on an incremental approach in which the parties lacked a well-defined vision of the ultimate goal. As a result, both Israelis and Palestinians treated the interim period as a time to shape the final deal through unilateral steps rather than through joint effort. Both

²³ Hussein Agha and Robert Malley, "Camp David: The Tragedy of Errors," *New York Review of Books* 48: 13 (2001): <http://www.nybooks.com/articles/14380> [December 18, 2006], Malley and Agha, "A Durable Middle East Peace," *American Prospect* 14: 10 (2003): <http://www.prospect.org/print/V14/10/malley-r.html> [December 18, 2006]. See also Agha and Malley, "The Last Negotiation: How to End the Middle East Peace Process," *Foreign Affairs*, May-June 2002: 10-18.

sides were determined to hold on to their assets (territory in Israel's case, the threat of violence in the Palestinians') as bargaining chips to be deployed in the endgame. Because the objective remained vague, neither side had a sufficient incentive to carry out its obligations, the goal always being appeasement of the United States rather than pursuit of desired purpose. And so each interim step became an opportunity for a misstep, and the logic behind the Oslo process – that interim measures would gradually boost mutual confidence – was turned on its head as each incremental violation further deepened the existing mistrust.²⁴

The authors argue that the interim approach has patently failed to instill confidence in the process. Each failed interim agreement – the Oslo Accords, the 1995 Interim Accords, the 1997 Hebron Agreement, the 1998 Wye Memorandum, the failed 2000 Camp David agreement, the 2003 'roadmap' – has instead served to redefine the conflict and entrench distrust and apprehension. Contrary to arguments that individual leaders acted as 'spoilers', this has been a failing of process and not of personnel.²⁵ While this is a moot point, it is clear that there are striking parallels to Sri Lanka. For example, the retention of assets as bargaining chips and the pivotal role of gaining international legitimacy has seen appeasement of the international community by both parties, 'rather than pursuit of desired purpose'.²⁶ In the former instance, the manifestation of this is the consistent refusal of the LTTE to consider laying down arms until a final settlement has been implemented. There are nonetheless two caveats that are of value both to the Israel-Palestine example and to Sri Lanka. As Uyangoda notes:

As we now know from retrospective wisdom, a key context in which the Israeli-Palestinian peace process ran in to crisis was not exclusively

²⁴ Malley and Agha (2003)

²⁵ Ibid

²⁶ United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Philip Alston has stated: "This is ultimately a struggle for legitimacy, not territory, and the Government and the LTTE recognize the strategic importance of achieving and maintaining international legitimacy." He adds that this provides the international community with powerful tools to intervene constructively (Address to the UN General Assembly, <http://www.tamilnet.com/art.html?catid=13&artid=20006>, October 20 2006). See also Suthaharan Nadarajah and Dhananjayan Sriskandarajah, "Liberation struggle or terrorism? The politics of naming the LTTE," *Third World Quarterly* 26: 1 (2005): 87-100

the interim nature of the agreements signed, but the absence of broad political consensus either in Israel or among the Palestinians over the settlement. The Norwegian led back-channel process of mediation was fundamentally flawed in the sense that it did not premise itself on creating political conditions in either society conducive and necessary for peace-making with the enemy.²⁷

In Israel, the party in opposition frequently acted as a 'spoiler', and in Palestine, similar polarization of politics occurred. In Sri Lanka, the experience has often been of unilateral peacemaking efforts ventured against powerful and emotive nationalist opposition. Second, it can be argued that it is not advisable to embark on an interim confidence-building process without a clear trajectory towards the final objective, ideally through a set of framework principles monitored by regional or international structures.

That said, much of the criticism offered by Agha and Malley misses a fundamental justification of the 'interim approach', which they accused in Israel-Palestine of being '*premised on an incremental approach in which the parties lacked a well-defined vision of the ultimate goal*'. It can be argued that lacking a 'well-defined vision of the ultimate goal' is inherent to the logic of the interim approach and not one of its inherent failures.²⁸ As noted above, we have two diametrically opposed state-formation projects characterised by Cohen's 'inexhaustible supply of distrust', and as such with radically different perceptions of the present reality and radically different visions of the future. In that environment, a well-defined vision of the ultimate goal is divisive, and the strength of a well executed interim approach is in its avoidance of such division by keeping open-ended the possibilities for the final picture. Instead, the interim approach, through deliberately collaborative trust-building initiatives and institutions, encourages the two parties to make modest but gradual progress on areas of mutual agreement. Each interim milestone would then assist in a steady normalization of relations, an experience of working together and cooperating, and ultimately, a new ground reality. In essence, therefore, when the final settlement approaches, it is not as all pervasive as it was at the beginning of the

²⁷ Jayadeva Uyangoda, "Beyond the Talks in Thailand: Towards Transformative Peace in Sri Lanka" (Colombo: CPA and Berghof, 2002): 11

²⁸ This defence of the interim approach owes a great deal to Rajesh Venugopal, University of Oxford, personal communication.

process. This is because progress has already been made and distance travelled on resolving common issues which in turn reduces the gulf between the two parties. Finally, the experience of having worked together in positions of responsibility which has yielded actions and decisions, ensures a change in outlook. This is, of course, particularly true for the non-state party, for whom the experience of limited governance and accountability is both rewarding and sobering.

This is the ideal in an 'interim approach'. In Israel-Palestine, Agha and Malley are correct to point to the deficiencies but those deficiencies should be limited to that particular peace negotiation and not universalised as a failure of the 'interim approach'. One final point has to be made. Johan Galtung has noted that for a trust-building approach similar to that envisaged by the 'interim approach,' a rigid, step-by-step strategy is not advisable. Instead, he extols the virtues of imagination over convention and linearity: a hundred steps in a hundred different directions builds trust better than any step-by-step approach.²⁹ An interim approach that takes a non-linear approach can generate progress in small but exponential manners in a multitude of areas and issues, guarding against the easy manipulability of a step-by-step approach. Therefore, any set of guidelines or framework principles must remain loosely defined, emphasising modes of conducts as opposed to modes of operation.

In Sri Lanka, the value of the interim approach has been acknowledged by the UNP as a 'pivotal ingredient' of the successful peace process in South Africa.³⁰ Despite this, in Sri Lanka, all attempts at peacemaking have either taken a step-by-step approach but with abstract notions of a final settlement or abstract notions of negotiating on core issues without addressing the ground realities at the time. In the post-2002 'peace process', as we will find below, there was an uneasy relationship between the 'interim' and the 'final' that failed to adhere to the ideal of an interim approach briefly outlined above.

²⁹ Luncheon meeting, ICES, 23 January 2007

³⁰ UNF statement urging UPFA to adopt a consistent stand on the ISGA, August 24 2004: <http://www.tamilnet.com/art.html?catid=13&artid=12726>

2 Evolution of the Peace Process

Numerous political commentators have posited that the seeds of the present peace process¹ lie in two key events, both of which acted as separate impulses on the two sides.² First, on the government side, the successful LTTE attack on Katunayake International Airport and the subsequent Annual Report of the Central Bank of Sri Lanka for 2001, which announced a negative growth of 1.4% representing the first post-independence contraction of the economy, and advised that “the country cannot continue to bear the cost of prolonged war, and hence, a speedy resolution of the conflict is essential.”³ The report noted that the “terrorist attack on the Katunayake International Airport in July sharply curtailed tourist arrivals, weakened business confidence and substantially reduced external trade. The last was the result of the imposition of a high war risk insurance premium on ships and airlines, following the attack.”⁴ On the LTTE side, it was said that the crackdown on international terrorism following the September 11 attacks in the United States was “a forceful reminder... of the

¹ The peace process as such can be said to run from December 2001’s unilateral cessation of hostilities to the present given that the Ceasefire Agreement signed in February 2002 remains valid. However, it is debatable as to the value of a document that pertains to cease hostilities when large-scale military operations are being fought in at least two different theatres of conflict, and bombings in Colombo remain an everyday possibility.

² See Saman Kelegama, “Transforming Conflict with an Economic Dividend: The Case of Sri Lanka”; Sunil Bastian, “How Development Undermined Peace”; Bernard Goonetilleke, “Sri Lanka Peace Process: What Lies Ahead in Sri Lanka”; and N. Ram “The Peace Process: A 2006 Reality Check” in Kumar Rupesinghe, Ed. *Negotiating Peace in Sri Lanka: Efforts, Failures & Lessons Volume Two* (Foundation for Coexistence: Colombo, 2006), pp 208-9, 247-9, 303, 408-9.

³ Central Bank of Sri Lanka Annual Report - 2001: 2. Available online at http://www.centralbanklanka.org/Chapter_1_AR_%202001.pdf [May 27, 2006]

⁴ Central Bank: 1.

limits of international tolerance”.⁵

With regard to the LTTE, in his account *War and Peace*, the late LTTE chief negotiator and theoretician Anton Balasingham notes that the LTTE leader Velupillai Pirapaharan first expressed a desire for peace and a negotiated political settlement to the country’s conflict when he met Norwegian peace envoys for the first time on October 31, 2000.⁶ The Norwegians had been invited to facilitate by President Chandrika Kumaratunga in February 2000, shortly after her re-election.⁷ At this meeting, Pirapaharan made it clear that in order for negotiations to commence, a process of de-escalation and normalization was a necessary pre-requisite. Towards this end, the Norwegian government presented a set of proposals to both parties in the form of a ‘Memorandum of Understanding’ setting out a series of actions in order to ‘improve the humanitarian situation and ease the human suffering’.⁸ The LTTE responded favourably on December 24, 2000 with an offer of a unilateral month-long ceasefire. However, the Kumaratunga administration decided to pursue the military objective enshrined in its “War for Peace” strategy and thus rejected the offer. The mindsets of both parties are clear in this regard: the LTTE wanted to negotiate from a position of military parity having made a series of military gains in the previous three to four years, regaining control of Mullaitivu, Kilinochchi and crucially, Elephant Pass,⁹ while President Kumaratunga wanted to militarily cripple the LTTE before beginning any negotiation process. Therefore, a stalemate ensued, and the LTTE called off its unilateral ceasefire on April 24, 2001 the day following the government’s final push to regain territory, Operation *Agni Khiela*. Thereafter, there was heavy fighting for three days, which resulted in no significant gain for the armed forces, and heavy losses to both sides.

⁵ Goonetilleke (2006): 303. See also Christine Fair, *Urban Battle Fields of South Asia: Lessons Learned from Sri Lanka, India and Pakistan* (Rand Corporation: Santa Monica, 2004): 65.

⁶ Anton Balasingham, *War and Peace: Armed Struggle and Peace Efforts of Liberation Tigers* (Mitcham: Fairmax, 2006): 341

⁷ D. B. S. Jeyaraj, “A Norwegian Initiative,” *Frontline*, 17: 5 (March 4 – 17, 2000), available at <http://www.flonnet.com/fl1705/17050500.htm> [August 31, 2006]

⁸ Balasingham (2006): 342

⁹ The LTTE captured Mullaitivu on 17th July 1996, Kilinochchi on 27th September 1998, and Elephant Pass on 21st March 2000. However, the LTTE was unable to re-capture Jaffna, though largely because of external support for the government from, in particular, Pakistan and China. This failure to capture Jaffna can also be seen as a factor in convincing the LTTE leadership that the military strategy had reached a stalemate, whether temporary or permanent.

In the context provided above, it is clear that the LTTE had offered a unilateral truce *before* September 11 and therefore, this was perhaps not a decisive factor in its decision-making process. The counter-argument as cited by N. Ram is that even prior to September 11, major countries – the United Kingdom, the United States and India – had imposed a ban on the LTTE or designated it as a terrorist organization, thereby placing limits on its fund-raising and organizational capabilities in the pivotally important diaspora.¹⁰ Indeed, the environment for secessionist struggle would have been particularly inhospitable in the immediate post-9/11 period. Therefore, it is true that the crackdown on terrorism, before and after September 11, 2001, would have played a role in the LTTE's thought processes. However, it is more likely that the primary spur would have been the achievement on the battlefield of a military stalemate, coupled with war weariness and battle fatigue.¹¹ Therefore, the LTTE could negotiate from a position of strategic parity. The late journalist D. Sivaram has stated:

[T]he LTTE leadership decided to start negotiations... because they were unequivocally satisfied by December 2000 that they had achieved a strategic parity with the Sri Lankan armed forces and were in a position to sustain that parity, barring an overwhelming and sustained external military intervention".¹²

Sivaram argues that the LTTE views 'military power first and foremost as a means to negotiate political ends', noting that those who indulged in the comforting view that the LTTE leader sued for peace in the post-September 11 environment were mistaken.¹³ The argument made with regard to the government needs also to be looked in the context of the limits of the military option and the declining morale of the armed forces. However, in this case, the immense economic cost of conflict and the inter-related benefits of relative peace have played an important role in driving forward the push for peace.

¹⁰ Ram (2006): 408.

¹¹ See Jayadeva Uyangoda, "Government-LTTE Negotiation Attempt of 2000 through Norwegian Facilitation: Context, Complexities and Lessons," in Kumar Rupesinghe, *Negotiating Peace in Sri Lanka: Efforts, Failures & Lessons Volume One*, 2nd Edition (Foundation for Coexistence: Colombo, 2006): 239-267, particularly pp. 243-8

¹² D. Sivaram, "The LTTE Will Negotiate Only with Parity of Military Status," *Daily Mirror*, January 28 2004. Reproduced at <http://www.tamilnation.org/forum/sivaram/040127.htm> [December 18, 2006]

¹³ Ibid.

2.1 The CFA and Peace Negotiations

In December 2001, the United National Front (UNF) led by Prime Minister Ranil Wickremasinghe swept to power on the platform of peace. Though Wickremasinghe won the parliamentary elections and as leader of the party with the majority in parliament became Prime Minister, the Presidency was in the hands of Chandrika Kumaratunga, leader of the rival People's Alliance (PA), who was entering the third year of her second term in office.¹⁴ Below, we will briefly offer a chronology of the four and a half years since the signing of the Ceasefire Agreement (CFA) on February 22, 2002. The CFA was signed speedily and without the input of either the armed forces or President Kumaratunga, who is also the Commander-in-Chief of the Armed Forces.¹⁵ This failure to consult Kumaratunga would adversely affect the peace process as it continued. She reacted at the time by expressing her 'shock and dismay', arguing that the decision not to consult her or present the draft Memorandum of Understanding to the Cabinet and Parliament prior to its announcement was an 'undemocratic act'.¹⁶ In defence of the UNF, there was a realisation that delaying implementation in a potentially futile effort to gain a broader consensus could result in the process being perpetually hamstrung. Procrastination could have proven fatal especially amid calls – at that stage, still a minority – that the UNF was entering an unholy alliance with terrorists.¹⁷ Nonetheless, the rapid signing of the CFA and the manner in which it was signed had subsequent negative implications which impacted upon the various post-CFA interim structures.¹⁸

¹⁴ The two major Sri Lankan political parties are the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP). The UNP led by Wickremasinghe was the chief constituent party of the victorious UNF alliance, while the SLFP was the chief constituent party of the PA (this included several other minor left-oriented parties) and was led by the President Kumaratunga.

¹⁵ The armed forces chiefs were given the opportunity to look at the document prior to the signing but did not play any part in its drafting or in amending it.

¹⁶ Statement made by Secretary to the President Mr. K. Balapattabendi, February 22nd 2002, cited at <http://www.tamilnet.com/art.html?catid=13&artid=6729>

¹⁷ This insinuation was also made during the election campaigns, with the snide '*Ali, Koti*' being bandied around to depict the UNF's call for peace as a clandestine plot with the LTTE to divide the country. *Ali* is the Sinhalese word for 'elephant', which is the party symbol of the United National Party, the chief constituent party of the UNF alliance, and *koti* is the Sinhalese word for 'tiger'.

¹⁸ See International Crisis Group, "Sri Lanka: Failure of the Peace Process," Asia Report No. 124, November 28 2006 for a critique of the lack of inclusivity in the approach undertaken by the Wickremasinghe Administration.

It should be noted that before the signing of the CFA and in the run up to negotiations in September 2002, the situation on the ground remained volatile and far from stable. Both the armed forces and the LTTE found it difficult to adjust to a situation of no-war. There was a significant delay in de-proscribing the LTTE and a failure on the government side to implement key elements of the CFA, especially with regard to creating conditions of normalcy in the North-East. The opening of the northern section of the A9 highway, for example, only happened on April 8, 2002.¹⁹ It can be argued that this was largely due to the unrealistic timelines imposed on some elements of normalization. For their part, the LTTE gradually began to take advantage of the ceasefire to eliminate informants, members of opposing Tamil paramilitary organizations, and military intelligence officers. However, while this began after the signing of the CFA, it accelerated in the period following the breakdown of negotiations. Even initially, therefore, the progress of the peace process was slow and doubts began to be raised about the longevity of the ceasefire.²⁰ The delay in deproscription was particularly problematic as the LTTE took a firm position that it would not participate at talks as a banned, illegal entity. Rather, they demanded a legitimate status, commensurate with their stated position representing the collective aspiration of the Tamil people.²¹

As such, the LTTE was deproscribed on September 4, 2002, paving the way for scheduled talks to begin in Sattahip, Thailand, from September 16 to 18.²² It also allowed the LTTE to enter negotiations as an equal partner, a status that the LTTE viewed as fundamental to its involvement in the peace process. Six rounds of negotiations were staged.²³ At the outset, the LTTE made it clear that

¹⁹ Balasingham (2006): 365

²⁰ S. Chandrasekheran, "Talking Peace and Preparing for War," South Asia Analysis Group, August 13 2002: <http://www.saag.org/notes2/note156.html> [December 18, 2006]

²¹ Balasingham (2006): 372-3

²² see <http://www.peaceinsrilanka.org/insidepages/Archive/September/banlifted.asp> [December 18, 2006]

²³ The six rounds of talks were held as follows:

- September 16th – 18th 2002 at Sattahip Naval Base, Thailand
- October 31st – November 3rd 2002 at Rose Garden Hotel, Nakhorn Pathom, Thailand
- December 2nd – 5th 2002 at Radisson SAS Plaza Hotel, Oslo, Norway
- January 6th – 9th 2003 at Rose Garden Hotel, Nakhorn Pathom, Thailand
- February 7th – 8th 2003 at Norwegian Embassy, Berlin, Germany
- March 18th – 21st 2003 at Prince Hotel, Hakone, Japan

they were following a two-dimensional approach whereby the urgent, existential problems faced by the Tamils would have to be tackled before embarking on the 'difficult process' of resolving the core issues. To this end, the LTTE advocated a stage-by-stage approach, in which immediate humanitarian issues were to be prioritised and tackled by an interim administrative mechanism.²⁴

At the opening round of negotiations, the issue of an interim administration initially gave way to the concept of a Joint Task Force to raise funds for reconstruction. By the second round of negotiations in Nakhorn Pathom, Thailand, it was clear that this was not feasible, leading to the formation of the Subcommittee on Immediate Humanitarian and Rehabilitation Needs (SIHRN) alongside the Subcommittee on De-escalation and Normalisation (SDN) and the Subcommittee on Political Matters (SPM). The three subcommittees were to report to each session of the negotiations between the two parties. The Terms of Reference of SIHRN state that it was a 'short-term mechanism for responding to immediate needs of the population' and its existence would not prejudice the development of any future interim structure. Rather, it would cease to function upon the establishment of an interim structure. SIHRN was headed by Secretary General of the Secretariat for the Coordination of the Peace Process (SCOPP), Bernard Goonetilleke, and the head of the LTTE Political Wing S. P. Tamilchelvan. The SDN, 'while accommodating the security concerns of each party,' would 'examine ways and means to ensure resettlement, the return of private property and the resumption of economic activities in these areas'. In addition, the two sides recognised the need to address matters relating to high security zones and other inaccessible areas in order to facilitate the resettlement of IDPs. The SDN was headed by the Secretary of the Ministry of Defence, Austin Fernando, and the LTTE Eastern Commander, Colonel Karuna. In recognition of the complex political issues at the heart of the conflict, the SPM was instituted to commence work in relation to relevant political matters. It was to be headed by the respective chief negotiators, G. L. Peiris and Anton Balasingham.

The rationale for the subcommittees arose from the fact that the UNF government made it clear to the LTTE that given the constitutional hurdles and the intransigence of President Kumaratunga, it did not have sufficient political power to push through the implementation of a fully-fledged interim

²⁴ Balasingham (2006): 382

administration. Therefore, they suggested a pre-interim administration which could later form the basis of an interim administration. The LTTE initially abided by this decision, recognising the difficulties the UNF government faced. In November, the Oslo donor conference brought about an initial pledge of funds to the Sri Lankan conflict and resulted in the installation of four co-chairs – Norway, the European Union, the United States and Japan.

The third round of negotiations held in Oslo in November took on added significance due to the so-called Oslo Declaration whereby both sides agreed to explore a solution 'founded on the principle of internal self-determination in areas of historical habitation of the Tamil speaking peoples, based on a federal structure within a united Sri Lanka.'²⁵ Both chief negotiators acknowledged that this represented a 'paradigm shift'²⁶ and as N. Ram notes, this was the first occasion in which internal self-determination figured in an official statement accepted by the Sri Lankan government, and the first occasion in which a 'federal structure' appeared in an official statement accepted by the LTTE.²⁷ On the LTTE side, the Oslo Declaration mirrored the Heroes Day speech made by Pirapaharan, where he spoke both of internal and external self-determination and the rights of a 'nation' to both, but also significantly stated that 'if our people's right to self-determination is denied and our demand for regional self-rule is rejected, we have no alternative other than to secede and form an independent state.' Ram, for one, argues that the LTTE demand for Eelam has not changed in the light of the Oslo Declaration.²⁸ It should also be noted that Balasingham in later statements made on the declaration has emphasised the use of the word 'explore', rather than state any commitment towards internal self-determination. Nonetheless, the willingness to seek internal self-determination in a federal structure in a united Sri Lanka – even if that meant exploring means to do so – was a significant step forward for the peace process. At the fourth round of negotiations in Nakhorn Pathom, a Subcommittee on Gender Issues (SGI) was set up to 'ensure the effective inclusion of gender issues in the peace

²⁵ <http://www.peaceinsrilanka.com/peace2005/Insidepage/PressRelease/RNG/RNG5thDec.asp> [December 18, 2006]

²⁶ Transcript of the Press Conference held at the conclusion of third round of negotiations in Oslo: <http://www.peaceinsrilanka.com/peace2005/Insidepage/Archive/December/Talks3Transcript.asp> [September 2, 2006]

²⁷ Ram (2006): 413.

²⁸ Ibid: 414-5

process'. Dr. Kumari Jayawardena for the GOSL and Sivahimi Subramaniam (Thamilini) for the LTTE subsequently headed the respective delegations.

The peace talks continued into 2003 and the seventh round of talks were to be held concurrent to a pledging conference for donor funds in Tokyo. On June 9, 2003, the Tokyo declaration outlined a US\$ 4.5 billion reconstruction package, stating that 'assistance by the donor community must be closely linked to substantial and parallel progress in the peace process toward fulfilment of the objectives agreed upon by the parties in Oslo.'²⁹ By this stage, however, the LTTE had withdrawn from the negotiations and had boycotted the conference.

2.2 The Breakdown of Negotiations

The negotiations broke down in early April, with the LTTE taking three interconnected actions. The first two actions were conveyed in a letter sent by Balasingham to Prime Minister Wickremasinghe on April 21, 2003. They announced a boycott of the Tokyo Donor Conference, in protest at being excluded from attending a preliminary session in Washington D.C. and secondly, announced a suspension of participation at negotiations urging the government to fully implement the normalisation aspects of the CFA and re-evaluate its economic development strategy to reconstruct the North-East.³⁰ Finally, on April 23, S. Tamilchelvan wrote a letter to Bernard Goonetilleke, the Secretary General of SCOPP and the Government chair of SIHRN, stating that the LTTE wished to postpone the next meeting of the Subcommittee. SIHRN did not meet again.³¹

The sixth round of negotiations was held in Hakone, Japan, from March 18-21. Between the meetings at Oslo and Hakone, the two sides met in Nakorn Pathom (Thailand) and Berlin. A number of issues had begun to dominate the agenda, causing friction and acrimony between the two sides. The slow progress in the implementation of the normalisation elements of the CFA, compounded

²⁹ Tokyo Declaration on Reconstruction and Development in Sri Lanka was held 9th – 10th June 2006 with participation by ministers and representatives of 51 countries and 22 international organizations: <http://www.peaceinsrilanka.com/peace2005/Insidepage/InternationalSupport/TokyoDonor/TokyoDec100603.asp> [September 2, 2006]

³⁰ See <http://www.peaceinsrilanka.com/peace2005/Insidepage/Proposals/docs/P210403A.asp> [December 18, 2006]

³¹ See <http://www.peaceinsrilanka.com/peace2005/Insidepage/Proposals/docs/P240403A.asp> [December 18, 2006]

by the controversy over the High Security Zones (HSZ) and then Major General Sarath Fonseka's report, had compelled the LTTE to question the government's intentions. Consistent violations of the CFA, particularly pertaining to the assassination of military intelligence officers and attempted smuggling of arms, epitomised by an incident on March 10 when an LTTE vessel was sunk by the Navy, had become key concerns for Colombo.

Commentators have speculated about the reasons behind the LTTE withdrawal from the peace negotiations. A number have posited that the negotiations were going 'too far, too fast' and that core political issues were to be on the agenda at the seventh round in Thailand giving rise to an LTTE fear that they would be locked into a 'peace trap'. The latter conjecture may be true; however, Balasingham has expressly noted his dissatisfaction on actual progress in the negotiations therefore bringing into doubt the 'too far, too fast' hypothesis.³² What can be argued is that the 'too far, too fast' was happening in areas that the LTTE were not comfortable with, while there was lack of progress in areas that the LTTE saw as pivotal, for example interim administration and normalization. In the course of the research for this paper, one view we came across was that Balasingham was to meet Professor G. L. Peiris in London in May 2003, thereby bringing core political issues firmly on to the agenda.³³ Evidently, the LTTE was uncomfortable in staying its hand on a final solution in the absence of gaining some degree of international legitimacy via an interim administration, ostensibly for reconstruction and a return to normalcy. Therefore, these arguments may be true. Furthermore, it is clear that the LTTE was beginning to grow distinctly uncomfortable over the extent of internationalisation in the peace process, which would only grow at the Tokyo conference, further entrenching the LTTE into a process of political transformation in order to attain international legitimacy and donor funding.³⁴ The decision by the LTTE to effectively block Ranil Wickremasinghe's candidacy in the November 2005 presidential election provides evidence to suggest that the 'international safety net' and arguably the decision to 'explore' a federal solution were, in the absence of tangible progress in self-rule through an interim

³² Balasingham (2006): 429-430.

³³ Interview with former SCOPP official June 2006.

³⁴ Balasingham (2006): 465

administration, not factors they were comfortable with.³⁵ It has also become common for a number of commentators, particularly pro-LTTE, to pick on the inability to attend the Washington Donor Conference as the key element in the breakdown of negotiations. We will analyse the importance of the Washington meeting later in this paper.

The demand for an interim administration took centre stage following the abrogation of negotiations. This followed on the heels of efforts by the international community, and in particular Norway, to secure LTTE participation at the Tokyo meeting. At a meeting with Pirapaharan, the Norwegian facilitators were given his views on what such an interim administration should constitute: it should be a new innovative structure for the North East with adequate authority and legal status for the rapid implementation of humanitarian and development activities.³⁶ It is important here to note that the government of Sri Lanka presented three sets of proposals, the first of which was co-authored with the Norwegian facilitator. The LTTE rejected all three sets of proposals, the culmination of which was a request by the government that the LTTE present their own set of proposals.³⁷ This request saw fruition in the form of the Interim Self-Governing Authority (ISGA) in October 2003.

2.3 Post-UNF: P-TOMS and 'Negative Peace' to Low Intensity Conflict

Despite arguably accepting Sri Lanka's sovereignty and unity, the ISGA sought far-reaching powers for the LTTE and therefore invoked a sharp response from President Kumaratunga. This constituted the taking over of three key ministries and the ultimate dissolution of parliament on February 7, 2004, after having for a number of weeks flirted with forming an alliance with Prime Minister

³⁵ Officially, the Oslo Communiqué of June 9, 2006, states: 'Noting the presidential election held in 2005 between the candidates who ran on the platform of negation of the accepted fundamental principles and the other who failed to implement the pledges made during the peace process and campaigned on the basis of having engineered a division of the Tamil Nation, as a consequence of which the Tamils exercised their democratic right and boycotted the election.' Furthermore, it also notes the 'repeated assertions of the GOSL that it has established an "international safety net" against the LTTE.'

³⁶ <http://www.peaceinsrilanka.com/peace2005/Downloads/Pmdocs/31May03%20-%20AB%20ltr%20to%20VH%2021May03.pdf> [December 18, 2006]

³⁷ There is some dispute over whether the LTTE had taken a unilateral decision to come up with their own set of proposals, as seems apparent in Balasingham's account. Balasingham (2006): 458.

Wickremasinghe. This negotiation came in the form of the 'Mano-Malik talks,' seven rounds of negotiations between appointed representatives of the UNF and the PA.³⁸ At the general election held in April 2004, President Kumaratunga's PA formed an alliance with the hard-line Janatha Vimukthi Peramuna (JVP), and as the United People's Freedom Alliance (UPFA) was successful in defeating the UNF. Equally significant for the movement for peace, the LTTE suffered a split in its ranks with the defection of the Eastern Commander Colonel Karuna and a number of his cadres. Despite her consistent criticism of the UNF handling of the peace process, Kumaratunga announced in June her intention to seek a resumption of negotiations based on the ISGA, though linked to a final solution, and within 'the contours of the sovereignty and territorial integrity of the country'.³⁹ Two factors prevented the resumption of negotiations: the LTTE's objection to the linkage of discussions on an interim arrangement with a final solution, and the fact that Kumaratunga faced significant opposition from within her own government, forcing her to once more contemplate an understanding with her great rival Wickremasinghe. With no progress on this front, Pirapaharan in November's Heroes Day speech, once more spoke of being forced into advancing the legitimate claims of the Tamil people through other means. It later became apparent that the LTTE was making preparations for a resumption of hostilities, moves that were brought to a halt by the tsunami on December 26, 2004.⁴⁰

The spirit of goodwill that followed the tsunami disaster, and the overwhelming pressure imposed by the international community for a joint mechanism to distribute relief funds, compelled the LTTE to overturn its initial decision to rule out any form of cooperative distribution of emergency funds. The debate on the P-TOMS, as it became known, was at times vitriolic and at complete

³⁸ See Bradman Weerakoon, "Initiating and Sustaining the Peace: Origins and Challenges (2002-2004)" in Rupesinghe (2006a): 30.

³⁹ "ISGA: CBK may bypass Parliament", leading article, *Sunday Times*, 13th June 2004: 1. Also "Govt. stands for talks based on ISGA," editorial article, *Sunday Times*, 13th June 2004: 10. The clearest position put forward by the LTTE was by S. Tamilchelvan who stated that the LTTE was willing to resume negotiations based on the ISGA, ruling out any counter government proposals as precursors to negotiations though they could be brought forward at a later stage. He added that the GOSL should be clear in its stance: "ISGA negotiable, says LTTE," *Daily Mirror*, 15th September 2004: 1.

⁴⁰ S. Tamilchelvan interviewed on Shakti TV, June 2006.

odds with the spirit and extent of the disaster. Nonetheless, despite the exit of coalition partner JVP who opposed the P-TOMS, President Kumaratunga signed the document in the summer of 2005 after significant delays in its finalisation. The JVP filed a fundamental rights petition in the Supreme Court against the P-TOMS. In its decision the Supreme Court imposed an injunction on certain provisions of the P-TOMS that provided significant power to the LTTE, on the argument that these provisions breached the Constitution. Final adjudication was ultimately called for on November 21, 2005, by which time the petition was withdrawn on the grounds that the new reconstruction agency, the Relief and Development Agency (RADA), had rendered P-TOMS irrelevant.

After the Supreme Court knocked down President Kumaratunga's bid to stay in power for a further year in August 2005, the November 2005 Presidential elections were contested by Mahinda Rajapakse as the UPFA candidate and Ranil Wickremasinghe. In the build-up, the Foreign Minister Lakshman Kadirgamar was assassinated at his Colombo residence by a sniper's bullet. Kadirgamar's assassination did not seem to garner an anti-peace vote against Wickremasinghe as Rajapakse's narrow victory in the poll was facilitated more by an LTTE-enforced boycott in the North-East. It did, however, lead to a travel ban on the alleged perpetrators, the LTTE, being imposed by the European Union. In Sri Lanka, Rajapakse's victory brought about a sharp and further deterioration of a perennially shaky truce. The LTTE consistently charged that the Karuna paramilitary group was operating alongside elements of the armed forces, having blamed it for the assassination of its Eastern Commander Kaushalyan in February 2005. On December 26, 2005, the TNA parliamentarian Joseph Pararajasingham was gunned down while attending a midnight Christmas mass in the Eastern town of Batticaloa. As with the Kadirgamar assassination, the perpetrators have not been brought to justice. The LTTE began to target armed forces personnel with roadside claymore explosions, in addition to continuing with its policy of eliminating military intelligence cadres and informants. By April 2006, approximately 67 had been killed, including two high ranking military intelligence officers.⁴¹

The slide to war was halted briefly by the February 2006 Geneva round of

⁴¹ Kumar Rupesinghe, "Analysis of the Implementation of the Ceasefire Agreement" in Centre for Just Peace and Democracy, *Envisioning New Trajectories for Peace in Sri Lanka* (Centre for Just Peace and Democracy and the Berghof Foundation for Conflict Studies, Colombo: 2006): 45.

'ceasefire' negotiations. 'Geneva I' as it has become known saw a government delegation led by Minister of Health, Nimal Siripala de Silva meet with the LTTE to determine methods of strengthening the CFA.⁴² The statement subsequent to the negotiations maintained that both sides were committed to respecting and upholding the CFA, and therefore, called upon the LTTE to take all necessary measures to ensure that there was no violence against the armed forces and police, and called upon the government to ensure no other armed group other than the armed forces carry arms, in accordance with the CFA.⁴³ This was evidently aimed at the disarming of the Karuna paramilitary group that the LTTE charged was undertaking operations with military support. It should be noted that the rapidly escalating violations of the CFA abated during this period, adding fuel to the allegation that the government or armed forces had a hand in controlling the Karuna faction and the LTTE in controlling the 'civilian forces' that were perpetrating acts of violence against the army and police.⁴⁴ However, upon their return, the government delegation appeared to backtrack on the promises made, which led to a relapse into the low-intensity conflict prevalent prior to the talks. Internationally, the LTTE found itself banned in Canada and the European Union, the latter ban causing the LTTE to protest the presence of members of the three EU members Finland, Sweden and Denmark in the Nordic SLMM. Negotiations on the role of the SLMM held in Oslo failed to take place over a dispute in the rank/diplomatic status of the negotiating teams.

⁴² Ceasefire Talks, February 22 – 23, 2006, Chateau du Bossey, Celigny, Switzerland

⁴³ The Geneva Statement, available at <http://odin.dep.no/ud/english/news/news/032171-990305/dok-bn.html> [August 31, 2006]

⁴⁴ Kumar Rupesinghe (2006: 45) provides figures that state ceasefire allegations fell from over 100 to 6 during this brief period of reconciliation, before steadily climbing in subsequent months.

3 Analysis of Interim Power-sharing Arrangements

3.1 The Ceasefire Agreement

This section of the paper will focus on the Ceasefire Agreement (hereinafter the CFA) as it is the primary and most vital document signed by the GOSL and the LTTE, and is an interim document which established an interim structure, the Sri Lanka Monitoring Mission (SLMM), an integral part of the overall peace process. An in-depth analysis of the agreement and related issues will be undertaken as the politics of the CFA impacted upon the peace process, its sub-processes and resulting structures. It has been argued that the agreement is based on a two actor framework that excludes other parties and is more suited to an inter-state conflict. However, as illustrated by other conflict situations, since the CFA is a document which seeks a cessation of hostilities, the fact the two primary armed actors (at the time of signing) were the only signatories is not problematic *per se*. The exclusive nature of the CFA could have been dealt with by the inclusion of all stakeholders in the negotiation process. Hence, for the purpose of analysis, this paper views the CFA as separate from the negotiation process.

The problems related to the CFA are both substantive and connected to procedure, i.e. the process undertaken in signing the document. The CFA is a bilateral document between the GOSL and the LTTE, and as a result does not recognise other parties to the conflict such as the Muslims. While the document prohibits 'offensive' military operations it allows the Sri Lankan Armed Forces (SLAF) to 'continue to perform their legitimate task of safeguarding the sovereignty and territorial integrity of Sri Lanka without engaging in offensive operations against the LTTE'.¹

CFA, Articles 1.2 and 1.3.

Another notable fact is that the document does not explicitly set out the areas under the control of the LTTE, i.e. there is no clear demarcation of territory controlled by each party. According to several interviewees this was a conscious decision of both parties.² There was however a difference in demarcation between the North and East. Though not stipulated in the CFA, the demarcation in the North was quite clear with a clear no-man's land, whereas the rural areas of the East were a messy patchwork that made demarcation difficult. In the case of the government, it could be argued that demarcation of territory would have meant unequivocally stating it was not in control of certain sections of the country, which while strategically placing them in a position of weakness, might have led to increased opposition to the CFA and peace process. Where the LTTE was concerned, clear demarcation might have exposed the fact that they did not control as much territory as claimed. Further, there were also areas that were not clearly within the clear control of either party. In such instances the CFA while not naming such areas, merely states that 'in areas where localities have not been clearly established, the *status quo* as regards the areas controlled by the GOSL and the LTTE, respectively, on 24 December shall continue to apply pending such demarcation...'³ The CFA goes on to state in Article 1.5 the 'Parties shall provide information to the Sri Lanka Monitoring Mission (SLMM) regarding defence localities in all areas of contention of Article 3. The monitoring mission shall assist the Parties in drawing up demarcation lines at the latest by D-Day + 30.' Despite this, the failure to clearly designate these areas resulted in both parties undertaking action to alter the balance of power, which led to struggles to gain or maintain control over an area. This points to the inadequacy of established mechanisms to deal with the consequences of the ambiguities of the CFA. For instance, why was there often confusion with regard to which party was in control of a particular area if the SLMM was aware of areas of control? Did the Parties fail to give complete information to the SLMM? Or did the fact that such areas were not mentioned in the CFA, enable the Parties to manipulate the ground situation and attempt to change the *status quo*? Or is it the case that both Parties paid little regard to the rulings of the SLMM and engaged in their power games in the public sphere regardless of the fact the SLMM knew of clear demarcation of areas of control?

² Interview with UNF party officials

³ CFA, Art. 1.5

Another important point to note is that the CFA does not prohibit both parties from re-arming. It merely states that Parties shall not move munitions, explosives or military equipment into the area controlled by the other Party.⁴ Since as a state actor, the GOSL is bestowed with the legitimate right to purchase weapons, one of the complaints of the LTTE about the CFA was that it shifted the balance of power by enabling the GOSL to rearm while imposing limitations upon the re-arming of the LTTE. Though the LTTE controlled certain portions of the seas adjoining the land masses under its control, the CFA made no mention of this matter either. This too was due to the sensitive nature of the issue which the GOSL feared would jeopardize the signing of the CFA. Evasion did not pay dividends as numerous incidents at sea relating to issues of control threatened the peace process at several junctures. The SLMM also came under fire due to its contradictory rulings on the subject. These issues not surprisingly impacted upon the interim structures that were established. The lack of clear demarcation of areas under control would no doubt have impacted upon the functioning of SIHRN, P-TOMS and particularly the SDN, which had to deal with controversial issues related to security.

The role of the SLMM was also problematic. The SLMM had no active powers, i.e. it had no enforcement powers. Therefore, compliance was at the mercy of the Parties. It became evident that in the event both parties did not respect the process and institutions, the monitors had no real capacity to ensure the effective observance of the CFA. Former Defence Secretary Austin Fernando points out that both the Sri Lankan Navy and the LTTE delayed providing information to the SLMM so that they could distance the SLMM and engage in confrontation.⁵ The SLMM itself has explicitly stated that the failure of the Parties to abide by SLMM rulings undermined its credibility.⁶ The public had high expectations of the SLMM and at times even seemed to blame them for not preventing violations of the CFA. This was due to many reasons. Most people were ignorant of the actual mandate and powers of the SLMM. Secondly, they often confused the SLMM with the Norwegian facilitators. Further, the small number of sixty monitors also meant people faced difficulties accessing

⁴ CFA, Art 1.7

⁵ Austin Fernando, "Peace Process and Security Issues" in Rupesinghe (2006a): 59.

⁶ Hagrup Haukland, "Sri Lanka Monitoring Mission: An Interview with Hagrup Haukland" in Rupesinghe (2006a): 152-4

the SLMM.⁷ Another problem faced by the SLMM was that because it had to maintain good relations with both the GOSL and LTTE it was not always in a position to publicly shame the parties into compliance, for fear it might be counter-productive. Hence, the lack of public censure of the Parties following an incident might have led the public to assume no action was taken, whereas the SLMM might have given its ruling privately to the Parties. The question we have to pose is whether quiet diplomacy was the correct approach to be utilised in dealing with recalcitrant parties, particularly the LTTE.

The process through which the CFA was signed was also marred by controversy. The President claimed the CFA was invalid as it was signed without conferring with her, as she in her position as executive president and commander-in-chief had the sole authority to sign such a document. It could be argued that this claim by the President coupled with the fact it was an extra-constitutional document somewhat diminished the legitimacy and authority of the CFA. At the same time the Sri Lankan Armed Forces was unhappy with the document because they viewed the document as favourable to the LTTE.⁸ It has been said that they were resentful as they were not consulted prior to the signing of the document.⁹ Even the one time Secretary-General of the GOSL's Peace Secretariat, Bernard Goonetilleke, has stated on record that the armed forces should have been given an opportunity to study the document. These comments, which were based on the belief the signing of the CFA was not a political decision but also a military one, point to a prevailing general confusion regarding the power of the political/civilian leadership over the military apparatus, that the military should be consulted only to obtain advice/information on specialised areas.

The army is said to have seen the 'CFA only as a temporary space' for the LTTE to re-group.¹⁰ As the discussion in the section on the SDN will illustrate, this attitude was reflected in the approach of the top brass of the army in shrinking the space available for discussion of controversial issues such as the High Security Zones (HSZ). The army also felt the sacrifices they had made to safeguard the

⁷ Ingrid Samset, "Trapped in the Peace Process: Ceasefire Monitoring in Sri Lanka," Occasional Paper (Working Group on Peace Support Operations, Nordic Research Programme on Security): 16.

⁸ Interviews with UNF party officials; Liz Phillipson and Yuvi Thangarajah, "The Politics of the North-East" in Goodhand, Klem et al (2005): 46-47

⁹ Phillipson and Thangarajah (2005): 46-47; Fernando (2006): 45

¹⁰ Phillipson and Thangarajah (2005): 46-47; Fernando (2006): 45

nation amounted to nothing.¹¹ This is echoed in Lieutenant General Nambiar's report on the HSZs, where he says political posturing in Colombo reinforced the view of military commanders that they should not become party to decisions that appeared to make concessions to the LTTE. Hence they became more entrenched in their positions. In an indirect way it would also have impacted upon structures such as SIHRN, as it would have affected the cooperation extended by the army to reconstruction efforts in the North-East, particularly if the army viewed improvement in the lives of those inhabitants as ultimately benefiting the LTTE. In the meantime, the JVP tapped into the dissatisfaction of the army to shore up support for its anti-peace campaigns.¹² This support boosted their opposition to the peace process in general, and structures such as P-TOMS in particular. The JVP also took advantage of the fact the CFA was not translated into the vernacular to create fears amongst the Southern public about the potential harm of the document. This was clearly evident in JVP campaigns against the P-TOMS during which they posited the P-TOMS as another example of attempts to divide the country, the first being the CFA.

Though the CFA is a significant document it is not a strong document and does not contain mechanisms to deal with the complex ground situation. Since the entire peace process flowed from the CFA, the inherent flaws within it and problems arising from it, adversely affected the functioning of the interim structures established at the negotiations. However, it is also important to address the counter-factual, i.e. given the circumstances was a stronger agreement possible in 2002? Though it was a weak agreement it served its immediate objective and was clearly the best possible at the time. The flaw in the strategy of the parties and the facilitator was that they failed to recognise the agreement was intended to only create conditions for itself to be superseded by a more powerful set of agreements and institutions in the future.

3.2 The Subcommittees and Post-Tsunami Operational Management Structure (P-TOMS)

This section will study the establishment and functioning of the Subcommittees and the Post-Tsunami Operational Management Structures (P-TOMS) situating it within the framework of the politics of the time which shaped and determined

¹¹ Fernando (2006): 48.

¹² Phillipson and Thangarajah (2005): 26

the outcome of these attempts to create interim mechanisms. Several themes emerge from the study. Though the LTTE wanted an interim arrangement for the North-East the politics of the South prevented the GOSL from pushing through a genuine interim structure. Hence, the parties settled on structures established with limited powers and within the parameters of the Constitution. With the aim of deflecting opposition from anti-peace, nationalist forces in the South both the GOSL and the LTTE attempted to depoliticize interim structures. Ironically, these very structures were often placed at the centre of vitriolic, emotional political debates and thereby ceased to exist, or existed in name only. The demise of these institutions highlighted inherent problems in the peace process and the strategies adopted by both parties. One issue related to the 'peace through development' approach of the GOSL, which will be discussed in-depth in the following sections. Secondly, the politics of the South and the uneasy cohabitation between the President and the Prime Minister impacted adversely upon the peace process, which was sacrificed for political expediency and electoral success.

The Sub Committee on Immediate Humanitarian and Rehabilitation Needs (SIHRN)

Box 1: Genesis and Structure of SIHRN

The Sub Committee on Immediate Humanitarian and Rehabilitation Needs (hereafter SIHRN) was established based on decisions made at the plenary to the peace talks on September 18, 2002 and further consultations between the GOSL and LTTE at the second round of negotiations at Nakhorn Pathorn on November 3, 2002. The Terms of Reference (TOR) of SIHRN state that it is 'a short term mechanism for responding to the immediate needs of the population' and that its establishment shall not impede the introduction of a provisional administrative structure. The TOR also state the Sub-Committee (SC) will cease to operate as soon as the interim structure is established. The SC is supposed to report to each session of negotiations between the parties. The role of the SC included identifying and prioritizing humanitarian and reconstruction needs of the population, deciding on allocation of financial resources required for such activities, identifying and selecting appropriate implementing agencies, monitoring the implementation of activities, ensuring the auditing of funds utilised for the operation of the SC and

the funds channelled to implementing agencies, and furnishing financial statements and narrative reports to each session of the negotiations. The guiding principles in the TOR contain statements on the importance of involving all ethnic communities, consulting beneficiaries, transparency and respect for international standards of human rights. The TOR state that SIHRN would be financed by the North-East Reconstruction Fund (NERF). SIHRN's membership consisted of four members of the LTTE and four GOSL members, with two of the four GOSL members from the Muslim community. The Secretariat was based at the Government Agent's office in Kilinochchi.

During the first week SIHRN received 526 proposals, mainly small infrastructure projects such as the (re)construction of tanks and roads. Initially, thirty five staff members were decided upon, with half the members proposed by each party. The Director Selvin Ireneuss, a Tamil in the Sri Lanka Administrative Service, was proposed by the LTTE and seconded to the SIHRN secretariat. Two Assistant Directors, a Sinhalese and Muslim were also appointed. These were D. D. Amaratunga and Sulaiman Lebbe Mohammed Faleel.

Participants in the SIHRN meetings included Bernard Goonetilleke, M. D. D. Peiris, Rishad Buhardeen, MP, Dr. S. H. Hasbullah, P. Maddugoda, K. W. E. Karaliedde and M. I. M. Rafeek, from the GOSL side, and S. Tamilchelvan, Dr. Jay Maheswaran, V. Balakumaran, Poonavan, Kausalyan, Tilak and Bava from the LTTE side. The Norwegian facilitator and the Government of Japan, as the Principal Advisor to the Sub-Committee, were also present at meetings.

According to the two chief negotiators, Professor G. L. Peiris and Anton Balasingham, the Subcommittee for Immediate Humanitarian and Rehabilitation Needs (SIHRN) was established in response to the LTTE's demand for an interim structure. Professor Peiris stated that the LTTE approached the government with a request to create an interim structure 'as they did not want to plead for assistance from what they called the "Sinhalese" government.' Though the political climate in Colombo, and in particular the cohabitation war raging between the President and Prime Minister did not allow the government to create an interim structure with substantive powers, Prof. Peiris said they recognised that certain structures

were required to meet the LTTE's need to be 'empowered'.¹³ Prof. Peiris stated that when he informed Balasingham of the government's inability to create a structure with substantive powers, Balasingham did not push for an interim structure but asked for another structure/option, which led to the establishment of SIHRN.

The Wickremasinghe government's peace through development strategy is nowhere more evident than in SIHRN. As Shanmugaratnam and Stokke point out, the government probably subscribed to the perception that normalization of every day life would temper nationalist views, and hoped the LTTE could be tamed, at least for a while, by economic benefits.¹⁴ As noted above, the LTTE preferred a stage-by-stage approach whereby urgent humanitarian needs were tackled prior to discussion of the core issues.¹⁵ The LTTE viewed the Sub Committees as 'pre-interim provisional mechanisms with limited powers to undertake humanitarian and reconstruction activities' which points to the LTTE's desire to depoliticize SIHRN. This was in line with the agenda of the government, which also sought to depoliticize the structure to circumvent opposition from Sinhala nationalist elements. Since the life conditions of the people of the North-East were difficult SIHRN was very important to the LTTE as a means of gaining legitimacy amongst the people who had suffered the consequences of two decades of armed conflict. As Partha Chatterjee states, the legitimacy of the modern state is grounded in popular sovereignty,¹⁶ hence the need for even undemocratic regimes, such as the LTTE, which seek legitimacy and recognition within the international sphere, to derive, or appear to derive, their legitimacy from the people. In this instance it appears the LTTE believed SIHRN was an important mechanism that would enable them to preserve their legitimacy amongst the people of the North-East through the delivery of services.

¹³ Interview with Prof. G. L. Peiris, June 2006.

¹⁴ N. Shanmugaratnam and Kristian Stokke, "Development as a Precursor to Conflict Resolution: A Critical View of the Fifth Peace Process in Sri Lanka" in Shanmugaratnam, (ed.), *Between War & Peace in Sudan and Sri Lanka* (Oxford: James Currey, forthcoming, 2007): 4: www.sangam.org/taraki/articles/2006/02-03_Development_Precursor_to_Conflict_Resolution.pdf [December 18, 2006]

¹⁵ Balasingham (2006): 382

¹⁶ Partha Chatterjee, 'Populations and Political Society', *The Politics of the Governed*, (Permanent Black, New Delhi, 2004): 27

While the LTTE sought to establish SIHRN for this purpose, it also packaged SIHRN in a manner that was attractive to the government. According to Prof. Peiris, the LTTE said it needed to convince the people of the North-East of the need to engage in the peace process, which could be done only through improvement in their day-to-day lives. The LTTE felt strongly that political and economic development had to go hand in hand. They pointed out that it was the means through which the peace process, the Sri Lankan government and any proposed solution could gain credibility in the eyes of the Tamil people.¹⁷ The LTTE therefore sought to achieve political ends through a depoliticized mechanism.

The LTTE hoped that engaging in reconstruction activities and providing services would reinforce its legitimacy in the eyes of the Tamil people and the international community. It would also have cemented their position as the sole representative of the Tamil people, a status already in part given by the CFA. As pointed out by scholars, the LTTE's need to control resources in the North-East is more about maintaining legitimacy and power over the people rather than greed.¹⁸ This is reinforced in Tamilchelvan's letter of April 24, 2003 to Bernard Goonetilleke announcing the LTTE's decision to postpone the next meeting of SIHRN where he says that due to the 'announcements made at our meetings, expectations among the people of the North-East have been raised to a high level'. The LTTE was clearly anxious about being perceived as powerless by the people of the North-East and feared the image it had created as an entity in control of a de-facto state in the position to provide for the people living within the territory under its control would be eroded. The means through which the LTTE sought to prevent this was by establishing itself firmly as an equal partner in the peace process through SIHRN which it expected to function as the conduit through which the people could gain access to the peace dividend. It is, however, ironic that the LTTE required the Sri Lankan government's cooperation and assistance to maintain its legitimacy amongst the people of the North-East as protector and provider, i.e. a state like entity.

Politics of Reconstruction: State Reform and the Limits of the Constitution

In establishing SIHRN both parties failed to realise the political nature of reconstruction and rehabilitation in Sri Lanka. Firstly, SIHRN's lack of legal

¹⁷ Interview with Prof. G. L. Peiris, June 2006

¹⁸ Phillipson and Thangarajah (2005): 9

status hampered its ability to effectively fulfil its mandate. According to the Terms of Reference (TOR), SIHRN was expected to give priority 'to activities aimed at rehabilitation of internally displaced people...and activities supporting the return of IDPs to their original homes...' The SIHRN Guidelines for the Selection of Projects in the North and East of Sri Lanka also list the resettlement of IDPs as one of the principal areas for implementation. Resettlement of IDPs is a legally contentious issue since properties may be occupied by squatters who themselves were displaced due to conflict. Since prescriptive law does not take into account forced migration, the rights of the original owner have to be balanced with the rights of squatters and settlers. As the law stands, most original owners would not be able to return to their properties. Despite the existence of these problems SIHRN did not consider the legal elements of humanitarian issues. Even if it had done so, SIHRN's lack of legal status, power and required expertise meant that it could not have effectively dealt with the resettlement of IDPs. Even though High Security Zones are one of the factors that prevent the resettlement of IDPs, the TOR of SIHRN make no mention of this or propose means of dealing with the issue. Although the Sub Committee on De-escalation and Normalization was formed, the TOR of both Sub Committees are silent on the need for coordination and cooperation between them. Furthermore, there is no doubt that the political nature of reconstruction, especially where downgrading High Security Zones were concerned, was intricately tied into the military dynamics of the LTTE.

Both parties also failed to take into account the centralised nature of the Sri Lankan state prior to the establishment of an extra constitutional, non-legal body such as SIHRN. An interviewee who was part of the UNF regime pointed out that the bureaucrats were not motivated to find solutions to the problems faced by SIHRN and instead had a 'what to do' attitude.¹⁹ Since SIHRN had no legal status there was no onus on existing governmental structures such as the Provincial Councils to collaborate with, or to give priority to the orders of SIHRN. Selvin Ireneuss, the Director of SIHRN pointed out that in practice a Director (such as the Director of SIHRN) cannot overrule a Secretary to the Ministry in the event a Ministry does not implement the request of SIHRN. Therefore, it was the responsibility of the Ministry of Public Administration to send circulars to all ministries and departments instructing them to give priority

¹⁹ Interview with UNF party official, July 2006

to the implementation of projects initiated by SIHRN.²⁰ Yet, this was not done. TNA MP Gajen Ponnambalam for instance, cited excessive red-tape in utilising foreign funds in the North-East, such as the need to obtain cabinet approval for funds that exceed Rs. 5 million, as one reason for the failure of SIHRN.²¹ As the ministers at the centre continue to control the dispensation of services, SIHRN had no power to direct or overrule the centre and was at the mercy of the bureaucracy. SIHRN's lack of power defeated the LTTE's intended aim for the subcommittee and rendered it irrelevant in their eyes.

Though SIHRN's lack of legal status could be cited as a reason for its slow functioning, paradoxically, according to Prof. Peiris, the informal, extra-legal nature of SIHRN was expected to work in its favour. He stated that the intention in creating SIHRN was to avoid the shortcomings of existing structures such as Provincial Councils, which he referred to as a 'cumbersome white elephant', and instead create institutions that would not be hampered by red-tape. He argued that the disenchantment with SIHRN had nothing to do with its institutional structure but with the attitudes of those involved in the process. He said turf wars ensued on the ground as Provincial Councils which exercised authority over many issues that were also within the purview of SIHRN had vested interests, and those manning the institutions felt threatened. Prof. Peiris also attributed SIHRN's failure to the limited time period within which they were expected to produce results.²²

Not surprisingly the politics of the South also impacted upon SIHRN. For example, the appointment of the District Coordinator for Mannar was delayed due to rivalries between the Muslim parties. Where the Coordinator for Ampara was concerned the government wanted to appoint a Sinhala representative while the Muslims wanted a Muslim appointed to the post.²³

Though SIHRN was hailed as an achievement at the time and touted as a 'testament to the commitment of both parties to work creatively on this issue'²⁴ one has to conclude that the government failed to appreciate the politics

²⁰ Interview with Selvin Ireneuss, June 2006

²¹ Interview, *Sunday Leader*, 20 June 2004

²² Interview with Prof. G. L. Peiris, June 2006

²³ Interview with Selvin Ireneuss, June 2006

²⁴ Dhananjayan Sriskandarajah, "The Returns of Peace in Sri Lanka: The Development Cart Before the Conflict Resolution Horse?" (Colombo: International Centre for Ethnic Studies, 2003): 11

of reconstruction and the importance the LTTE attributed to SIHRN. The government did not realise the LTTE had to perceive SIHRN as beneficial in order for the process to work. Government delays in appointing its nominees to the Secretariat and failure to smooth the way for SIHRN by instructing provincial and local government structures to give priority to SIHRN projects support this viewpoint.²⁵ As noted above, Prof. Peiris disputes this and attributes its failure to structural problems, such as the Provincial Councils. Since the Provincial Council system is the result of one of many attempts to find a negotiated settlement to the ethnic conflict through state reform, **its failure is political**, and reinforces the fact that substantive state reform is prerequisite for the success of any structure created as part of a solution to the ethnic conflict.

Issues such as the dual system of governance in the LTTE controlled areas, and the impact of the dynamics of the relationship and workings of these systems on SIHRN and its mandate, were ignored by the parties to the conflict, the facilitators and even multilateral aid agencies. Though the LTTE tolerated government structures in the areas under their control for purely pragmatic reasons, during a time of 'no war' when there was increased space for the government and multilateral agencies to provide services to the people, the LTTE obviously felt threatened and sought to consolidate its hegemonic position through means which adversely impacted upon the peace process. It can be deduced the LTTE expected such a threat to its hegemonic position and looked upon SIHRN as a means of maintaining its position as provider and protector within the framework of the peace process.

In the case of post-tsunami reconstruction too, the centralised state and the complicated provincial council and local government system made aid disbursement slow and inefficient even in the non-conflict affected areas. Not only was post-tsunami relief hampered by an inefficient bureaucracy but there were also claims of ethnicization of the disbursement of aid. For instance, the Human Rights Commission in its report on the Eastern province states that due to the ethnicization of divisional secretariats the government experienced problems allocating land for resettlement. In some cases people did not wish to move to government allocated land due to the ethnic composition of

²⁵ Interview with Harim Peiris, former Advisor to President Kumaratunga, June 2006

neighbouring villages.²⁶ Although the P-TOMS was intended to enable more efficient aid disbursement in the North and East, no thought was given to the unitary nature of the state, the complex bureaucratic system and other obstacles, such as the complex and volatile ground situation that the P-TOMS would encounter. It is apparent that no lessons were learnt from the experience of SIHRN.

The Wickremasinghe government also appeared to harbour the notion that including the LTTE in administrative structures would naturally lead to their democratization, which is a problem that has plagued the peace process from its inception. Bureaucratization is not democratization, nor does it lead to or guarantee democratization. Merely 'adding on' the LTTE to Colombo's highly centralised bureaucracy only consolidated the undemocratic, authoritarian, top-down manner in which the LTTE managed institutions in areas under its control. In this instance, a marriage of Colombo and Kilinochchi without any reform or mechanism in place to ensure democratic accountability and subsidiarity was a recipe for disaster.

The Economics of Politics: The Politics of Economics

Economic policies in Sri Lanka have been inconsistent, often 'dictated by the dominant ideologies of the day and the political dynamics of Sri Lanka's electoral system of government'.²⁷ At present, due to market exigencies, international trading regimes and the influence of the World Bank (WB) and the International Monetary Fund (IMF), the policies of the SLFP-led PA, and the UNP are not vastly different. The only difference is the UNP's wholehearted adoption of neo-liberal economic policies with the common neo-liberal disregard for marginalized groups. The reluctance of the PA to follow the same course can be attributed to the pressure of its coalition partners, especially the JVP, and the political astuteness of party leaders who realise that to be seen to privatise and liberalise at the behest of international monetary institutions would result in the loss of their support base – the Sinhala rural people and discontented youth.

²⁶ Human Rights Situation in the Eastern Province, Update 2005, Human Rights Commission of Sri Lanka, <http://www.hrsl.org/publications/reports/index.php> [December 18, 2006]

²⁷ Donald. R. Snodgrass, 'Economic Development in Sri Lanka', in Robert I. Rotberg, *Creating Peace in Sri Lanka: Civil War & Reconciliation* (Washington D.C.: The World Peace Foundation & The Belfer Centre for Science and International Affairs, 1999): 94

The UNP's policy with regard to the peace process in 2002 hinged strongly on economic policies, which they assumed would both keep the LTTE engaged in the process and obtain the support of the South. In 2003, analysts were arguing that the 'development imperative' was a shared priority (of both parties) and 'emerged as a first priority in conflict resolution; underpinning negotiations to date and, it is hoped, paving the way for a permanent political settlement'.²⁸ The consensus amongst both parties alongside other actors such as the international community and civil society was that 'joint and early action on securing the material dividends arising from peace can, at least in the short-term consolidate efforts at conflict resolution'.²⁹ This section will illustrate the inherent problems with this approach in that it disregarded various issues such as the politics of economics, structural impediments and the politics of the South. The policy also illustrated a lack of understanding of the needs and concerns of the electorate, particularly in the South.

As mentioned earlier, SIHRN is the perfect example of the peace through development policy in practice, as it was set up by the government and the donors on the assumption that development would be a point of convergence for the parties to the conflict. Yet, none of the actors took into account the divisive politicization of development which only served to exacerbate existing mistrust between the parties. For instance, the constant rumblings about development aid being disproportionately disbursed to the North-East could have increased suspicions government officials harboured about SIHRN, and led to diminishing cooperation between SIHRN and existing governmental institutions. Furthermore, the history of development policies and projects in Sri Lanka shows that development policies implemented by consecutive governments have exacerbated existing inter-community tensions and resulted in the 'unmaking of the island's mixed social and cultural geography, and old and deep local traditions of multiculturalism and co-existence between the island's diverse and culturally hybrid inhabitants'.³⁰ For example, development schemes, like Gal-Oya, which also served as colonization schemes, introduced new crop cultivation, such as

²⁸ Sriskandarajah (2003): 3

²⁹ Ibid: 3

³⁰ Darini Rajasingham-Senanayake, 'Beyond Institution and Constitution Building: Linking Post/Conflict Reconstruction and Deep Democracy' in Markus Mayer, Darini Rajasingham-Senanayake and Yuvi Thangarajah, Eds, *Building Local Capacities for Peace: Rethinking Conflict and Development in Sri Lanka*, (New Delhi: Macmillan India, 2003): 110

sugar, in areas previously used for paddy farming. This resulted in water-shortages in the area and adversely affected those engaged in paddy cultivation, mainly the Tamils and Muslims.³¹ In addition, state takeover of land belonging to Tamils and Muslims for colonization and development schemes, without provision of compensation, contributed to tension between the settlers and the Tamils and Muslims in the area. Despite shortage of land in the Jaffna peninsula and its dependence on the earnings of those working in Colombo and elsewhere in the island, no major development programmes or irrigation projects were initiated in the North. It is also important to factor in the fears of the Southern electorate that a major portion of reconstruction and development aid would be disbursed to the North-East.

Though cooperation on economic matters could have built trust and led to a political settlement³² the assumption that the 'peace through development' strategy could be achieved by establishing powerless interim structures, such as SIHRN, without even minimal state reform was naïve at best. Furthermore, despite fierce opposition in the South due to the perception, fanned by nationalist forces, that the peace dividend was going primarily to the North, the UNP chose to implement wide ranging economic reforms such as extensive privatisation of state owned resources, and retrenchment of state employees.³³ The donors supported the UNP's strategy of economic pragmatism as they too believed that 'the promotion of a liberal market economy and strengthening liberal institutions and values was the way forward for peace and prosperity in Sri Lanka'.³⁴ Though donor support was initially expected to provide the government 'considerable political mileage in its bid to counter domestic opposition and garner popular support',³⁵ the strategy backfired as Sinhala nationalist opposition to the peace process built up in the South. The opposition, led by the JVP and certain factions of the SLFP, focused on the role of the international community which it accused of pushing forward neo-liberal economic reforms that benefited only the privileged. These campaigns also made the Wickremasinghe government appear weak and incapable of safeguarding the sovereignty of the country by portraying him as the puppet of

³¹ Yuvi Thangarajah, 'Ethnicization of Devolution Debate and Militarization of Civil Society', in Mayer et al (2003): 25

³² See, for example, Sriskandarajah (2003)

³³ Bastian (2006): 257

³⁴ Ibid: 257

³⁵ Sriskandarajah (2003): 16

the international community, in particular of the WB and IMF. Further, Sinhala nationalist groups such as the JVP equated/linked the foreign 'elements' which were pushing the government towards neo-liberal economic reforms with those groups/nations that were accused of appeasing the LTTE.³⁶

Although in theory the government appeared to espouse the 'peace through development' strategy, in practice their actions severely undermined the peace effort. The strategy employed by the government 'gave the impression of being a strategy developed independent of the peace process',³⁷ i.e. it took no account of the need to ensure the South benefited from the peace dividend. The government failed to understand that to the average citizen economic issues took precedence over the conflict, perhaps owing to the fact that the Southern electorate experienced the conflict in a less intense manner than the North-East. Orjuela argues that to the 'majority of the Sinhalese the war has not been experienced directly - instead poverty and high costs of living are the largest problems - problems which the ceasefire agreement and the peace process has not brought a solution to. It is thus important for the support of the Sinhalese, that they also see how they can benefit from an end to the war'.³⁸ There was for instance no poverty alleviation programme initiated by the UNP. Instead, existing programmes were tightened, which diminished the support the government had garnered in the South.³⁹ As the government focused on the LTTE and the international community it failed to realise the importance of the 'battle for the extremist Sinhala Buddhist soul'⁴⁰ which impacted upon all actions of the government with regard to the peace process, whether setting up interim structures, providing aid to the North-East or even continued engagement with the LTTE.

Disguising Politics as Governance

It is our contention that the failure/non-functioning of established interim structures was due to attempts by both the GOSL and the LTTE to pass

³⁶ Ahilan Kadirgamar, 'Engaging the JVP on Federalism', *Tamil Times*, 24: 6, June 2005: 27

³⁷ Bastian (2006): 274

³⁸ Camilla Orjuela, "The Peace Process in Sri Lanka and the Role of Civil Society," Tromsø Centre for Peace Studies Working Paper No. 6 (2003): <http://uit.no/getfile.php?PageId=3324&FileId=35> [December 18, 2006]

³⁹ Bastian (2006): 273

⁴⁰ Ajith Samaranayake, "Modern politics played out to ancient war drums," *Sunday Observer*, June 26 2005: <http://www.sundayobserver.lk/2005/06/26/fea02.html> [December 18, 2006]

political decisions as decisions related to governance. The efforts of the parties to depoliticise politically charged issues by downplaying their importance or by ignoring them, only served to exacerbate suspicion and opposition. For example, debates on SIHRN focused on the supposed non-political nature of the structure. Was SIHRN a political body or merely an administrative structure? Selvin Ireneuss for instance said that it was a political body which was created only to set priorities.⁴¹ As stated above, where the LTTE was concerned, the structure was viewed as a non-political means of ultimately achieving political ends. On the other hand, an interviewee, who was a part of the PA regime during President Kumaratunga's tenure, felt it was a non-political body which failed due to that very fact.⁴² He pointed out that members of SIHRN had no political access, which was one reason it was unable to ensure its decisions were implemented. Though both parties may have made public statements that SIHRN was established for purely humanitarian purposes the fact remains the structure was ultimately about power sharing, a core issue that forms the crux of the conflict and one which both parties were reluctant to discuss. Power is a political issue and has to be dealt with as such instead of being disguised as an issue of governance. The government therefore would have viewed SIHRN as a means through which to manage the conflict through economic development of the North-East while searching for a long-term solution within an unstable and fractured polity.

It can be argued that SIHRN had many inherent shortcomings due to which the structure would have failed to function effectively and meet the expectations of the parties even if negotiations had continued. For example, SIHRN did not have a roadmap or blueprint but functioned on a project basis, i.e. its work was conceptualised in terms of short-term projects rather than long-term processes and methods. The SIHRN Guidelines for Selection of Projects in the North and East of Sri Lanka for example cite that its aim is to 'ensure the speedy selection of projects funded through the North and East Reconstruction Fund (NERF) for implementation...' Though quick action is required to meet immediate humanitarian needs, one doubts whether speedily selected short-term projects outside the framework of a long term comprehensive macro plan would contribute towards providing the people with a sustainable peace dividend.

⁴¹ Interview with Selvin Ireneuss, June 2006

⁴² Interview with PA official, March 2006

Further, considering the North-East has been affected by two decades of armed conflict, the failure to formulate a macro plan is a serious shortcoming that would have hampered the effective functioning of the structure. The attempt by the parties to the conflict, the co-chairs and the donors to push development as a point of convergence between the parties was in effect an attempt to disguise (to borrow a phrase from Rob Jenkins) politics as governance.⁴³ As discussed in-depth earlier, the politics of development and aid in relation to the conflict and reconstruction was ignored, and both the government and the LTTE sought to create a depoliticized body to deal with extremely political issues. Devoid of political context a mechanism such as SIHRN, which was expected to function in a politicized environment and deal with politically sensitive issues, became a paper institution.

Box 2: Post-Tsunami Operational Management Structure (P-TOMS)

The GOSL and the LTTE signed an agreement on June 24, 2005 to establish a mechanism titled Post-Tsunami Operational Management Structure (P-TOMS) to disburse aid and speed up reconstruction and rehabilitation in the six tsunami affected districts in the North-East. The structure was to consist of three tiers: a High Level Committee, Regional Committee and District Committees. The Committees were expected to discharge their duties to address the concerns of the people in the Tsunami Disaster Zone (TDZ) which was defined as areas affected by the tsunami, including all tsunami affected land areas of Sri Lanka that are adjacent to the sea, within 2 kilometres landwards from the mean low water line. The MOU provides for the High Level Committee to bring additional areas within the TDZ if such area has been directly affected by the tsunami or the displacement and resettlement of persons as a result of the tsunami. The agreement explicitly states that the MOU will not in any way affect or prejudice the Ceasefire Agreement between the GOSL and the LTTE.

The functions of the High Level Committee include policy formulation for equitable allocation and disbursement of funds in the TDZ, provision of advisory services and monitoring the functioning of P-TOMS. The Committee was to consist of 1 nominee each of the GOSL, LTTE and Muslim parties. Members were to elect one of the members to function

⁴³ Rob Jenkins, "Mistaking 'Governance' for 'Politics': Foreign Aid, Democracy and the Construction of Civil Society" in Sudipta Kaviraj and Sunil Khilnani, Eds, *Civil Society: History and Possibilities* (Cambridge: Cambridge University Press): 250-268

as Chairperson with the chair rotating among the members, with each member serving for two months. The Committee was to also have two observers, one representing multilateral donors and the other representing bilateral donors. The decisions of the Committee were to be based on consensus and in the event consensus could not be reached the parties were to engage in consultations with their nominating parties to reach an agreement. If consensus was not possible even after this process, cooperation in the High-Level Committee could be suspended after 14 days notice. The Committee was to be located in Colombo.

The Regional Committees were mandated to act within the TDZ in the specified six districts. The Committee was to develop strategies for prioritization and implementation of post-tsunami relief, rehabilitation, reconstruction and development, approve and manage projects, manage funds and conduct overall monitoring of projects. The Committee was to consist of two GOSL nominees, of which one was to serve as Deputy Chairperson, five LTTE nominees of which one was to be Chair and three nominees of the Muslim parties of which one was to serve as Deputy Chairperson. Like the High Level Committee, the Regional Committee would also make decisions based on consensus and in the event consensus could not be reached decisions would be made by a simple majority with the Chair possessing a casting vote. If a proposal did not get a simple majority and at least two members requested redressing the decision relating to the proposal, the rejection would require two thirds majority (seven members). Notwithstanding the above provision if a decision taken adversely affects a minority group, acknowledged by at least two members of the Committee, approval required two-thirds majority. The Regional Committee was to be headquartered at Kilinochchi. The District Committees were to identify and prioritize needs, generate, receive, appraise and prioritize project proposals from various stakeholders and submit recommendations to the Regional Committee and monitor and report on project process to the Regional Committee.

A Post-Tsunami Coastal Fund was to be set up for the six districts consisting of unspecified (program) funds and secretariat funds. The unspecified (program) funds were to consist exclusively of foreign funds while the secretariat funds were to consist of both foreign and local funds. The parties were to appoint a multilateral agency to be the custodian of the Fund.

The attempt by both parties to downplay the political nature of the structures established in collaboration with the LTTE continued with the Post-Tsunami Operational Management Structure (P-TOMS). This led to questions regarding whether P-TOMS was part of the peace process and linked to the conflict or a mechanism set up to administer humanitarian aid. Both parties downplayed the agreement by assigning low profile, non-political persons to sign the MOU on behalf of the parties. The fact M. S. Jayasinghe, Secretary to the Ministry of Relief, Rehabilitation and Reconstruction signed on behalf of the government while Shanmugalingam Ranjan, Deputy Head of Planning and Development Secretariat signed on behalf of the LTTE, clearly illustrates the attempt by both parties to depoliticize the P-TOMS.

Questions regarding whether the P-TOMS was a part of the peace process intensified because there was no unified stance within the PA government, which had been voted back to power in the 2004 parliamentary elections. The lack of a party policy became evident when various members made contradictory statements on the issue. Some government members said it was part of the peace process while others denied it. Constitutional Affairs Minister D. E. W. Gunesekera for instance said:

'Actually the P-TOMS has two aims. One of course is to deliver humanitarian assistance to the tsunami affected people, while the other is to draw the LTTE into the peace process at the lowest level. This is a method to draw the LTTE into this whole process without going through the constitutional process. This is like civil society consultation.'⁴⁴

The then Secretary General of SCOPP, Jayantha Dhanapala also expressed hope the structure could metamorphose into a step toward the final settlement. He stated that the joint mechanism

'will also assist them (LTTE) in the transitional process they must undertake from being a rebel group wedded to violence and committing the most horrendous terrorist acts into a political formation that can work with government and other parties within a democratic framework...an opportunity for us to induct

⁴⁴ Interview in the *Sunday Leader*, August 15 2004

the LTTE into the administrative processes of the country'.⁴⁵

Kumaratunga on the other hand made public statements that the P-TOMS had no connection whatsoever to the peace process. Newspaper articles state that at a meeting with Muslim civil society leaders she 'reiterated the fact that the P-TOMS has nothing to do with the peace process *per se* and is designed to die a natural death after one year; she said neither the LTTE or the Government has ever said the joint mechanism is part of the peace process'. She also said the P-TOMS 'was not a pact with the LTTE but merely an arrangement to facilitate tsunami relief distribution with the participation of all communities'.⁴⁶ Though the government may have argued that the P-TOMS was not a political body since it did not entail sharing power and did not contain any political elements, it cannot be denied that the inclusion of the LTTE within an institutional framework established for the disbursement of tsunami aid is an act that entails sharing power.

As pointed out by an interviewee, though the stated purpose of the agreement was to deal with humanitarian issues, the fact the document was negotiated along ethnic lines linked it to the conflict. Perhaps it was the covert nature by which the document was shaped along ethno-political lines that made nationalist parties, like the JVP and JHU, wary of the structure. This could very well be the reason for the strong opposition P-TOMS encountered while the other body previously set up to deal with humanitarian needs, SIHRN, elicited no negative response from Sinhala nationalist groups. The argument put forward is that the LTTE stood to gain a lot through the P-TOMS which would have given them an institutional foothold in the six districts, a fact recognised by the JVP and JHU. Though the main opposition party, the UNP, felt the conscious de-linking of the P-TOMS from the peace process by the President was, as Prof. Peiris states 'unsatisfactory and unsound', it did not oppose the P-TOMS.⁴⁷ This is significant, as for the first time there was bipartisanship on a conflict related issue.

⁴⁵ Dhanapala made the remarks at an open forum organised by the Council for Public Policy, *The Island*, May 22 2005: http://www.priu.gov.lk/news_update/features/2005/20050526_yanthranaya_no_kumanthranaya.htm [December 18, 2006]

⁴⁶ *Daily News*, August 4 2005: <http://www.dailynews.lk/2005/08/04/> [December 18, 2006]

⁴⁷ Interview with G. L. Peiris, June 2006

The Failure of P-TOMS and the Politics of the South

The failure of the P-TOMS can also be attributed to myriad factors related to the politics of the South. The JVP played a prominent role in the whole process by astutely transforming people's dissatisfaction with the government's provision of assistance and disbursement of aid into opposition of the P-TOMS.⁴⁸

The P-TOMS agreement was challenged in the Supreme Court mainly on the ground that there was no legal basis upon which the government could enter into such a pact with the LTTE. It was contended that the powers of the Committees constituted under the agreement were governmental in nature, and therefore could not be conferred upon those Committees validly. Further, the petitioners claimed the provisions for the disbursement of monies were inconsistent with legal requirements since the Fund was not established by a parliamentary act and hence was not subject to the scrutiny of the Auditor General. Additionally, the petitioners argued that the setting up of the committees in the said areas (North and East) discriminated against those living outside those areas solely on the basis of their place of birth and residence and hence violated Article 12(2) of the Constitution.

In its decision the Supreme Court issued an interim stay order on the provisions dealing with Regional Committees and the Regional Fund. Though the GOSL sought to proceed with the implementation of the remainder of the agreement and appointed its representative to the P-TOMS, the LTTE did not reciprocate since the structure where its power was centred, the Regional Committee, was barred by the Supreme Court. Hence, the process stalled. When the case was taken up by the Supreme Court on November 22, 2005, the counsel for the petitioners stated there was no need to proceed with the case since the creation of the proposed National Disaster Management Council Act would make the P-TOMS redundant.⁴⁹ It has to be noted that those who petitioned against the agreement were members of the JVP who had successfully contested the previous election as nominees of the United People's Freedom Alliance (UPFA), the governing party. Of the petitioners two were Cabinet Ministers while two were Deputy Ministers. The political fall out of the P-TOMS was the exit of the JVP from the coalition resulting in a minority government in

⁴⁸ Phillipson and Thangarajah (2005): 22; David Rampton and Asanga Welikala, "The Politics of the South" in Goodhand, Klem et al (2005): 38

⁴⁹ *Daily News*, June 22 2005: <http://www.dailynews.lk/2005/06/22/> [December 18, 2006]

power.⁵⁰ Other Sinhala nationalist parties such as the JHU also stepped up their protest against the P-TOMS and the peace process in general. It is worth noting that the Supreme Court legitimised the Ceasefire Agreement and the MOU on P-TOMS.

Although there was an enormous amount of goodwill immediately after the tsunami, by the time the P-TOMS agreement was finalised Buddhist monks had initiated 'fast to death' campaigns and the JVP filed action against the MOU in the Supreme Court. This was in stark contrast to the CFA which was negotiated and signed in quick order. Many interviewees felt that if the agreement had been signed soon after the tsunami not only would forces opposed to the agreement not have had sufficient time to organise but any opposition would have appeared insensitive and callous. In an interview to the *Sunday Leader*, senior SLFP parliamentarian D. M. Jayaratne points out that

'When a government starts expressing conflicting view points, people start to have doubts as to whether the government has staying power and begin to wonder whether political instability will ensue. It then becomes impossible for the government to do anything properly because not only does the opposition continually oppose its every move but a faction within the government is also bringing about a conflict of ideas. As a result, this coalition government finds it impossible to adopt a single unified position on anything.'⁵¹

Though President Kumaratunga campaigned actively for the establishment of the P-TOMS it could be argued she was a victim of the success of her own anti-peace process/nationalist campaigns during the Ranil Wickremasinghe administration. For example, in February 2003 on the eve of the fifth round of peace talks Kumaratunga in a nationwide broadcast of a speech to party workers called the peace talks a 'travelling circus' and alleged that nothing of substance was being discussed at the talks.⁵² Hence, a year later the President and PA lacked credibility to mobilize people in support of a structure that involved working

⁵⁰ *Daily News*, June 22 2005: <http://www.dailynews.lk/2005/06/22/> [December 18, 2006]

⁵¹ Interview in the *Sunday Leader*, August 15 2004

⁵² *Tamilnet*, April 2 2003 <http://www.tamilnet.com/art.html?catid=13&artid=8652>, [December 18, 2006]

with the LTTE. The nationalist, anti-peace sentiment built up by Kumaratunga turned out to be an impediment to her during the P-TOMS negotiations.

Though Muslim opposition to the P-TOMS was a surprise to many, in retrospect it is evident that it should have been expected. The Norwegian treatment of the process as bilateral was also evident in the handling of the negotiations related to P-TOMS. According to a SLMC official, the party had informed the Norwegians in no uncertain terms that they would oppose the P-TOMS if they were not included in the negotiation process.⁵³ Despite this their concerns were ignored. The Muslim opposition adversely impacted upon the institution, more so than the opposition of the Sinhala nationalists. Since the Muslims were the group most affected by the tsunami, their opposition to the structure which had as its supposed aim the dispensation of tsunami aid for reconstruction and rehabilitation de-legitimized P-TOMS and gave credence to arguments against it.

Lack of Strategy and Planning

Another issue that runs through the entire process is lack of strategic planning undertaken by the GOSL in steering the process and sub-processes. The Sub-committees also encountered problems with leadership. SIHRN for instance did not contain members who had substantial political access. An interviewee who was part of the Wickremasinghe government stated that though persons appointed to lead the Sub-committees were committed, scrupulous individuals they were ill suited for this role as the circumstances demanded the persons who had grassroots experience and possessed the ability to overcome obstacles by sometimes employing unconventional methods. Personality therefore played an important role in the manner in which the sub-committees functioned. Where SIHRN was concerned, both the GOSL and the LTTE nominees did not possess experience in dealing with operational matters related to reconstruction, development etc. In certain instances persons who held high positions and thereby under pressure to be publicly seen to espouse the stance of the group and appear uncompromising about the positions of their respective collective, such as Tamilchelvan, were appointed. This, not surprisingly, had an adverse impact on the effective functioning of SIHRN. An interviewee pointed out that 'the framework for the institutions are the people themselves.'⁵⁴ Once again if we use SIHRN as an example, many interviewees

⁵³ Interview with A. M. Faaiz, member of the SLMC, August 2006.

⁵⁴ Interview with UNF party official, July 2006.

stated that the appointees were not those who could handle delicate situations and come up with innovative solutions. Another issue that impacted upon the institutions was the mindset of the appointees. A structure such as SIHRN had no chance of working effectively if the GOSL appointees to the sub-committees were of the mindset that material benefits to the Tamil people translated into material benefits to the LTTE, and therefore detrimental to the entire process. For instance, though Bernard Goonetilleke, Secretary-General of SCOPP at the time, headed the GOSL - SIHRN delegation, subsequently he also made numerous public statements criticising the CFA, casting doubt upon his ability to spearhead the effective functioning of SIHRN through constructive engagement with the LTTE.⁵⁵

Box 3: The North East Reconstruction Fund (NERF)

The Asian Development Bank (ADB), the World Bank (WB) and UNDP were proposed as possible custodians of NERF. The ADB was purportedly not interested, and UNDP was not selected though it had good terms of reference, allegedly due to the reluctance of the LTTE. After a month and a half of negotiations both parties agreed to formally request the WB to act as custodian. Due to reasons discussed below the establishment of the North East Reconstruction Fund (NERF) required innovative thinking. Firstly, since the Bank only deals with governments, issues of accountability and the need to devise new avenues for redress arose in this case because a non-state actor was involved. As the Fund was envisaged to be under the control of SIHRN, an institution which had no legal status, additional legal obstacles were encountered.

The Bank resolved these issues by making the party to the negotiations responsible for any misappropriation or misuse of funds by an affiliated organisation. In the case of organisations that were not connected to either party the Bank decided to utilise normal legal process in case of malpractice.

Lack of planning and communication, and failure to factor in the ground situation also contributed to the failure of NERF. For instance, as the WB bureaucracy in Washington D.C. did not move with the same urgency as those on the ground

⁵⁵ See, for example, "Sri Lanka Peace Process: What Lies Ahead in Sri Lanka," presentation, November 4 2005: http://www.slembassyusa.org/statements/2005/sl_peace_process_04nov05.html [August 11, 2006]

in Colombo, finalising NERF took considerable time. Prof. Peiris stated the delays led the LTTE to believe there was no political will on the part of the government to make SIHRN and NERF work. He said the LTTE blamed the government because it had no understanding of the complexities involved in setting up the fund due to its lack of experience working with multilaterals. Though the WB, donors and the GOSL were creative in drawing up the framework for the establishment of NERF (see Box 3) practical issues, such as the possible reaction of the LTTE considering their lack of experience in dealing with multilaterals, the political fall out of possible delays etc, were not dealt with strategically. Another example that can be cited relates to the signing of the document establishing NERF. In April 2003, the LTTE was ready to sign the draft agreement and Peter Harrold, the Country Director of the World Bank travelled to Kilinochchi. However, minutes before the signing he was told not to sign the document as the government had requested additional changes. It was alleged that the government requested Harrold to inform the LTTE that it could sign the document if it so wished but that amendments would be made to the document post-signature. Leaving aside the veracity of the allegation, the fact that the government instructed Harrold not to sign at the eleventh hour is yet another example of the lack of proper planning on the part of the government in taking the peace process forward.

The GOSL's lack of planning also impacted adversely upon attempts to create a constituency for peace. Government failure to provide the public with up to date information about the peace process, in order to counter often fictionalised nationalist anti-peace propaganda, contributed to the creation of unwarranted fears amongst the Southern public. For instance SIHRN Director Selvin stated there were misconceptions in the South about the NERF, with most fears relating to LTTE control over the fund.⁵⁶ He pointed out that since the WB was the custodian of the fund the LTTE could not have dipped into the fund since the money would have been managed by the WB and allocated for identified and approved projects.

Where the Sub-committee on De-escalation and Normalization (SDN) was concerned, the lack of planning contributed to difficulties in discussing substantive issues. While it is not evident in the official statement released following the final meeting on the SDN at Muhumalai, the meeting itself was fractious and unsettled.

⁵⁶ Interview with Selvin Ireneuss, June 2006

According to a government representative on the SDN, this arose from two facts: lack of strategic planning and the element of surprise.⁵⁷ Furthermore, it was held in inclement weather conditions in a leaking and unstable tent, forcing the two sides to closer physical proximity than would normally have been the case. This would have magnified the tension and mistrust between the two sides. Where strategic planning was concerned, the government team had neither a clear sense as to what the SDN mandate entailed nor where it stood on critical issues. At the meeting, the team did not resemble a thoroughly briefed, well organized unit. A member of the SDN said they did not anticipate the issue of HSZ to be placed on the agenda at the Muhumalai meeting, and arising from the first point, some members were uncertain about the official government position on HSZ. Major General Fonseka is said to have been taken unawares by the LTTE stance that Pirapaharan expected the issue of HSZ to be discussed, and further taken aback by the litany of issues raised by the LTTE. In stark contrast to the government delegation's apparent under preparedness, the LTTE acted with efficiency and singular purpose.⁵⁸

As with SIHRN, this is indicative of a lack of strategic planning on the part of the GOSL which was a crucial impediment to confidence-building with the LTTE. Furthermore, it demonstrated a worrying lack of communication between the leadership and its representatives on an issue as important as High Security Zones. Moreover, the decision to task a known hardliner Major General Fonseka with preparing the first action plan on resettlement ultimately undid any potential for the subcommittee to take on a confidence-building role. The dynamics of the SDN will be evaluated in greater depth below.

Two Sides of the Same Coin: Normalization and Militarization, Politics and Reconstruction

The failure of SIHRN and the lack of progress on the humanitarian front were cited as justifications by the LTTE for its unilateral withdrawal from negotiations. The LTTE stated that it did not wish to begin a dialogue on political content before progress was made on humanitarian issues. The inability of the two sides to reach any sort of agreement on the scaling down of High Security Zones (HSZ) in the Jaffna Peninsula was a prime factor in the failure of the normalization agenda. It is clear, nonetheless, that an agenda of normalization rested uneasily

⁵⁷ Interview with a member of the SDN

⁵⁸ Interview with a member of the SDN

with the need for a resolute military deterrent on the part of the Sri Lankan armed forces. Therefore, the issue of normalization is inextricably linked to the military dynamics of the conflict and the maintenance of the balance of power.

Box 4: Genesis of the Subcommittee on De-Escalation and Normalization

At the second round of negotiations, held in Bangkok, the two sides decided to establish a Sub-Committee on De-Escalation and Normalization, which 'while accommodating the security concerns of each party,' would 'examine ways and means to ensure resettlement, the return of private property and the resumption of economic activities in these areas.' In line with the overall objective of facilitating the resettlement of internally displaced persons, the two sides recognised the need to address matters relating to high security zones and other areas made inaccessible to the public. It was announced that the Subcommittee would comprise high-level civilian and military personnel from the two sides, including Secretary to the Ministry of Defence Austin Fernando and the LTTE Eastern Commander Colonel Karuna.

Headed by Fernando and Karuna, the Subcommittee met for the first time in Omanthai, on November 10th 2002. The two sides addressed procedural matters, and identified issues to be resolved by the SDN. Agreement on dates for district meetings and representatives to participate at these meetings was made, with the argument that decisions taken would then be 'embedded in local knowledge'.⁵⁹ It would appear the only concrete action was in relation to fishing on the Jaffna coastline where it was decided that eight entry points for the fishermen will be open on a day and night basis.

The GOSL members (rank at the time of writing) of the SDN included Major General Shantha Kottegoda, General Sarath Fonseka, Brigadier S. R. Balasuriya, Rear Admiral Sarath Weereasekera, Group Captain Kolitha Gunathilaka, Mr M. A. Majeed, Mr S. S. P. Nimal Lewke, and Major General (Retired) Devinda Kalupahana. LTTE members included Colonel Karuna, Colonel Theepan, Colonel Jeyam, Colonel Pathuman, and Peace Secretariat head S. Pulithevan.

⁵⁹ Official Statement of the Royal Norwegian Government, 10th November 2002, at <http://www.peaceinsrilanka.org/peace2005/Insidepage/Pressrelease/RNG/10NovRNE.asp>

As a result, the Subcommittee on De-Escalation and Normalization (See Box 4) was a casualty of the zero-sum nature of military de-escalation in a post-conflict scenario that had, at best, tenuous support from the respective militaries. The second and ultimately final meeting of the SDN was held in Muhumalai on December 14, 2002. The official documentation of the meeting notes that it was constructive and included extensive discussion on the matter of HSZs, focusing on the Jaffna Peninsula. The parties agreed that resettlement of IDPs and the return to normalcy in the North-East could only be solved through integrated plans of action agreed upon by the two parties. This had particular relevance to HSZs. Furthermore, the plans would be developed in consultation between the relevant brigade field headquarters, and focused upon limited areas because of the need to build trust. The first such report was to be delivered by the Sri Lankan Army before December 21, a task delegated to General Sarath Fonseka, SLA Commander, Jaffna. The documentation noted that this method of connecting security to normalization is 'regarded by the parties as an expression of de-escalation contributing to building confidence between the parties'. The two sides agreed that the third meeting would take place in Omanthai on the January 20, 2003. The meeting never took place.

At the fourth round of plenary peace negotiations, held in Nakorn Pathom, Thailand, on January 6-9, 2003, the facilitator's post-negotiation statement noted that the 'parties recognised that the situation with regard to the High Security Zones involves major humanitarian and security concerns for both sides. Recent controversies surrounding this matter were discussed in depth. The parties did not reach agreement on the continuation of the work of the Sub-Committee on De-Escalation and Normalization.'⁶⁰ In reality, the LTTE had unilaterally pulled out of the SDN and in order to understand why, it is necessary to explore the particular dynamics of the HSZs, the link between security, normalization and resettlement, the specific circumstances of the second SDN meeting, and the outcry provoked by General Fonseka's De-Escalation Plan.⁶¹

⁶⁰ Official Statement of the Royal Norwegian Government, 9th January 2003, at <http://www.peaceinsrilanka.org/peace2005/Insidepage/Pressrelease/RNG/RNG09Jan.asp> [December 18, 2006]

⁶¹ Henceforth referred to as the Fonseka Plan

Box 5: High Security Zones

Operated by the Government of Sri Lanka, High Security Zones can be defined as areas near military emplacements, camps, barracks, or checkpoints where civilians cannot enter. They usually extend up to a four kilometre radius from the fences of most military camps.⁶² They are maintained for the following reasons: due to LTTE long range weapons and artillery, to protect strategically placed camps and headquarters of certain military brigades, and to prevent LTTE invasions into the Peninsula. In January 2003, there were eighteen such zones in the Jaffna Peninsula alone, covering an area of 190 km² out of a total area of 880 km².⁶³ These areas are not open to civilians, therefore making it impossible for IDPs to return to their abandoned homes.

For some background, in 1980, only the area surrounding the Palaly Camp, an area of 300 metres by 300 metres was known as the High Security Zone but people moved freely and schools within the area operated without any problems.⁶⁴ The situation in 1985 was the same. In June 1990, the SLA took over the school and some areas in order to extend the HSZ as it was necessary to protect the area from the LTTE's homemade Pasilan 2000 mortar, which had a range of two hundred metres. By 1994, the LTTE began firing 81 MM mortars with a firing range of 5,400 metres. This necessitated the extension of the high security zones. Palaly, the Kankesanthurai naval port and cement factory, the Thelipalai hospital and other areas were brought together as one security complex, known as the Jaffna Task Force area. This was the situation when peace talks began between former President Kumaratunga and the LTTE in 1994. After the resumption of hostilities, the LTTE brought down a transport aircraft with a shoulder-fired missile, which necessitated a further extension of the HSZ to allow for the safe take-off and landing of aircraft. In 2000, the LTTE acquired 130 MM artillery, with a range of twenty seven kilometres, constituting a far more severe threat to the armed forces. The HSZ were extended further to compensate for the scope of the artillery fire, largely from the LTTE's positions in Pooneryn.

The close link between resettlement and security has made the issue of government-operated HSZs a veritable powder keg (see Box 5). To put this in context, in its 2005 Human Rights Report on Sri Lanka, the United States Department of State asserted that approximately 50,000 primarily Tamil IDPs had been unable to resettle because of the HSZs.⁶⁵ The LTTE puts the figure at 30,000 families, higher than the SLA's estimate of 10,000 and that of the civil authorities at 15,000.⁶⁶ The Report states that it is widely felt that the zones are excessive and unfairly affect Tamil agricultural lands, particularly in Jaffna, where the zones have displaced more than 30,000 thousand families and occupied over sixty square kilometres, amounting to approximately twenty percent of usable land in the peninsula. Furthermore, quoting UNHCR figures, the report notes that around 268 camps were housing IDPs, who numbered approximately 339,000 in addition to approximately 340,000 displaced with relatives, friends or in welfare centres.⁶⁷ During the negotiation process, the right of the internally displaced to return to their original homes and the need for the SLA to maintain a powerful deterrent to recurring conflict were diametrically-opposed objectives. Nonetheless, the lexicon of resettlement and normalization is juxtaposed with the LTTE's own military agenda.

In this regard, at the crux of the issue is pressure for the military to relocate, or significantly reduce, their forces at the strategically critical Waligamam area, which includes the northern port of Kankesanthurai and the Palaly air base. Observers and commentators have acknowledged that any attempt to dilute this is bound to meet with stiff resistance from the SLA.⁶⁸ The Fonseka Plan operationalizes this belief in the preamble:

As existence and strength of HSZ is utmost vital [sic] for success of defences and security of Jaffna Peninsula and islands, no risks or chances

⁶² United States State Department Country Report on Human Rights Practices 2004, at <http://www.state.gov/g/drl/rls/hrrpt/2004/41744.htm> [October 1, 2006]

⁶³ Dr. S. Chandrasekharan, "Sri Lanka: The issue of High Security Zones", South Asian Analysis Group, January 2003, at <http://www.saag.org/notes2/note174.html>

⁶⁴ The following information is gleaned from an article by Bandula Jayasekera, "High Security Zones – who started the fire?" *Island*, 7th January 2003.

⁶⁵ United States State Department Country Report on Human Rights Practices 2005, at <http://www.state.gov/g/drl/rls/hrrpt/2005/61711.htm>.

⁶⁶ Fernando (2006): 72

⁶⁷ State Department Report on Human Rights Practices, 2005. The extent of internal displacement has multiplied as the intensity of conflict escalated in the latter half of 2006.

⁶⁸ See V. S. Sambandan, "Relocating high security zones in Sri Lanka crucial," *Hindu*, October 27 2002, <http://www.hinduonnet.com/2002/10/28/stories/2002102803021200.htm> [July 12, 2006]

should be taken, to weaken security by making HSZ vulnerable.⁶⁹

To the Tigers, the issue of resettlement is of paramount importance for two fundamental reasons. First, it is ideologically intolerable to have thirty to forty thousand SLA soldiers stationed in the Jaffna Peninsula. The complete or phased de-escalation of these personnel would represent an ideological as well as a military victory. Second, in its wider quest for legitimacy as the sole representative of the Tamil people, and presumably because of its own desire, it was unacceptable for the LTTE to be unable to deliver the basic requirements for the people of the North-East. As TNA MP Ponnambalam has repeatedly argued, the North-East has specific humanitarian needs that, unlike in the South, are largely existential with the right to return and normalcy being paramount. Any 'peace dividend' for the North-East would have to ensure basic humanitarian conditions and resettlement are met, unlike in the South, where the primary aim would be economic redevelopment. In that regard, the HSZ issue is critical to the LTTE as it can be argued that, in their eyes, they cannot reasonably sell a process that does not permit its followers to return to conditions resembling normalcy. This underpinned their steadfast refusal to acquiesce to the *status quo*, whereby government restrictions remained.

For the LTTE, therefore, this was a cardinal issue governing their involvement in the negotiation process. As a result, the linkage of normalization and resettlement, including within HSZs, emerged at the second round of negotiations in Bangkok, resulting in the formation of the SDN. The aftermath of the Fonseka Plan, coupled with the relative downplay of the HSZ issue by the government peace delegation at the Nakorn Pathom talks in January 2003, convinced the LTTE that the SLA and GOSL were either not prepared or not in a position to deliver on the HSZ. The *Frontline* and *Hindu* correspondent Sambandan has argued that this failure to deliver was a fundamental factor in the LTTE decision to suspend talks.⁷⁰

⁶⁹ De-Escalation Plan proposed by Security Forces Commander, Jaffna Peninsula, Major General Sarath Fonseka, to Enable Re-Settlement of Civilians in High Security Zones, December 20, 2002.

⁷⁰ V. S. Sambandan, "An agenda for de-escalation," *Frontline*, 20: 11, May 24 - June 6 2003, available at www.flonnet.com/fl2011/stories/20030606007713000.htm [December 18, 2006]

Building Mistrust: The Issue of High Security Zones

The concept of interim arrangements is premised on the belief that they 'build trust,' in that they grant opportunities for establishing mileposts on the road to a final agreement. In theory, the Subcommittee on De-escalation and Normalization should have resulted in the two sides arriving at a series of agreements governing how they would go about achieving the core objectives of the subcommittee. In that regard, a series of 'integrated plans of actions' addressing issues of resettlement and return to normalcy would have established a series of agreements and frameworks to which both sides could have agreed. Taken as a whole, these institutionalized frameworks would have acted as trust-building milestones in an overall process culminating in a final agreement focused on SLA de-escalation and withdrawal, and LTTE de-escalation and phased demobilization. In practice however, the subcommittee fed on mistrust, heightened tensions and exacerbated fissures that ultimately resulted in the negative activities surrounding de-escalation impacting upon the peace negotiations as a whole.

As hinted above, the subcommittee's decision to task Major General Fonseka with presenting the first action plan on resettlement was a fundamental factor in eviscerating any progressive role intended for the subcommittee. The Fonseka Plan set out its agenda very clearly in the preamble when it stated that while the GOSL and the security forces recognised the 'most important humanitarian need'⁷¹ to resettle people back in the houses in areas affected by the conflict, it also 'understood resettling civilians in HSZ can bring about a **big political success to the LTTE**', and can therefore have a 'direct impact on the political situation in Jaffna which may... most probably go in favour of LTTE under present political situation'.⁷² To this end, the plan argues that 'resettling civilians in the HSZ should go hand in glove with a de-escalation process agreed by both GOSL and LTTE'. Furthermore, it stated the LTTE should not gain militarily and a weak security environment should not be created in the wider interest of maintaining the peace process.⁷³

The Fonseka Plan entered for strong criticism from the LTTE because of its underlying premise and the language employed throughout the report. Its basic premise was that the HSZ were vital to the security forces and could not be

⁷¹ Art. 1

⁷² Art. 2; emphasis added

⁷³ Art. 3

made vulnerable. Bearing that in mind, it stated resettlement could take place in such a way that the security forces did not compromise security at any stage. As recommended by the plan, relocation should not be made public, and 'vulnerable and sensitive defences, air and sea communication agencies should not be sacrificed'.⁷⁴ Further, and most critically, the plan reiterated that 'security can be relaxed only in stages in relation to de-escalation of LTTE, *i.e. disarming of cadres and decommissioning of LTTE long range weapons*'.⁷⁵ Immediately afterwards, the plan states that the 'security of IDPs also to be considered as equally important because they may be vulnerable to terrorist activities.' The choice of language angered the LTTE which took serious umbrage at being consistently labelled as 'terrorist' throughout the report. Ultimately, the Plan states that the final resettlement program must run parallel to the elimination of the threat, *i.e.* the reduction of the LTTE offensive capability by disarming and decommissioning of weaponry, as peace and development, is not possible without security, and security is not possible without 100% superiority over the LTTE.⁷⁶

The LTTE was swift in castigating the report:

Having carefully studied General Fonseka's document, it is quite clear that the Sri Lanka military is simply not prepared to ease urgent existential problems of the people of Jaffna. In fact, these problems have been trivialized as secondary to the security forces' own comfort and concerns. Furthermore, apart from the belligerent and hostile tone of its document, the SLA is reducing the considerable difficulties faced by the people of Jaffna to the question of whether political benefits that may or may not accrue to the LTTE should be permitted. Most importantly, the SLA is now making its adherence to the normalization aspects... conditional on the LTTE's disarming of its cadres and decommissioning of its weapons. **These conditions are unacceptable and unrealistic.**⁷⁷

⁷⁴ Art. 17 (a, c, d)

⁷⁵ Art. 17 (b); original emphasis

⁷⁶ The report (Art. 13) states: 'As SF (Security Forces) presently does not have 100% superiority over the LTTE military capability, it is not advisable to take risks unless SF capabilities are developed to be able to remain 100% superiority over LTTE thus any short term drawbacks can be overcome and regain initiative to avoid disasters'.

⁷⁷ Balasingham (2006): 410-11 (Emphasis added)

It is interesting to debate the central point of Fonseka's argument – that resettlement of civilians and the consequent scaling down of HSZs would constitute a political victory for the LTTE. A political figure closely aligned to the UNF government of the time noted that Wickremasinghe and his advisors had to make a calculated decision on forging forward with resettlement and rehabilitation in the North-East. He stated that it was quite clear that affording material benefits to the Tamil people would accrue similar benefits to the LTTE given that they were highly clued into the political expediency of reconstruction and sought maximum ownership of the process.⁷⁸ In short, any concrete and material benefit to the Tamil people aided and abetted the end goals of the LTTE itself. In the past, this single fact was the major stumbling block to successful negotiations, as assisting economic development in the North-East was thought to be detrimental to the final objective of defeating the LTTE. It was this belief that drove Major General Fonseka's thinking in linking resettlement with political success for the LTTE. In essence, however, this viewpoint was at loggerheads with the core negotiating strategy of the UNF which had accepted that ultimately power sharing negated separatism.⁷⁹

It would be instructive to investigate whether there was any dialogue between the political leadership and Major General Fonseka before the compilation and submission of the report.⁸⁰ If not, did the political leadership give Fonseka a *carte blanche* to produce the report in order to permit the military to put across its viewpoint? This is unlikely, but if so it was evidently a *faux pas* to align the government with a report that was clearly antagonistic towards any form of dialogue with the LTTE and persisted in terming them as 'terrorists'. The final potential scenario was that there was limited communication between the political and military dimensions of the Sri Lankan state and the plan was produced and submitted on a largely unilateral basis. If this was the case, it was another worrying indictment of the lack of strategic planning in conducting the peace process. One final point needs to be made here. It was stated at the end of

⁷⁸ Interview with UNF party official, July 2006

⁷⁹ Interview with UNF party official, July 2006

⁸⁰ It can be speculated that Major General Fonseka was more aligned with President Chandrika Kumaratunga and was taking a hard line stance compared to the other main contender for overall Army Commander Shantha Kottegoda in anticipation of gaining that post himself (which, of course, he ultimately did): See Frederica Jansz, "HSZs rock peace process," *Sunday Leader*, January 5 2003.

the final meeting of the SDN that the 'integrated plans of action' would focus on 'limited areas' in order to build trust. It is therefore surprising that the first such plan of action was instead a report on a multitude of issues relating to *all* High Security Zones in the Jaffna Peninsula.

Into this volatile blend, the Head of Mission of the SLMM, Trond Furuhoide issued a statement that held up the centrality of the balance of power, arguing that dismantling HSZs would decrease both the security and combat potential of the armed forces, therefore damaging the equilibrium of the CFA.⁸¹ The LTTE was very critical of Furuhoide arguing that he had legitimized the SLA's argument that security concerns over-rode humanitarian concerns. Furthermore, Lieutenant General Lionel Balagalle, Commander of the SLA, announced in Kandy shortly after the submission of the plan that the LTTE must relinquish their weapons to a 'third party' before any phased withdrawal from HSZs in the Jaffna Peninsula.⁸² At the same time, the JVP made a vitriolic public announcement that the Prime Minister had signed a secret pact with the LTTE whereby he was set to dismantle the HSZs and divide the country.⁸³ In contrast, the JVP commended Fonseka for taking a steadfast position in the face of the LTTE threat. By the time the negotiations resumed at Nakorn Pathom, Balasingham said the LTTE took the position that the SDN was now defunct:

The central obligations of the ceasefire agreement and the fundamental objectives of the (SDN) were rendered useless by the attitude of the Sri Lankan army. The peace process itself was seriously threatened. The LTTE leadership was deeply disillusioned, and because of the army's attitude, Pirapaharan considered the subcommittee defunct, I said.⁸⁴

Balasingham states he was taken aback by the indifference to this point, an aspect that appeared to reinforce the LTTE belief that both the GOSL and the SLA were not interested in tackling the HSZ issue. A compromise was, however, reached at Nakorn Pathom where the two sides agreed to an 'Action Plan for an Accelerated Resettlement Programme for the Jaffna District,' the first phase

⁸¹ SLMM, December 26, 2002: http://www.slmm.lk/press_releases/261202.htm [November 1, 2006]

⁸² Jansz (2003)

⁸³ *TamilNet*, January 6 2003: <http://www.tamilnet.com/art.html?catid=13&artid=8108>

⁸⁴ Balasingham (2006): 415

focusing on resettlement cases relating to areas outside HSZ. The second phase would tackle resettlement in areas within the HSZs, as and when they were released by the SLA for resettlement. For this purpose, the Norwegian statement announced that the GOSL would undertake a review of the HSZ with the assistance of an internationally recognised military expert, taking into account relevant humanitarian and security needs. Verbalizing this agreement, G. L. Peiris said that the pragmatic approach was to concentrate on what could be done, before taking on the daunting task of the HSZ. Importantly, Balasingham noted that the government delegation 'saw the (HSZ) issue differently' from the Fonseka Plan.⁸⁵ In view of international assistance, retired Indian General and former UN Head of Mission in Bosnia-Herzegovina (UNPROFOR) Lieutenant General Satish Nambiar was tasked with making an independent assessment of the HSZ issue.

Unfortunately, Nambiar's entry into this delicate balance complicated rather than clarified. Firstly, his initial observations were leaked to the press angering both sides, particularly the LTTE.⁸⁶ On the LTTE side, the argument that 'any review of the scope and content of the High Security Zones will only come about if the LTTE deposits its weapons to neutral supervision and initiates measures to withdraw from frontline positions into nominated areas' brought about a similar rejoinder to that put out in the wake of the Fonseka Plan. Balasingham reinforced the LTTE position that it would 'fiercely oppose and reject any proposal that makes resettlement of refugees conditional upon de-commissioning of LTTE weapons'.⁸⁷ He went on to assert that de-escalation and normalization were being confused with de-militarization and demobilization, explaining that the LTTE was demanding a reduction of troops as opposed to demilitarization or dismantling of camps. Rather, the LTTE demand related to a strategy that would allow people to return to their homes. According to him this strategy depended on de-escalation – 'the gradual and systematic reduction of the level of tension caused by intense military occupation of civilian areas' and normalization – the establishment of 'conditions of normalcy congenial to free and unconstrained existence'. This view would refute the argument of Sinhalese

⁸⁵ *TamilNet*, January 7 2003: <http://www.tamilnet.com/art.html?catid=79&artid=8117>

⁸⁶ See "Nambiar's Dec. report takes realistic view of HSZ dilemma," *The Island*, January 26, 2003: 1.

⁸⁷ *TamilNet*, January 28 2003

hardliners, such as S. L. Gunasekera, who argued that the LTTE was calling for virtual disbandment of HSZs while failing to disarm, therefore intending to fight another war.⁸⁸

However, it is not possible for 'conditions of normalcy congenial to free and unconstrained existence' to prevail side-by-side with fully operational military camps. Therefore, normalization as defined by Balasingham would require the 'strategy to allow people to return home' to include features of force reduction and demobilization. Hence, there is an uneasy link between the LTTE military strategy and the issues of resettlement and HSZs.

Militarization as "Sugar Coated" Normalization: Debating the Nambiar Report and LTTE Strategy

Former Defence Secretary Austin Fernando dealt regularly with the TNA who petitioned the government on issues concerning normalization. In a 2006 article, Fernando has outlined some examples of where the LTTE demonstrated a 'hidden agenda when making demands for relocation of security establishments or security points'.⁸⁹ In an interview, Fernando termed this methodology as 'sugar-coated militaristic measures' with the implication that humanitarian concerns often included acquiring a military advantage for the LTTE.⁹⁰ As an example, Fernando has cited the case of two schools at Tellippalai Junction: following a request by the TNA, the Ministry of Defence, overriding the concerns of the SLA, agreed to release Union College to resume operations. Immediately following the decision, he states, a further request was made to dismantle the military checkpoint at the four-pronged Tellippalai Junction approximately one hundred yards from the school, on the basis that it hindered the access of students to the school. However, it was clear that while ostensibly humanitarian, this request had militaristic undertones as any cursory military analysis of the situation would reveal that 'he who holds Tellippalai Junction holds sway over the Jaffna HSZ, and especially Kankesanthurai Port'.⁹¹ Similarly, when the second school at the junction, Mahajana College, was opened, a demand followed requesting that access to the school be allowed along the fence of the army camp. Furthermore,

⁸⁸ S. L. Gunasekera, "HSZ withdrawal: Beware of LTTE trap!" *Sunday Times*, January 5 2003

⁸⁹ Fernando (2006): 74

⁹⁰ Interview with Austin Fernando, former Secretary to the Ministry of Defence, August 2006

⁹¹ Fernando (2006): 91

when the Tellippalai Cancer Hospital was made accessible, a demand was made for 'unhindered access' through the army-held area and withdrawal of the same checkpoint at the junction.⁹²

There is, therefore, an inherent dilemma. As Fernando himself puts it:

It is a fact that the return of... displaced persons was invariably delayed by the existence of HSZs. Similarly, HSZ is a necessity if the (armed forces) were to perform their duty without hindrance.⁹³

Satish Nambiar's report was an attempt at addressing this paradox. It was handed over to the Prime Minister in May 2003. In this instance, the media reaction in Colombo matched that in Kilinochchi for vehemence. The report is of interest to our understanding of interim arrangements for two primary reasons, neither to do with the workings of the SDN, which was never likely to be resurrected. First, the Nambiar report made very astute arguments about the wider structures and forms of the peace process that had also impacted on the SDN and the other interim power-sharing arrangements. Second, while not without flaws, the Nambiar report was a logically argued report that could have formed the basis for a come-down from the two sides' zero-sum positions.

The report details a number of inter-connected politico-military factors that impinge on the fundamental issue of HSZs in myriad ways. With regard to the armed forces, the leaked report in January 2003 notes that its commanders at various levels 'seem to have much difficulty in coming to terms with the reality of the status of the LTTE as a party to the peace process'. This attitude is exacerbated by political posturing in Colombo, which acts to reinforce the view of military commanders that they should not become party to decisions that appear to make concessions to the LTTE.⁹⁴ This was because doing so was tied to being unpatriotic. There was also a fundamental lack of trust in the LTTE which gave rise to fears that in the event of a resumption of hostilities, recapturing vacated areas would be difficult and entail heavy loss of life.⁹⁵ The report adds:

⁹² Ibid: 91. He notes that while the hospital is in operation, Mahajana College has not reopened.

⁹³ Ibid: 72

⁹⁴ Art. 2 General observations, "Nambiar's Dec. report takes realistic view of HSZ dilemma," *The Island*, January 26, 2003

⁹⁵ Art. 21, Nambiar Report

I may reiterate that the SLA authorities at various levels do not trust the LTTE at all. There is little doubt about this position. Hence it would appear most unlikely that they would agree to dismantle the HSZs or even dilute them without securing some positive in locations of LTTE moves towards disarming and demobilising its cadres.⁹⁶

However, 'notwithstanding the fact that the Sri Lanka Army would like to treat the LTTE as and insurgent outfit that must disarm and demobilize before the SLA is prepared to consider dismantling the HSZs and diluting other precautionary measures, this is NOT going to happen.'⁹⁷ Indeed, Nambiar notes that the LTTE considered themselves on par with the SLA, a position they had earned on the battle field. Mistrust also bred suspicion in the activity of their political cadres, given their unfettered access to government-controlled areas. It should be noted that this lack of trust permeated the peace process at all levels – military, political, civil and societal.

Nambiar argues that all these factors need to be addressed in seeking a successful resolution of the HSZ impasse. In order to ease pressure on military commanders, public pronouncements of commitment would go some way towards absolving them of the need to portray themselves as the sole guardians of national security.⁹⁸

Nambiar recognized that both humanitarian and security concerns were at play in the HSZ issue, and that until one factor overrode the other, both would have to be considered.⁹⁹ With regard to his recommendations on de-escalation, the report recognized that a phased dismantling and reduction of HSZs in Jaffna would be very difficult and require either international or shared (SLA-LTTE) monitoring. This would help alleviate the mutual lack of trust between the parties.

In his original comments, Nambiar observes at the outset that the LTTE should be treated as a partner in the process and that any unilateral demobilization of its cadres or decommissioning of heavy weapons must be accompanied by a solid commitment on the part of the GOSL on the subject of devolution of power to the North-East. By the time of his final report, he recognizes that any de-

⁹⁶ Art. 21, Nambiar Report

⁹⁷ Ibid

⁹⁸ Article 5, General observations

⁹⁹ Art. 20, Nambiar Report

escalation would likely be impossible without carefully considered monitoring procedures.

While the LTTE once again dismissed Nambiar's assertions, elements in the Sri Lankan press too found fault with its recommendations, with the *Island* editorial pages taking the lead in taking the report to task.¹⁰⁰ It argues that Nambiar attempts to indulge in psychology by questioning the acceptance of the peace process by commanders of the armed forces, and by pinpointing political posturing in the South as imposing limitations. It in particular, claimed that Nambiar seemed out to 'change the thinking not only of our military commanders but political leaders in the South as well'. Ultimately, the editorial accused Nambiar of attesting to the view held by the LTTE that the SLA is the chief obstacle in the way of the peace process. The fact that the report is utterly unacceptable to both sides demonstrates once more the yawning gap in perceptions between the two sides. It is clear that two fundamental realities come into play in the High Security Zone debate. On the one hand, there is a human rights issue, and on the other hand, there is a balance of power and military security issue. In highlighting the 'balance of power' issues the report follows a conventional military view of the situation which, given Nambiar's background, was not unexpected.

As with the experience of the ISGA where unilateral proposal-making resulted in an intractable impasse, the head of the South Asia Analysis Group, Dr. S. Chandrasekharan has criticized the inadvertent polarization caused by the fallout from the HSZ issue. He argues that such a divisive issue should not have been entrusted to a retired Indian general well known for his conservative and conventional approach towards military affairs.¹⁰¹ However, it can be argued that the damage had been done prior to the invitation of Nambiar. Permitting a known hardliner in General Fonseka to submit an official report on behalf of the SLA, and by implication the GOSL, was completely avoidable.

Normalization: The Sole Preserve of the Military?

Ultimately, the Subcommittee for De-escalation and Normalization was a failure. The primary reason for its failure lay in its inability to provide a trust-building environment for the discussion of the intractable and divisive issue

¹⁰⁰ "Another Solheim," *The Island*, Editorial, 10th May 2003.

¹⁰¹ Chandrasekharan (2003)

of resettlement, particularly concerning the future of High Security Zones. Numerous factors account for this stalemate in progress. First, as noted above, the HSZs are the symbolic manifestation of the uneasy tension between security and normalization. Given that the military on both sides remained suspicious of permitting any gain to incur on the opposing side, it became impossible for any tangible reduction of HSZs to take place. Where normalization did take place, it was in the vacation of public buildings and places of worship for the resumption of normal activities. However, even the vacation of public buildings became in essence a redeployment of forces elsewhere in the peninsula. Therefore, when the SLA agreed to vacate the Subash Hotel and relocate the forces stationed there to elsewhere in Jaffna city, pro-LTTE supporters and the TNA protested these actions. As a result, the *status quo* remained unchanged.¹⁰² In this respect, the LTTE was playing with higher stakes and attempting to ensure that vacation of public buildings did not result in relocation of troops elsewhere in the peninsula. This demonstrates the paradox inherent in normalization. Normalization cannot take place if troops merely relocate from a public building to elsewhere in the city; however, the LTTE used the politics of protest to perpetuate these crises and therefore, bring into question their own bona fides towards demobilization and demilitarization.¹⁰³

Second, both delegations to the SDN had a strong military presence. The LTTE team was led by Colonel Karuna and also included its Northern, Western and Trincomalee Division Commanders Colonel Theepan, Colonel Jeyam and Colonel Pathuman, alongside political wing members and the head of the LTTE Peace Secretariat S. Pulithevan. The GOSL team, for its part, comprised members such as Major General Fonseka, Rear Admiral Sarath Weerasekera, Major General Shantha Kottegoda, and Special Task Force head Nimal Lewke.¹⁰⁴

¹⁰² Fernando (2006): 91

¹⁰³ See above section concerning Balasingham's analysis of the difference in what the LTTE was requesting.

¹⁰⁴ Major General (now Lieutenant General and Commander of the SLA) Sarath Fonseka is a known hardliner and the architect of the subsequent De-Escalation Plan that effectively connected any scaling down of HSZ with phased demobilization of the LTTE. A number of interviewees have noted that General Fonseka had vowed never to relinquish an inch of HSZ while the LTTE had arms. Naval Commander for the Northern Province, Rear Admiral Sarath Weerasekera is another with similarly strong views and was subsequently transferred from his post as Naval Commander for the East on the allegation that he had addressed a meeting of three wheel drivers who later instigated a long-running controversy over a Buddha statue in Trincomalee.

Despite the nominal civilian presence, it was highly questionable decision-making in permitting representatives of two military forces fresh from seven years of conflict to sit around a table and attempt progressive debate on normalization and de-escalation. If there was any advantage to the process, it was in that it was useful for both sides to be able to speak their mind to one another, and gauge where the other stood. However, any such advantage derived was outweighed by the negative qualities of having some individuals more committed to preserving deterrent and maintaining a long-term view on escalation sitting on a subcommittee designed for de-escalation. As one interviewee stated, the SDN should not have been the sole preserve of the military and it would have been far more advisable to have more non-military elements included in proceedings.¹⁰⁵

Nonetheless, some of the recommendations made in the Nambiar report should be implemented regardless of the controversy of his core findings, including the emphasis on strengthening international monitors and employing international observers. Notwithstanding that, given that creative international solutions to demobilization exist, it is perhaps a criticism of the Nambiar report that it constricted itself to a conventional viewpoint. The DDR element of the Bougainville peace agreement, which is in the process of being loosely emulated in Nepal, is a good example of how to link disarmament to tangible progress on issues of state reform and power-sharing. Perhaps, the direct approach towards a resolution of the HSZ proved divisive. An interviewee has suggested that a further avenue out of this situation would have been for the GOSL to unilaterally explore ways and means of relaxing the restrictions in the HSZs.¹⁰⁶ This would be a low profile exercise, away from the high table, therefore avoiding the risk of being seen as buckling to pressure from the LTTE and/or the international community.

Politics of the Media: Influencing Division

As a recent study notes, the role of the media within the ethnic conflict is something which many people seem to recognise intuitively.¹⁰⁷ While guarding

¹⁰⁵ Interview with UNF party official, August 2006

¹⁰⁶ Interview with a Member of Parliament, May 2006

¹⁰⁷ Thiru Kandiah with Sandagomi Coperahewa, Lakshman Gunasekera, Jehan Perera and A. Sivanesavelan, *The Media and the Ethnic Conflict in Sri Lanka* (Colombo: Marga Institute, 2001): 1

against the view that the vernacular media is 'central to opinion formation,' there is no denying that it should not be overlooked when seeking a more nuanced understanding of Sri Lanka's politics.¹⁰⁸ Its stance on the power-sharing arrangements that is the subject of study in this paper is, of course, a microcosm of a wider fissure along the lines of which Sambandan asserts:

In its own way, the current media trends are linked to the post-independence evolution of the polity, which is more along assertion of the divergent ethnic identities, rather than the formation of a pan-Sri Lankan identity. This has resulted in the media, by and large, setting out to champion the cause of particular communities, even if it meant compromising realities, sustaining stereotypes and projecting wishful thinking.¹⁰⁹

As a result, the press is often guilty of the 'promotion of zero-sum approaches to the peace process.'¹¹⁰ The 'Southern' press, and this does not include Tamil-language newspapers have had, and continue to have, two core aims. One is a 'concern with building up, strengthening, maintaining, expressing and justifying a distinct southern, specifically Sinhala, consciousness against those on the other side of the ethnic divide.'¹¹¹ The second is that the approach is generally 'pursued in a way that also simultaneously serves the particular interests of rival groups within the internal politics of the South.'¹¹² These two broad goals govern the editorial output of the major southern publications, especially English-language. In that sense, the southern media is a key reflection of both the crisis of the state, and the intra-group dimensions of inter-group conflict as portrayed by Kenneth Bush and others.¹¹³ Whereas occasional peace-related criticism of the LTTE occurred in the pages of the moderate *Virakesari* or *Thinakkural* newspapers, the Tamil media has taken a more uniform nationalist

¹⁰⁸ Suthaharan Nadarajah, "Sri Lanka's Vernacular Press and the Peace Process" in Goodhand, Klem et al (2005): 7

¹⁰⁹ V. S. Sambandan, "Federalism and the Media: Some Realities and Stereotypes from Sri Lanka" in Raghavan and Bauer (2006): 108

¹¹⁰ Nadarajah (2005): 6

¹¹¹ Kandiah (2001): 6

¹¹² Ibid: 6

¹¹³ Kenneth Bush, *The Intra-Group Dimensions of Ethnic Conflict in Sri Lanka: Learning to Read between the Lines* (Basingstoke and New York: Palgrave Macmillan, 2003)

position as the peace process has faltered.¹¹⁴ Nonetheless, in many ways, the media are as Kandiah put it 'central *instrumentalities* of the conflict,' and not merely vehicles or 'opportune tools' of externally shaped 'operative substantive factors and positions.'¹¹⁵ This influence is nowhere more visible than in debates on the HSZ issue which demonstrated best how the media, particularly the vernacular, reflects the inherent polarity of the polity. It should also be noted that it was in the light of a strong media reaction that the two sides avoided the potentially emotive concept of a Joint Task Force and moved towards more limited power-sharing arrangements in the subcommittees.¹¹⁶

It is interesting to note the diametrically opposed stances taken by the media with regard to the HSZ issue. The respective vernacular press sided themselves with either the stance taken by General Fonseka or with that of the LTTE. The vast majority of the mainstream Sinhala newspapers trumpeted security over resettlement and took the view that vacating the HSZs was not possible. In the build-up to the fourth round of plenary negotiations at Nakorn Pathom, the HSZ issue became a focal point of interest. The *Lakbima* ran an article by General Fonseka proclaiming that the army cannot afford to relax in Jaffna.¹¹⁷ On the same day, the newspaper quoted a 'senior defence official' as saying that the LTTE spent 1% of their time undertaking political work in government areas and the rest of the time was spent on abduction and extorting taxes.¹¹⁸ This was a common practice in the Sinhala press and often went hand-in-glove with an overall strategy of casting aspersions upon the genuineness of LTTE involvement in the peace process. The *Divaina* ran a prominent first page report on Defence Secretary Austin Fernando's comments that resettlement of people in HSZs could not take place until solutions were found to various problems including land disputes, land mines and non-identification of ownership of land.¹¹⁹ In contrast, on the previous day it had relegated Tamilchelvan's comments that a

¹¹⁴ Nadarajah (2005): 21-22

¹¹⁵ Kandiah (2001): 2 (Original emphasis)

¹¹⁶ Surprisingly, the shared decision-making entailed in SIHRN did not meet with adverse press reactions unlike in the cases of the Joint Task Force, the concept of interim administrations, and later, the P-TOMS. The reasons behind this are perhaps something that could form a subject of future research.

¹¹⁷ *Lakbima*, January 2, 2003

¹¹⁸ *Lakbima*, January 2, 2003

¹¹⁹ *Divaina*, January 2, 2003

final decision on HSZs will be made at the peace talks to an inner page.¹²⁰

Similarly, the Tamil press highlighted the necessity for the Tamil displaced to return to their vacated homes as quickly as possible. It viewed the SLA's position as inimical to progress in the peace process.¹²¹ In his study Nadarajah notes that all three publications *Virakesari*, *Thinakkural* and *Sudar Oli* were concerned that united Sinhala chauvinism was threatening to derail the peace process.¹²² This division in views was encapsulated on January 6 as the fourth round of plenary negotiations began in Thailand when the *Divaina* proclaimed that instead of producing an editorial on the fourth round of talks, it was bringing to attention the abduction of an Army intelligence officer, the third such abduction since the CFA was signed. Indeed, the newspaper ran with "Tigers Abduct Army Corporal in Batticaloa" as its headline.¹²³ In contrast, the Tamil newspapers remained steadfast in reporting on the build-up to the peace talks with the *Sudar Oli* citing G. L. Peiris' statement that the HSZ issue would not dent the peace talks.¹²⁴

As noted above, the *Island* newspaper reacted angrily to the Nambiar report stating that the Indian General appears to be appreciative of the LTTE and therefore should 'seek the views of his colleagues who were with the IPKF here about (their) trustworthiness and dependability'. It charges that he was 'another Solheim' buying into the LTTE view that the SLA was the 'main obstacle' in the way of the 'peace process'.¹²⁵ This was an about turn for the *Island* as it had in January complimented Nambiar despite his contention that the SLA did not trust the LTTE at all, had no faith in the peace process, and were not

¹²⁰ *Divaina*, January 1, 2003

¹²¹ This was largely the established position. Nadarajah points out in his study that the generally nationalist *Thinakkural* in its January 2, 2003 editorial, described the SLA's proffered rationale for not withdrawing from HSZs as 'convincing': Nadarajah (2005): 32

¹²² *Ibid*: 32

¹²³ *Divaina*, January 3, 2003. Of all the vernacular newspapers the *Divaina*, sister publication to the *Island*, was the most hostile towards any perceived appeasement of the LTTE. It remained a committed critic of the peace process throughout. Even when it gave its tentative support to the CFA, the newspaper made it out to be a stay of execution. The above quoted editorial is an excellent example of how the southern nationalist media did little to promote confidence in the peace process.

¹²⁴ *Sudar Oli*, January 3, 2003

¹²⁵ *The Island*, May 10, 2003

trusted by the Tamils in the area.¹²⁶ The *Mirror* restricted itself to reporting on the content of the General's findings while in the *Sunday Leader*, former SLAF Commander Goonetilleke asserted that it would be suicidal for the LTTE to give up a substantial part of their armoury.¹²⁷ In that regard, he did not see any possibility of the LTTE relenting on the HSZ issue, particularly as they were speaking from a 'position of strength' but he also stated his belief that the LTTE was not likely to start a macro-confrontation. Rather, they were more likely to rally protests by organised groups of IDPs in order to focus attention on the HSZ and how it is being used to prevent resettlement. In this regard, Goonetilleke was remarkably prescient as the LTTE employed these precise measures on two fronts: citizens' groups were mobilized, both inside and outside IDP camps, and the TNA parliamentarians were employed in the Sri Lankan parliament as a second line of protest.

Goonetilleke's view refutes those made by a number of commentators that the LTTE were duty bound to demobilize or hand over their weapons to a 'third party' if they were truly interested in peace. For example, a subsequent editor of the state-owned *Daily News* Bandula Jayasekera stresses that the GOSL could not risk 40,000 troops being isolated in the Jaffna Peninsula and therefore it was unreasonable to expect dismantling of, or relocation from, HSZs.¹²⁸ This issue became further magnified by an offer by the Wickremasinghe administration (that the LTTE rejected) to shift HSZ-positioned forces to Jaffna Fort. Local media argued that the GOSL had been forced into this position because of LTTE pressure with Dayan Jayatilleke arguing that the Fort was a 'deathtrap', proven when the armed forces were forced to evacuate it in 1990. He condemned the move, claiming that it was extremely difficult to defend and furthermore, to break out and secure any point of tactical value.¹²⁹ As it happened, this relocation was of a limited nature of units within Jaffna town, and it was later announced by Defence Minister Tilak Marapana that the GOSL was to move sixty five army bases to other areas, in order to facilitate resettlement of civilians. However, Marapana insisted that there were not many HSZs in the Peninsula, 'just one' surrounding the Palaly airbase, and that this relocation was taking place from

¹²⁶ *The Island*, January 26, 2003

¹²⁷ Harry Goonetilleke, "The Challenge of HSZs," *Sunday Leader*, January 5 2003

¹²⁸ Jayasekera (2003)

¹²⁹ Dayan Jayatilleke, "High Insecurity Zone," *Island*, March 4 2003.

locations outside HSZs.¹³⁰ Furthermore, Marapana noted that the LTTE did not require removal of HSZs, but reduction.¹³¹

On controversial issues governing the conflict such as HSZs, the press has been guilty of the 'promotion of zero-sum approaches to the peace process.'¹³² As a result, it aided in heightening mistrust and eradicating possible routes to compromise. The failure of the press to take a positive stand is also mirrored in the debate on interim administrations, which is studied below.

Sub-committee on Political Affairs: The Sub-committee that Never Was

The Sub-committee on Political Affairs existed in name only as it never met. This raises several questions. Why was the sub-committee formed in the first place? Was it established on the insistence of the Sri Lankan government? Or was it formed due to pressure from the international community, the Southern electorate and Sinhala nationalist parties that core issues be discussed? Since the sub-committee never met, and since both the GOSL and the LTTE did not seem to want the sub-committee to work, it can be deduced that both parties were not overly anxious to tackle core issues at that juncture. The LTTE probably felt the process was progressing too quickly and they would be pushed into a settlement while the Wickremasinghe government realised it would not be able to offer substantial power sharing in the midst of the cohabitation battle with the President and building opposition in the South. Hence, at the time both parties would have found the sub-committee useful in dealing with the pressure from the respective constituencies without compromising their own positions or the *status quo*.

Building Trust: Opportunities Missed and Relative Successes

Though the Wickremasinghe government's peace through development policy was flawed in many ways, it also created some space for interaction and collaboration between the GOSL and the LTTE. Since the policy focused on addressing reconstruction through SIHRN, continued engagement between the GOSL and the LTTE could have minimised acrimony and contained growing mistrust between the parties. While this space could have been utilised for

¹³⁰ Keith Noyahr, "Govt. to relocate Army camps," *Daily Mirror*, May 8 2003.

¹³¹ *The Island*, lead article, May 8 2003.

¹³² Nadarajah (2005): 6

confidence building measures, it can be argued the existence of the space itself would have signalled to both parties the possibilities that existed for working together.

Arguments have been made that if NERF had been available earlier then the LTTE would have been placated to a certain extent and the process would not have broken down. We would argue that even if NERF had been set up and functioned, inherent problems with the structure, powers and mandate of SIHRN, and existing political and administrative realities would have hampered its performance. It is however possible, as pointed out by a World Bank official, that if NERF had been in place the peace process would not have unravelled as quickly, as some achievements would have taken place in reconstruction and rehabilitation.¹³³ This would have alleviated immediate pressure and contributed to confidence building measures. Ultimately, it is doubtful whether extra-legal structures like SIHRN and NERF would have worked within a centralised state with a polarised/fractured polity.

At the time of writing, SIHRN continued to function at the LTTE's Planning and Development Secretariat in Kilinochchi.¹³⁴ Until April 2003 donor funding was utilised to pay salaries and meet other expenses but from 2004 SIHRN was incorporated into the budget of the government. An official of the Peace Secretariat stated that since SIHRN is the last existing/functioning link to the peace process it should be kept alive so it may be used as a possible space for interaction between the government and the LTTE.¹³⁵ Though one might question the need to keep a lame duck institution alive, it appears the Director Ireneuss does enable interaction between the two parties at a more local level. Ireneuss stated that he continues to act as a facilitator between the LTTE and government structures, such as the provincial councils, to motivate the LTTE to take an active role in civil administration.¹³⁶ The counter argument that can be posited is that these measures while building confidence between the parties will lead to the empowerment of the LTTE without accountability.

¹³³ Interview with Naresh Duraiswamy, June 2006

¹³⁴ This was the situation at least until the end of 2006. We are unable to confirm the present situation.

¹³⁵ Interview with former Deputy Secretary General/acting Secretary General of SCOPP, John Gooneratne, June 2006

¹³⁶ Interview with Selvin Ireneuss, June 2006

Likewise, the P-TOMS is another structure that could have been used, if not to re-invigorate the peace process, at least to enable continued engagement between the two parties, particularly since it was being set-up at a critical juncture when the LTTE was assumed to be preparing to return to war. Opinions have been expressed that the P-TOMS could have formed the basis of a future interim structure, as a milestone in the path to a negotiated settlement. Where the intentions of the GOSL and the LTTE are concerned we can come to the following conclusions based on their actions. The TNA, which felt that the P-TOMS was inadequate, clearly feared that it would become the basis of a future interim structure, and is therefore said to have advised the LTTE against signing the MOU.¹³⁷ One is forced to deduce that since the LTTE accepted the mechanism without much fuss they did not see it as a mechanism that could at some point in the future form the basis for an interim structure, but instead viewed it as an exercise in pragmatism. Further, the fact that the LTTE agreed to the inclusion of the Muslim community and to some, though inadequate, safeguards for the minorities, supports the theory that to the LTTE the P-TOMS was a practical solution which they believed would enable them to gain access to aid and at the same time maintain their position as provider in the eyes of the people.

Though the P-TOMS falls short of the maximalist ISGA proposals of the LTTE it can be argued it gave LTTE control over the disbursement of funds and a foothold in the six districts. According to the MOU, the High Level Committee could function in the Tsunami Disaster Zone, which was defined as all tsunami affected land area within 2 kilometres of the low water line, and was also given the power to 'decide to bring additional land areas within the TDZ; provided, however, that all such land areas must have been directly impacted by the tsunami or directly affected by the displacement and resettlement of persons as a result of the tsunami'. Technically the High Level Committee would have had the power to make policy and disburse funds for all tsunami affected areas in the country, including the South, through which the LTTE could have gained legitimacy and authority.

More importantly, since the P-TOMS was established by a new government, i.e. not the government with which the LTTE engaged in the peace process, it would have been an invaluable opportunity for the two parties to work together.

¹³⁷ Interview with TNA MP, R. Sampanthan, August 2006

Hence, the P-TOMS could have functioned as a trust building mechanism which would have contributed to the re-initiation of peace talks.

The enduring legacy of the SDN was that it epitomised the exceptional difficulties in marrying normalization and security. However, it would be unfair to characterise the history of the SDN as an unmitigated failure. Perhaps its most invaluable contribution to the wider peace process was in the continued interaction of district-level SLA officers and their LTTE counterparts and indeed, members of the SLN and the Sea Tigers. Even though these meetings took place prior to the formation of the SDN, the decisions made by the SDN legitimized and strengthened the mandate and effectiveness of district-level meetings.¹³⁸ While formalized district committee meetings ended with the collapse of the SDN, the habit of meeting at a district level continued for a number of months afterwards, probably until Colonel Karuna's defection and the April 2004 election. At a pre-planned and broader level, these meetings took place in the Northern Province and in the Trincomalee, Batticaloa and Ampara districts. For example, in the Ampara meeting, held on November 23, 2002 at the Akkairapattu Divisional Secretariat building, the two sides agreed to implement a phased withdrawal of STF camps that were located in schools, houses and public buildings.¹³⁹ The meeting also covered the issue of paddy farming for the Muslim community and as with other meetings at a district level and in direct contrast to the two SDN meetings, agreements were reached in a more amicable atmosphere. One interviewee noted that by having district-level officials engage at the district level, the meetings would avoid the hard-headed and zero-sum positions taken by officials at higher levels. Issues were more easily accommodated and more pragmatic, everyday thinking was applied.¹⁴⁰ Furthermore, in many cases, the Government Agent or Divisional Secretaries would attend these meetings, thereby broadening the resource base.

The relationships built at these meetings played a significant role in future crisis management actions as local-level meetings were crucial in ensuring local

¹³⁸ See, for example, "SLA meets LTTE Northern Forces Commander," *TamilNet*, September 12, 2002: <http://www.tamilnet.com/art.html?catid=13&artid=7463>

¹³⁹ "STF withdrawal, Muslim farming discussed in Ampara Meeting," *TamilNet*, November 23, 2002: <http://www.tamilnet.com/art.html?catid=13&artid=7864>

¹⁴⁰ Interview with Austin Fernando, August 2006

incidents remained localized, nipped in the bud, and escalation was prevented.¹⁴¹ Whenever an incident occurred, the district representatives would meet and discuss means of containing the situation. Often, these *ad hoc* meetings were called by the local SLMM official. As noted above, it is unclear as to when and why these meetings stopped. An evident and obvious disruption was the defection of Karuna. It has also been alleged that the LTTE was concerned that there was too much interaction between the military figures on each side.¹⁴² Nonetheless, following Karuna's split, these meetings were far less frequent. Furthermore, the Rajapakse administration was averse to meetings taking place between the two sides. Whatever the case may be, the value of containing local incidents can be seen in the context of early 2006 where in the absence of constraints, even minor conflagrations threaten to spiral out of control. Indeed, magnification of potentially small incidents becomes part of the endgame.

¹⁴¹ Interview with Austin Fernando, August 2006

¹⁴² There has also been unsubstantiated speculation that a potential reason for Karuna's split was his perception that the LTTE leadership was curtailing his role, and that his links with the military which may or may not have led to the defection developed during these interactions.

4 Interim Administrations

Concomitant to the decision by the LTTE to withdraw from the negotiations process was a request for the government to fulfil its pledge to establish an interim administration for the North-East. At the outset, this section will briefly cover the history of the 'interim administration' idea in the Sri Lankan context. Secondly, it will undertake a brief overview of the three proposals submitted by the government and a more detailed analysis of the proposals for an Interim Self-Governing Authority (ISGA) put forward by the LTTE. It will next evaluate how the contrasting approaches of the two peace partners demonstrated minimalist and maximalist approaches to the establishment of an interim administration. Finally, it will study the debates around the proposals, particularly the ISGA, and conclude with an evaluation of the underlying obstacles to progress, highlighting the political, before identifying potential avenues forward.

Peace in Stages: The Rise of the 'Interim' Administration in Peace Negotiations

The concept of an interim administration for the North-East was first introduced in the Indo-Sri Lanka Accord of 1987, the result of the cumulative effect of Indian 'mediation' in Sri Lanka's conflict.¹ Indian involvement in seeking a political solution went through three failed stages before culminating in the Accord.² Each

¹ We qualify the term 'mediation' here because Indian involvement in Sri Lanka affairs was reluctantly accepted: it can be described as 'mediation with muscle'.

² These were: the diplomatic initiative of Prime Minister Indira Gandhi's envoy G. Parthasarthy leading to the All Party Conference in 1984; the hosting of peace negotiations between the Sri Lankan government and all Tamil political and militant groups in Thimpu (Bhutan) in 1985 which led to the 'Thimpu Principles', and "proximity talks" between May and December 1986 culminating in the 'December 19th proposals', that aimed at finalising a devolution package with the province as unit of devolution.

stage fed into the content of the final accord signed by Indian Prime Minister Rajiv Gandhi and President J. R. Jayawardene with the agreed consent of all major Tamil stakeholders. The Accord was bolstered by the entry into Sri Lanka of a peacekeeping force, entitled the Indian Peace Keeping Force (IPKF), to implement the Accord and ensure the laying down of arms by Tamil militant groups.

The centre-piece of the accord itself was the North Eastern Provincial Council (NEPC), implemented into law by the Thirteenth Amendment to the Constitution, which tentatively actualized the Tamil demand that the North-East constituted the historical homeland of the Tamil people, while allowing for a referendum in the East to de-merge if it so desired. Interestingly, as Loganathan has noted:

... [A]ll non LTTE Tamil politico-military organizations accepted the Accord as an “interim solution”, but expressed dissent over the “referendum clause” which made the merger of the Northern and Eastern Province conditional.³

Therefore, it can justifiably be argued that the accord itself was the first interim arrangement signed in the history of the Sri Lankan conflict as the Tamils did not see it as a ‘final settlement,’ arguing that there were notable ‘deficiencies’.⁴ The NEPC itself was clearly an interim administration. Unfortunately, the experience of the Provincial Councils in general was one of peripheral subordination by the Centre. The NEPC was a casualty of the failure to incorporate the LTTE, which entered into full-scale hostilities with the IPKF. As a result of the LTTE’s non-participation in the process, they boycotted the elections to the NEPC. When they did take place, it has been widely acknowledged that the elections were rigged, though some observers have questioned the extent to which coercion took place.⁵ The Eelam People’s Revolutionary Liberation Front (EPRLF) took control of the NEPC as all other Tamil entities, political and military, declined to contest. The EPRLF-run Provincial Council was an affront to the LTTE’s continuing

³ Ketheshwaran Loganathan, “Indo-Sri Lanka Accord and the Ethnic Question: Lessons and Experiences” in Rupesinghe (2006b): 81. Emphasis added.

⁴ Ibid: 81; 89. This was true of all the Tamil groups to varying degrees

⁵ See *ibid*: 86. In the North, there was no actual poll as the Indian Ambassador Dixit had facilitated a ‘no contest’ pact whereas in the East, complete Indian control ensured the final result.

quest to be the sole representative of the Tamil people, and ultimately ensured the NEPC would forever be blighted in LTTE eyes and consequently a non-starter in future peace negotiations. Following bloodshed between the EPRLF and the LTTE, tacitly supported by the government of President Premadasa, and the ultimate Unilateral Declaration of Independence by the EPRLF/NEPC, the NEPC was dissolved through the enactment of the Provincial Councils Amendment Act No. 28 of 1990. Through this amendment, the Centre could dissolve a Provincial Council if more than half the PC’s membership expressly repudiated or manifestly disavowed obedience to the Constitution. This effectively negated any effective governance potential for the NEPC or indeed, any other Provincial Council. Furthermore, elections to the Council have not been held since and though it operates at an administrative level, its role has not been as was envisaged.

In future negotiations, the demand for an ‘interim administration’ became a key demand put forward by the LTTE, an effective pre-condition for negotiations. President Kumaratunga made two abortive attempts at bringing the LTTE to the negotiating table. In both instances, the LTTE expected talks to proceed in two stages – firstly, to address the immediate problems faced by the Tamil peoples and secondly, to arrive at a negotiated political settlement.⁶ This ‘staged’ or ‘step-by-step’ approach was, and is, a consistent feature of LTTE negotiating strategy, and a pivotal ingredient in the failure of the Kumaratunga initiatives. To facilitate its staged approach, the LTTE requested two major actions: an immediate cessation of hostilities and an end to the economic blockade to the Northern part of the country. P. Rajanayagam in his account on the 1994/5 initiative, stated that following the first round of negotiations in Jaffna, the government delegation was very positive while the head of the LTTE delegation and Eastern Area Commander Karikalan was more circumspect, noting their emphasis on the ‘staged approach’. Rajanayagam notes that this was not recognised at the time and the government felt that it could carry out in parallel confidence building measures related to day-to-day issues and political negotiations. This divergence of views manifested itself as the process progressed, and is particularly visible in the letters exchanged between Pirapaharan and the government.⁷ In one, the

⁶ P. Rajanayagam, “Govt-LTTE Negotiations 1994/1995: Another Lost Opportunity” in Rupesinghe (2006b): 174

⁷ *Ibid*: 174

LTTE leader emphasizes:

We are very clear in our view that the overwhelming objective of the peace process should be aimed at resolving the national problem by exploring the causes of the armed conflict. We assure you that there is no differing perception on this fundamental issue. What we wish to emphasize is that the peace process should be advanced in stages. The early stages of the peace negotiations, we wish to reiterate, should address the pressing problems and hardships encountered by our people which are crucial for the restoration of normalcy and for the creation of a peaceful environment.⁸

Pirapaharan went on to state that the first round of negotiations was predicated on the premise that the government would alleviate the urgent day-to-day issues of the Tamil people. This had led to wide expectations on the part of those people, and 'any attempts on the part of the Government to sidetrack or circumvent these issues would be *considered by us and our people as an act of political bad faith*.'⁹ The government, however, persisted in its parallel approach, and cited the assassination of Kumaratunga's presidential opponent Gamini Dissanayake as the factor behind the delay in implementing what had been agreed to in the first round of negotiations.¹⁰ The presidential poll was held on November 9, 1994 but a ceasefire was only agreed in early January, and the relaxation of the economic embargo on January 26. This, too, was only a partial relaxation, leaving eighteen items banned, including significantly, petrol and diesel. Ultimately, the LTTE unilaterally resumed hostilities in April 1995. Whatever the reasoning behind that decision, the crux of disagreement arose over when to bring in 'political' or 'core' issues: the LTTE insisted on tackling normalization and reconstruction first, the Kumaratunga regime insisted on a 'parallel' process.¹¹ Nonetheless, the violence unleashed by the LTTE simultaneous to the ceasefire collapsing left many to feel that the organization

⁸ Ibid: 182

⁹ Ibid: 182 (emphasis added)

¹⁰ This first round of negotiations had been held prior to the Presidential election and hence Dissanayake's assassination in the build-up to the poll.

¹¹ There was also a feeling on the part of the LTTE that the GOSL did not dispatch a negotiating team in recognition of and cognizant of the fact that in the LTTE's self-image, they were representing a people with the structures of a (quasi-) state to bolster the claim. See Jayadeva Uyangoda, "Breakdown of 'Peace Talks'," *Pravada*, 4 (May/June 1995)

never had any intention to negotiate, merely biding their time to strike back refreshed and reinforced.

This dilemma repeated itself in 2000 when President Kumaratunga once more mooted the possibility of talks with the LTTE, this time with Norwegian facilitation. Having undertaken a strategy for the previous five years of shaping her own political settlement to the conflict, Kumaratunga again insisted on a parallel process while the LTTE persisted with its demand for a staged approach with a cessation of hostilities and the lifting of the economic embargo once more taking priority. Indeed, Kumaratunga's office countered the LTTE demand for a ceasefire by arguing that a ceasefire need not precede negotiations, and that the government would take it into consideration when the negotiations had made satisfactory progress.¹² As noted above, there was a sound military reasoning for the failure of the 2000 peace initiative: while the LTTE were willing to negotiate as they had achieved strategic parity, the government were unwilling to a ceasefire as they sought to recapture lost territory (in effect, they sought to continue Kumaratunga's War for Peace strategy). Ultimately, this fundamental divergence of strategy has plagued Kumaratunga-LTTE efforts at re-starting negotiations, re-emerging when she inherited the UNF peace initiative.

Constrained by Circumstances: Examining the Government Proposals

The Wickremesinghe Administration, however, was wedded to the idea of a 'staged' approach and promised an interim administration for the North-East in its electoral manifesto. While the LTTE had its own rationale for the staged approach, in the eyes of the UNF, the economic development of the country could not take place without a cessation of hostilities and relative peace. However, when in power and hamstrung by the straitjacket imposed by cohabitation, the UNF intimated to the LTTE that it would be extremely difficult to push through an interim administration at the onset of the peace negotiations. This, as noted above, resulted ultimately in the formation of SIHRN as a quasi-interim administration. SIHRN, it was anticipated, would have a limited lifespan of one year, after which it would seem likely that the LTTE request for a more fleshed out interim structure would have been revived. As it happened, SIHRN ran into difficulties following the suspension of negotiations in May 2003; simultaneously, the LTTE requested that the government submit its proposals

¹² Uyangoda (2006a): 248

for an interim administration.

The first set of proposals for the establishment of a new mechanism for development and reconstruction in the North-East was submitted by Norwegian Foreign Minister Vidar Helgesen on May 17, 2003. This document was 'worked out' by Helgesen with 'the consultation of the Government of Sri Lanka'.¹³ The North East Development and Reconstruction Council (DRC) envisaged in the document was largely an expansion of SIHRN, and did not constitute a concrete proposal as such but a series of guiding notions, and was tied to an 'abstractly formulated "road map" of an envisaged federal solution'.¹⁴ The LTTE rejected it outright and requested that the Prime Minister respond officially to Pirapaharan's letter, noting that a clear set of ideas and proposals would be beneficial to the LTTE leadership taking a positive decision with regard to participation at the Tokyo donor conference.

The Prime Minister responded with two sets of proposals – the apex body proposals in May and the July proposals. It should be noted that both sets of proposals sought to initiate dialogue rather than concretize final contours, and were therefore framework documents.¹⁵ The ensuing debate over these documents bears out the expectation gap between the two parties. The apex body proposals envisaged a council for decision making with regard to all immediate and medium-term rehabilitation, reconstruction and development work in the North-East and advising on policy development. There was no political or legal dimension to the proposals, and administration of the North-East was the responsibility of both the North-East Provincial Council and the central government, with an overriding Board. The Board was to be elected entirely by the Prime Minister, in consultation with the LTTE. The Special Commissioner would be the Chief Administrative Officer of the Board, to whom power would incur, and to whom responsibility of organizational structures would fall. The Special Commissioner would be elected by the Board. The role of the LTTE in the set-up was both limited and vague.

It is evident that the government proposals did not meet the lowest acceptable negotiating position for the LTTE, who rejected them outright.

¹³ Balasingham (2006): 447

¹⁴ Ibid: 447

¹⁵ Weerakoon (2006): 24. Weerakoon offers a detailed outline of the two government proposals in this article.

They amounted to the powers of a developmental council, similar to the ill-fated District Development Councils of 1982.¹⁶ The government maintained its difficulty in addressing the issue within the confines of the constitution, a position that was untenable as far as the LTTE and indeed, the TNA were concerned. The LTTE indicated that it was 'surprised and dismayed', noting that the proposals did not make any effort to form an interim administrative structure and instead amounted to a development-orientated structure with 'extremely limited administrative powers in which the participatory role of the LTTE is... left deliberately ambiguous'. It also pointed that the proposals ignored the ground reality in that the LTTE ran a 'de-facto administration of its own in vast tracts of territories under its control'.¹⁷ The LTTE also questioned whether the UNF government was hiding behind the fact that it could not act against the Constitution of Sri Lanka, something that was reiterated in Prime Minister Wickremasinghe's subsequent letter responding to the LTTE's criticisms.¹⁸

Joseph Pararajasingham, a senior Tamil parliamentarian who was later assassinated, noted that the CFA was the sole reason for tranquillity in the country and it had no constitutional basis:

Therefore, why can't the Sri Lankan government look beyond the constricting parameters of its constitution to formulate an interim mechanism for rebuilding and rehabilitating the war ravaged northeast? ... We are saying this because there isn't the slightest leeway under Sri Lanka's constitution to set up an interim mechanism with the necessary executive power and fiscal authority to cut through the mass of red tape to achieve the objectives of rebuilding and rehabilitating the northeast to stabilise the peace process and lay a firm foundation for cementing trust.¹⁹

Despite the effort to remain within constitutional boundaries, constitutional experts and civil administrators noted that the proposals would be unable to

¹⁶ District-level decentralization is ironically the preferred choice of conflict resolution put forward by the extremist Jathika Hela Urumaya (JHU)

¹⁷ Balasingham (2006): 451-3

¹⁸ Ibid: 454-6

¹⁹ Comments made at a press conference following a meeting between the TNA MPs and Prime Minister Wickremasinghe on June 2 2003: <http://www.tamilnet.com/art.html?catid=79&artid=9125>

surmount legal impediments and would be at the mercy of the President given her power to dissolve parliament. As with SIHRN, the interim administration would have to contend with the fact that its powers would be roughly equivalent to any statutory board or authority, and therefore would be forced to surmount prohibitive administrative red tape.²⁰

The July proposals clarified some of the earlier ambiguities in the government's position, especially with regard to the role of the LTTE in the interim administration. The discussion paper came in the form of a Provisional Administrative Structure, comprised of a majority of LTTE members but with notable representation for the UNF and the PA and the Sri Lankan Muslim Congress (SLMC) as representatives of the Muslim community. With regard to the chair of the Council, the GOSL proposals provided for two options. First, that it would comprise two chairpersons, one each from the LTTE and the GOSL, and that both would have veto power over any proposal brought before the Council. Second, that a Chairperson would be elected from amongst the members of the Council, with an added safeguard that any decision affecting the Sinhala or Muslim communities can only be made valid if the decision is supported by either a majority of the Council, or a majority of the representatives of the Muslim and Sinhalese communities as the case may be.

With regard to mandate, the July proposals invested in the Council the ability to exercise authority over powers and functions as are at present being exercised and performed by the Government in respect of regional administration, excepting police and security, land, and revenue but including rehabilitation, reconstruction and resettlement. It was further proposed that a Special Commissioner be appointed with the authority to utilize State machinery for the implementation of the decision of the Council. This person was to be appointed by the GOSL with the consent of the majority of the Council. The finances for the interim administration would be channelled through an expanded form of NERF, called NERRF – the North East Reconstruction and Rehabilitation Fund, with the emphasis away from 'immediate' needs. Furthermore, the Council was to appoint district committees which would in turn appoint district sub-committees. Finally, there was a provision for the appointment of specialised committees on economic affairs, infrastructure and essential services.

²⁰ Press conference, June 2 2003

Pitching High: The Parameters of the ISGA

If the Apex Body proposals constituted the minimalist position of the government, then the July proposals constituted a projection of powers that went further along the spectrum of power-sharing. There was a more concerted effort at incorporating the LTTE's demands in offering them a clear central role, which is, however, subject to government veto. Furthermore, the proposals lacked jurisdiction over areas that the LTTE considered essential, namely law and order, and land rights. While there was no verbal response by the LTTE to the July proposals, the ISGA proposals represented its effective response. They were drafted during meetings in Paris and Dublin between September and October 2003 by the LTTE's Constitutional Affairs committee which included Professor Sornarajah, Professor of Law at the National University of Singapore, Siva Pasupathy, a former Attorney General of Sri Lanka, Professor P. Ramasamy, Professor of Political Science at the National University of Malaysia and V. Rudrakumaran, legal advisor to the LTTE.²¹ On October 31, the proposals were handed over to the Norwegian facilitator to be forwarded to the GOSL and were made public the following day.

The Interim Self-Governing Authority (ISGA) proposals outlined the establishment of the Authority (hereafter, the ISGA) in eight districts until such time as a final negotiated settlement is implemented.²² The ISGA was to be comprised of members appointed by the LTTE, the GOSL and the Muslim community in the North-East. With regard to the Muslim community, it notes that its representatives have the right to participate in the formulation of their role. Furthermore, it states the number of members would be determined to ensure 'an absolute majority of the LTTE appointees in the ISGA' and subject to this, the Muslim and Sinhala communities in the North-East shall have representation in the ISGA. It goes on to state that 'the chairperson shall be elected by a majority vote of the ISGA' and serve as its chief executive with the responsibility to 'appoint the Chief Administrator for the North-East [sic] and

²¹ The other members of the committee were Dr. Manuepillai Paul Dominic, Professor of Law, University of Sydney, Mr. Visvendran, legal expert, and Dr. Jay Maheshwaran, economic advisor. Among the other participants at the meetings were S. Tamilchelvan and Colonel Karuna and Selvin Ireneus as well as several international experts. See "Current State in the Peace Process," *Tamil Times* 42: 10 (2003): 9-10

²² The eight districts are Ampara, Batticaloa, Jaffna, Kilinochchi, Mannar, Mullaitivu, Trincomalee and Vavuniya.

other such officers as may be required... The chairperson shall have the powers to suspend or terminate any such appointment.'

The meat of the proposals, and those areas that met with the greatest opposition, concerned the jurisdiction of the ISGA, as it granted powers to deal with issues over and above resettlement, rehabilitation, reconstruction and development, including improvement and upgrading of existing facilities in the North-East (RRRD), raising revenue, imposition of taxes, levies and duties, law and order, and land. Furthermore, Clause 10 (Separation of Powers) vests judicial powers for the North-East in the ISGA, and grants the institutions created under this clause the 'sole and exclusive jurisdiction to resolve all disputes concerning the interpretation and implementation of this agreement and any other disputes arising in or under this agreement or any provision thereof'. The GOSL proposals did not deal with law and order, financial authority, taxation and the judiciary.

The ISGA was vested with the power to administer all land in the North-East, alienating and determining appropriate use of non-private land, the appointment of a commission enquiring into and reporting on the rights of dispossessed people over land and land subject to encroachment, 'notwithstanding the lapse of any time relating to prescription.' Lack of power over land was a significant sore point for the LTTE in both the government proposals and the mandate of SIHRN. As Ponnambalam has pointed out, SIHRN did not have the power to deal with the rights of returnees and 'squatters' regarding prescription, and was hence inadequate for fulfilling its core mandate.²³ The HSZ were critical in this regard and the ISGA notes that the 'occupation of land by the armed forces of the GOSL, and the denial to the rightful civilian owners of unfettered access to such land, is a violation of the norms of international law,' in calling for such occupied land to be immediately vacated and restored to the possession of the previous owners. It adds that the 'GOSL must also compensate the owners for the past dispossession of their land'. Control of natural, marine and offshore resources in the North-East and its adjoining waters were also vested in the ISGA which notes that all existing agreements will continue in force but all monies due under such agreements are to be paid to the ISGA. The ISGA also retains the right to enter into future agreements.

With regard to finance, a financial commission comprising of 'distinguished

²³ Interview with TNA MP Gajendrakumar Ponnambalam, May 2006

individuals' was to be appointed by the ISGA in order to make recommendations regarding the proportion of the consolidated fund to be allocated to the North-East, with the GOSL making 'its good faith efforts to implement the recommendation'. The proposal also gave control of the three funds envisaged – the North-East General Fund, the North-East Reconstruction Fund (NERF) and the Special Fund to the ISGA. NERF retained its original function but the proposals recommended that control over it be transferred to the ISGA. The General Fund was to consist of the proceeds of all grants and loans made by the GOSL to the ISGA and the proceeds of all other loans made to the ISGA, as well as all allocations made by the GOSL from agreements with states, institutions and/or other organisations earmarked for use in the North-East. The Special Fund specifically covered RRRD. Significantly, the ISGA is also vested with the power to 'borrow internally and externally, provide guarantees and indemnities, receive aid directly, and engage in or regulate internal and external trade'. A final point with regard to financial control was particularly controversial, and this was the appointment of a separate auditor general for the ISGA, with auditing of all moneys received from international sources subject to approval by an internationally-reputed firm appointed by the ISGA.

On human rights, the proposals stated that every action taken was to conform to internationally accepted standards of human rights protection, and all rights under international law would be accorded to the ISGA's constituents. Furthermore, there would be an independent human rights commission, appointed by the ISGA, which would ensure compliance with human rights obligations. The commission would liaise with international human rights bodies to 'facilitate the rapid establishment of an effective regime for protecting human rights,' and would be entitled to receive and act on any petition by any individual. The ISGA protected secularism, and decreed that there would be no discrimination on grounds of religion, race, caste, national or regional origin, age or gender; no bribery or corruption, and no laws made prejudicial to cultural or racial sentiments.

With regard to the settlement of disputes, the proposal states that where following Norwegian conciliation, no agreement is possible between the parties to the agreement, an arbitration before a tribunal would take place. The tribunal would consist of three members with each party appointing one each and the third, who would act as chairperson, to be appointed jointly. In the

event of any disagreement over this latter appointment, the parties shall ask the president of the International Court of Justice to appoint the chairperson. Finally, determination of disputes would take into consideration the parity of status between the two sides. Elections to the ISGA would be held five years after implementation, providing an overriding final settlement has not been reached. In concluding, the proposal states that the ISGA will operate until such a time as a new government for the North-East, pursuant to a permanent negotiated settlement, is established, noting that the parties will negotiate in good faith to reach such a settlement as early as possible. However, if after the end of four years no final agreement has been reached, both parties shall engage in negotiations for the purpose of strengthening the terms of the ISGA agreement.

Analysing the ISGA: Exposing the “Expectations Gap”

There was no immediate emotive reaction by the press to the document. There are a number of possible reasons for this. First, the LTTE had taken great care in ensuring that it received a positive response. Indeed, Tamilchelvan himself had earlier voiced his confidence that the Sinhalese population would not find any offence in the proposal.²⁴ Second, an apparently ‘leaked’ version of the ISGA proposal was outlined in great detail by the journalist D. B. S. Jeyaraj a week before its submission.²⁵ It is unclear how, and why, this took place, but Jeyaraj’s article went into far greater procedural detail than the final document which suggests that alternative versions of the ISGA document were prepared. Finally, Perera has argued that the LTTE had refrained from addressing emotive arguments, such as the role of their military, the national flag or anthem.²⁶ Former Defence Secretary Austin Fernando, however, disagrees with Perera’s assessment, noting that hard language was used that only served to create negative feelings and serious innuendos. This hardened the view in the South on the ISGA.²⁷

²⁴ Frances Bulathsinghala, “Nothing to fear from counter proposals,” *Daily News*, October 7 2003

²⁵ D. B. S. Jeyaraj, “Details of LTTE Draft Proposals”, *Sunday Leader*, October 26 2003; see <http://www.tamilnation.org/conflictresolution/Tamilelam/norway/031026dbjonproposals2.htm>

²⁶ Jehan Perera, “Balancing self-rule aspect of LTTE proposals with shared rule,” *Daily News*, November 20 2003; <http://www.dailynews.lk/2003/11/20/fea01.html> [November 1, 2006].

²⁷ Fernando, “Interim Self Governing Authority (ISGA) Revisited”, *Daily Mirror*, December 2004.

Perhaps the main reason for the lack of an emotive response from the press was that President Kumaratunga curtailed Prime Minister Wickremasinghe’s powers just as they were digesting the document.

There is no doubt that the ISGA proposals are ‘maximalist in spirit’.²⁸ Given their ideological commitment to Eelam, it is unsurprising that the LTTE would pitch high. The proposals effectively call for autonomy in every aspect of the day-to-day life of the North-Eastern populace. This includes a commitment to set up autonomous institutions governing law and order, the judiciary, finance, taxation, election, resource management, local and foreign grants and loans, and trade. Significantly, there is no mention of the December 2002 Oslo agreement and the commitment to explore ‘federalism’, which implies both self and shared rule. In any power-sharing arrangement, shared rule at the centre acts as a bridge between the centre and periphery, creating fetters against majoritarian rule at either extreme. The LTTE proposals, Perera notes, focus on the self-rule aspect only.²⁹ In response, the LTTE has argued that the proposals were formulated to address immediate humanitarian needs and prepare the ground for a ‘final solution’, and did not tackle issues like federalism.³⁰

However, it is clear that an interim proposal must have some connection to the final settlement. As it is, there is very little shared-rule implicit in the proposals, and it is clear that the proposals go well beyond anything that the Sri Lankan government has offered or is able to legally offer with regard to an interim administration. Indeed, it is questionable whether the full gamut of powers envisaged in the ISGA would even be envisaged (by the GOSL) in a final settlement. Key elements that the ISGA enshrines in terms of self-rule (such as law and order, judiciary and land) are not even accepted as issues for which shared rule applies in the government proposals. Furthermore, the sweeping powers governing trade, resource management and development arguably surpass the constitutional powers bestowed on federal states in countries such as India.

The LTTE has a complete majority in the running of the ISGA with no safeguards for minority protections. The ISGA is conspicuously silent on the

²⁸ Perera (2003). See also Jayadeva Uyangoda, “Power struggle in Colombo: The implications for the peace process,” *Daily Mirror*, November 7 2003.

²⁹ Perera (2003)

³⁰ Interview with S. P. Tamilchelvan, *Sunday Observer*, December 12th 2004: 53.

extent and influence of the Muslim community with only a rider stating that the 'Muslim communities of the North and East' would have a role to play in formulating their role. This has been interpreted as an effort to capitalise on the divided nature of the Muslim political constituency, and it would not be acceptable to the Muslim community, either in the North-East or in Colombo. Therefore, there is a need for clarity in instituting powers and safeguards vis-à-vis the Muslim community and the process of consultation involved in coming to that agreement. In this regard, the LTTE's own Oslo communiqué of June 2006 should be adhered to:

[N]oting that the representatives of the Muslim community have the right to participate in the formulation of their role in the ISGA and protection of the interest of northeastern Muslims in accordance with international human rights norms'.³¹

There is a qualitative difference in this position to that put forward in the ISGA as it recognises that the wider Muslim community has the right to participate in the formulation of safeguards for the Muslim community of the North-East. This statement must be translated into incorporating a tangible commitment towards accommodating Muslim concerns and requirements, including access to meaningful self-rule in Muslim-dominated areas in the East, accountability and built-in minority safeguards for the central structure. In the ISGA, the powers held by the LTTE are overwhelming, and even where protections are imposed, there is no clear indication as to how these institutions would enjoy any independence.

The issue of human rights protections is ostensibly addressed but the independent commission is to be set up by the ISGA, where the LTTE would hold an absolute majority. In the absence of stringent checks and balances, the proposals leave open the possibility of absolute and unilateral power. This is particularly problematic given that the transfer of power to the authority is at the first instant not contingent on an election, which happens only after five years and only given progress having been made towards a final settlement. Despite the LTTE's experience in running parallel administrative structures, these structures have been geared thus far towards running a war economy and in the post-CFA period, with an added reconstruction and rehabilitation element.

³¹ Oslo Communiqué, June 9 2006, at www.tamilnet.com/art.html?catid=13&artid=18454

Neither in their general approach towards militant rivals and democratic oppositions nor in the ISGA proposal itself is there any evidence of a tendency towards democratic transformation. Rather, the LTTE views demands for more safeguards for human rights and democratic accountability with indifference. A strain of thought argues that once the Tamil people gain access to self-rule, issues like pluralism, democracy and human rights violations would automatically be negated, as reform would derive from within. This is a viewpoint that has been strenuously argued against.

As one analysis argues, the ISGA is a document that primarily secures LTTE hegemony and smothers opposition, including a vibrant civil society. If it was intended to be a document to build confidence and quell insecurity, it does not achieve this in any way.³² Citing a human rights observer in the East as stating that 'all things come from the mind of Prabhakaran,' Bush argues that the 'rigidly top-down-greatman structure of the organization' mitigates against any democratic transition. Furthermore, he notes that the micromanagement of LTTE practices and the lack of skilled individuals does not augur well for democratic governance or 'community empowerment'.³³ Therefore, it is important that human rights structures are established according to the norms established by the Paris Principles and human rights monitoring mechanisms not be linked with LTTE institutions but be international or structured in a manner that guarantees independence.

Reactions to the ISGA: A Brief Summary of Disparate Views and Approaches

As noted above, the immediate response to the ISGA was overshadowed by the takeover in early November of three government ministries by President Kumaratunga. There were merely three days where concerned stakeholders digested the contents of the proposals before attention shifted to the emerging constitutional crisis. However, there was some debate in November 2003, and this re-ignited in the second half of 2004 as President Kumaratunga displayed a willingness to negotiate the proposals alongside a parallel discussion on 'core'

³² Vasuki Nesiya and S. Nanthikesan, "From ISGA to Eternity: The light at the end of the tunnel has been shut off until further notice," *Lines* 2: 3, November 2003: http://www.lines-magazine.org/Art_Nov03/Editorial.htm [December 18, 2006] See also Kethesh Loganathan, "Interim setup should be based on pluralism and human rights," *Tamil Times*, 22: 8 (August 2003): 11

³³ Bush (2003): 169

issues. From a cursory evaluation of both initial responses and subsequent position statements, it is possible to extract three broad but nonetheless variegated views on the ISGA. First, that the ISGA, if granted, was countenancing separatism and a 'sell out' to terrorism. This was a manifestation of the majoritarian nationalist viewpoint that is largely against any major concession to the LTTE. There is an argument to suggest they may accept some form of limited package to assist in reconstruction and development work, but this has not yet been proved. Second, those that are prepared to negotiate on the ISGA as one of many proposals, and alongside parallel negotiations on 'core issues'. Third, there are those that are prepared to negotiate the terms of the ISGA as part of a continued interim approach. No approach considered the ISGA as the sole departure point for re-commencing negotiations, with the second approach maintaining a thinly veiled hostility towards the document and on the overall subject of negotiating with the LTTE.

The JVP and JHU are the most prominent political entities that conform to the first standpoint, alongside a number of influential intellectuals and patriotic movements, significantly the Patriotic National Movement (PNM).³⁴ The JVP has been at the political vanguard of opposition against the peace process, and appeasement of LTTE separatism. It was highly critical of the signing of the CFA and a vociferous critic of granting any form of interim administration to the North-East. It came out strongly against the July proposals put forward by the UNF government, noting that 'the proposed interim administrative council would divide the country forever'.³⁵ Therefore, its negative response to the ISGA was predictable, and should be placed in context: whatever the contents of the ISGA, it is likely that the JVP would have found reason not to offer any form of support. The party warned of an uprising as the ISGA re-entered the political debate with one of its leading parliamentarians charging:

The ISGA means the division of the country. Every action has a reaction. The TNA should be held responsible if the youth in the

³⁴ The PNM is an amalgam of intellectuals and political leaders reflected in its leadership with the prominent author Gunadasa Amarasekera as President and leading JVP parliamentarian Wimal Weerawansa as General Secretary. The PNM has organized frequent protests against the CFA, charging the UNF of conniving in an alliance with Tiger terrorism, and focusing also on the role of Norway as facilitator.

³⁵ *TamilNet*, July 29 2003: <http://www.tamilnet.com/art.html?catid=13&artid=9529>

south take up arms against the division of the country resulting from the ISGA.³⁶

The JHU was created in April 2004, and therefore was not a political entity at the time of the submission of the ISGA. Nonetheless, it emerged from the Sihala Urumaya, a party of Sinhalese political intellectuals, some of whom continue to play key roles with the JHU. It, too, was a consistent critic of negotiations with the LTTE.³⁷

The second viewpoint has been adhered to largely by the SLFP and its leader until late 2005 Chandrika Kumaratunga.³⁸ As with her response to the signing of the CFA, the initial response of Kumaratunga, her key advisors and the official party line was very critical of the ISGA. The official statement expressed 'grave concern' over the ISGA, reiterating the party's 'total and permanent' commitment to the sovereignty of the country.³⁹ Foreign Minister Kadirgamar was even more vehement, slamming the proposals as a blue print to a separate state:

... The Interim Self-Governing Authority (ISGA) proposal, on the face of it, will be very difficult for a sovereign government to accept. It has no reference to a Parliament, claims a separate Auditor General, and demands 200 mile maritime zone along two thirds of Sri Lanka's coast. It is a blue print for a future separate state.⁴⁰

Indeed, there is an argument that the ISGA was the catalyst for Kumaratunga's

³⁶ Nandana Gunatilleke, MP, JVP, during parliamentary proceedings, *Sunday Times*, December 1, 2004: 1. If one was to be flippant, this is a rather indefensible point, considering the thousands of youth who have already died in the war.

³⁷ This was personified by the comment made by party leader Tilak Karunaratne that had the party possessed an anti-aircraft missile, it would not have hesitated in shooting down the helicopter EU External Affairs Commissioner Chris Patten was traveling to Kilinochchi in.

³⁸ The post-Kumaratunga SLFP regime has largely ignored the issue of the ISGA entirely, preferring to frame its position with reference to core issues. Indeed, the issue of an interim administration does not feature in the mindset of President Rajapakse or in official government practices.

³⁹ *TamilNet*, November 4, 2003: <http://www.tamilnet.com/art.html?catid=10346>

⁴⁰ Late Foreign Minister Kadirgamar made the following remarks at a speech made at the Brookings Institute, Washington D. C., May 2004: <http://www.tamilnet.com/art.html?catid=13&artid=11974> [accessed June 28 2006]. He made similar remarks at a press conference in November 2003 following the publication of the proposals. See <http://www.tamilnet.com/art.html?catid=13&artid=10346>

move to take over the three ministries on the grounds of national security. However, once Kumaratunga was guiding the peace process, the SLFP became more open to the suggestion of opening negotiations on the basis of the ISGA, albeit with the retention of the SLFP practice of linking any negotiations on 'immediate needs' with parallel negotiations on core issues. This is a critical gap in the ISGA proposals. There is no attempt to link it to any final settlement and therefore the dilemma of *interim to what* remains unresolved. Nor is there any attempt to link it to present structures existing at the local and provincial government level.⁴¹

The statement released by the ruling UNF administration on November 1, 2003, immediately following the release of the proposals characterises the third strand of thought. It notes that the ISGA 'differs in fundamental respects' from the GOSL proposals, containing proposals 'in respect of which no agreement has been reached' thus far, but nonetheless, 'the Government is convinced that the way forward lies through direct discussion of the issues arising from both sets of proposals'.⁴² The UNF reiterated its stand in August 2004, urging the ruling UPFA alliance to adopt a 'coherent and internally consistent stand in respect of their attitude' towards the ISGA. In repeating its commitment to direct negotiations on the ISGA and the UNF proposals, the party underlined the importance of interim arrangements in the broader context of the peace process.⁴³ This view has been echoed by the smaller leftist parties, including the Lanka Sama Samaja Party and the New Left Front. Both civil society and the international community approached the proposals with caution, in some cases bordering on optimism. A number of civil society organizations were keen that a roadmap guided the interim process towards the final settlement, thereby attempting to resolve *the interim to what* dilemma and ensure that the ISGA, or any potential interim administration, does not get set in stone. It can be argued that this position is in slight variance to the Kumaratunga position, as the demand is not on parallel negotiations on 'core' issues but on a mutual agreement on the guiding principles to govern both the interim and final settlement. The ultimate difference between the second and third positions is not in the need to bridge

⁴¹ This can be explained by the LTTE's stated position that it does not recognise the Sri Lankan state or constitution and therefore the structures that come under it.

⁴² *TamilNet*, November 1, 2003: <http://www.tamilnet.com/art.html?catid=13&artid=10330>

⁴³ *TamilNet*, August 24, 2004: <http://www.tamilnet.com/art.html?catid=13&artid=12726>

the interim with the final settlement, but in the emphasis by the former on parallel negotiations around 'core issues'.

The embassy of the United States noted that the ISGA represented an opening from which constructive negotiation and compromise could flow.⁴⁴ Deputy Secretary of State Richard Armitage added that the LTTE proposal was 'the first time' he had seen 'such a comprehensive delineation of the aspirations of the LTTE' and therefore, they were a 'significant' development. However, both Armitage and later Assistant Secretary of State Christina Rocca cautioned that the proposals went beyond what had been agreed upon in Oslo, and there was therefore a need to draw them in.⁴⁵ During his controversial visit to Sri Lanka in November 2003, the External Affairs Commissioner of the EU Chris Patten stated that he hoped the ISGA proposals represented a 'first set of proposals' and not a final position, as it was 'quite difficult to associate them with any federal' solution.⁴⁶ The Indian government specifically, and consistently, noted that 'any interim arrangement should be an integral part of the final settlement and should be in the framework of the unity and territorial integrity of Sri Lanka'.⁴⁷

The vernacular media was typically divided along ethnic lines, with elements of the English language newspapers consistent in their vehement opposition to Kumaratunga's willingness to re-start negotiations. In the political columns, *The Island* editorials blared out vitriolic warnings on the hidden agenda behind the LTTE. The 'great betrayal' appeared to be the crux of its argument.⁴⁸ At the same time, the epithet "Trojan Horse" began to be attached to the ISGA in some

⁴⁴ Statement made by the U.S. Embassy in Colombo, November 3 2003: <http://www.tamilnet.com/art.html?catid=13&artid=10332>

⁴⁵ *TamilNet*, November 4, 2003: <http://www.tamilnet.com/art.html?catid=13&artid=10349>. Rocca's comments were cited by the internet-based *Asian Tribune*, June 24, 2004. See Harris, A. W., Mediating Protracted Conflict, *Journal of Conflict Studies*, Summer 2005: 138

⁴⁶ V. S. Sambandan, *A resented visit*, *Frontline*, 20: 25, December 6 – 19, 2003: <http://www.hinduonnet.com/fline/fl2025/stories/20031219007113100.htm> [December 18, 2006]

⁴⁷ Ram (2006): 417

⁴⁸ "People and Lanka being betrayed," *The Island*, Editorial, June 14 2004; "The Great Betrayal," *The Island*, Editorial, July 29 2004; "The Great Betrayal is On," *The Island*, Editorial, August 2 2004; "Blackmailing the Nation," *The Island*, Editorial, September 9 2004; "Abomination," *The Island*, Editorial, September 29 2004.

quarters, notably by the former Presidential Secretary K. H. J. Wijayadasa.⁴⁹ The influential analyst and subsequently, Sri Lanka's Permanent Representative to the UN in Geneva, Dayan Jayatilleke was also consistently critical of the ISGA but argued that confrontation rather than refutation was the way forward.⁵⁰ He noted that while institutionalizing the ISGA as it stands would be tantamount to suicide, he argued that the government should 'confront' the LTTE at the negotiating table. However, any negotiation based on the ISGA should be inextricably linked to its prior commitment, in the form of the Oslo Declaration, to explore a federal solution. He cautioned against linking it with some abstract final settlement that no Sri Lankan government could reasonably guarantee in the backdrop of JVP and JHU opposition.⁵¹

Critically, the media consistently failed to play a constructive role in bridging the 'expectation gap' that existed between the LTTE and the GOSL. A more damning illustration of this was the approach taken in the aftermath of the Oslo Declaration and while this is not directly linked to the interim administration debate, it is instructive to the role the media played in the wider *politics* involved in coming to a power-sharing compromise. As illustrated by Sambandan's study on the media and federalism, the opening afforded by Oslo Declaration to propel the peace process forward was not embraced by the media. Instead, it was twisted to meet partisan ends, and the nuances in the declaration were swept under the carpet. As Sambandan notes, the reports and media coverage of the aftermath of the declaration are 'both illustrative and instructive'.⁵² Pointing out that the headline of the state-controlled *Daily News* – "Third round ends on positive note: Parties agree to final solution with united Sri Lanka," makes no mention of the 'most significant change in the *status quo*' in the two sides agreeing to a federal solution, he states that the Sri Lankan media made it out as if the LTTE had renounced separatism:

The broad media interpretation, which was unchallenged and hence tacitly endorsed, was that the LTTE 'had given up separatism' and had

⁴⁹ K. H. J. Wijayadasa, "The Trojan Horse called ISGA," *Sunday Island*, two parts, August 29 2004 and September 12 2004. See also Subash Wickramasinghe, "ISGA: Trojan Horse of Peace," *Daily Mirror*, June 29 2004.

⁵⁰ See for example, Dayan Jayatilleke, "The Darkening," *Sunday Island*, August 15 2004.

⁵¹ Jayatilleke (2004)

⁵² Sambandan (2006): 110

'agreed' to a federal framework. Missed in the larger media discussion was also the point that the (GOSL), particularly a government led by a political party which framed the unitary Constitution, had also 'agreed to explore' a federal structure.⁵³

Unsurprisingly, the Tamil press highlighted this latter fact, and made an open challenge for the government to prove its bona fides. The *Sudar Oli* ran two successive editorials, entitled "Ball is now in the southern court" and "We are prepared, are you?" Similarly, the *Thinakural* made a strong call for federalism while blasting the SLFP for its sudden, new found opposition to federalism.⁵⁴ Like the Sinhala press and the *Daily News*, however, the Tamil press utilised the Oslo Declaration to push an agenda. Neither media capitalized on the true breakthrough reached: that the two protagonists had agreed to come to a negotiated settlement along federal lines. Indeed, the calculated positions taken went some way towards dissipating the long-term effectiveness of the declaration.

Importantly, there was no sustained debate on how to constructively build on the declaration. Instead, within a fortnight, the issue had been overwhelmed by the controversy that broke out on the HSZs. If anything, the focus of the 'Southern' media on what the LTTE *had agreed to* went some way towards the LTTE distancing themselves from the commitment.

Ultimately, in the context of the LTTE's original demands, the ISGA appears 'overweight'.⁵⁵ To recall Pirapaharan's original demand to Norwegian Deputy Foreign Minister Helgesen, he argued for an innovative structure with adequate authority and legal status for the rapid implementation of humanitarian and development activities, emphasizing the need for the LTTE to have a significant decision-making role and delivery power in the tasks of rebuilding the economy and restoring normalcy. The proposal grants significant political and judicial powers to the ISGA over and beyond the scope of the original request. There is no doubt that the oft-made argument that the ISGA was not merely a mechanism for 'rapid implementation of humanitarian and development activities' rings true.⁵⁶ However, if the process of establishing an interim administration was to

⁵³ Ibid: 111

⁵⁴ Ibid: 112-113

⁵⁵ Fernando (2004)

⁵⁶ Sathya (2004)

have had any chance of success, it was imperative that the proposals (taken as a whole) be viewed in terms of an overall framework of accommodation, which we will elaborate further below. The government proposals were effectively documents open to discussion and both Balasingham and Tamilchelvan have gone on record intimating that the LTTE would be willing to negotiate the terms of the ISGA. Indeed, in his largely negative Heroes Day speech of November 2004, the LTTE leader noted: "If some elements of our proposals are deemed problematic or controversial, these issues can be resolved through discussions at the negotiating table."⁵⁷ It is possible that this willingness constituted an LTTE negotiating gambit and as with past experience, a different excuse would be presented as a required confidence-building measure before negotiations could resume, and would therefore result in no agreement being reached.

To place this in context, we should first attempt to understand the bargaining strategy of the LTTE before placing the wider politics of negotiations within a framework of accommodation noted above.

The LTTE Negotiation Strategy: Ground Realities, Legitimacy and Mindset

The negotiating strategy employed by the LTTE is premised on one key element – ground realities. Over the last fifteen years, the LTTE has maintained separate administrative structures in areas they control. This phenomenon was first witnessed in the aftermath of the withdrawal of the Indian military in 1990. As the IPKF vacated the main cities, in the Northern Province in particular, the LTTE moved in, and over the ensuing five years proceeded to run a parallel state apparatus centred at Jaffna. The army takeover of Jaffna in 1995 effectively ended overt LTTE control of the peninsula; however, despite this initial attempt at state-building being extremely limited, it was arguably important in the LTTE's intended trajectory from guerrilla organization to a politico-military entity governing wide swathes of territory.

While the LTTE may have lost control of the population centres, the parallel state apparatus has strengthened and become embedded in those areas they control. This parallel state structure is both of geo-strategic value and a

⁵⁷ Heroes Day speech, November 2004

highly significant element of the LTTE struggle for legitimacy.⁵⁸ At the time of the CFA, it covered a considerable proportion of the North-East, centred in Kilinochchi and the Wannu Peninsula, stretching upwards to the forward defence lines at Muhumalai and Nagarkovil in the Jaffna Peninsula, and downwards to the Mannar-Vavuniya-Weliyoia line, more than 100 kilometres south of the Peninsula. Furthermore, there are active pockets in Mannar, Vavuniya, and Weliyoia, connected tenuously to the Eastern Province where control is extensive but limited to the hinterland whereas government control was largely along the coast and included the major towns of Trincomalee and Batticaloa.⁵⁹ Despite the LTTE and its sympathisers arguing that it controlled 75% of the land in the North-East, its critics note that a good proportion of this land is contested and even that land area controlled constitutes a considerably diminished percentage of the population (given that Jaffna, Trincomalee and Batticaloa are all under government control). There are three considerations to account for here. First, the LTTE was unable to re-capture Jaffna in 2000/1 primarily because of overstretch and a resuscitated military. Second, it can be argued that controlling major population centres is a strain on resources and of limited strategic value. Therefore, there is an argument to suggest that the LTTE would rather not militarily control major towns given the difficulty in both governing their day-to-day activities, and defending them from offensive operations. Third, the LTTE's writ, both through legitimate political means and through coercion, extends outside those territories it controls.

Both prior to, and following the implementation of the CFA, the LTTE undertook an extensive state-building campaign focused on strengthening and legitimising its claim to an already existing *de facto* state. In addition to official propaganda on LTTE and nationalist websites, scholars have also commented on the extent of the LTTE 'state'. The most prominent example

⁵⁸ It is of geo-strategic importance because it has made access to the Jaffna Peninsula contingent on passing through LTTE-controlled territory (facilitated crucially by the capture of Elephant Pass). In war time, this has forced the government to supply the 30,000 to 40,000 strong government forces in the Peninsula through sea or air routes. This is both an expensive and ultimately unsustainable logistic supply route which places severe strain on economic resources: Jagath Senaratne, "The Security Establishment in Sri Lanka: A Case for Reform" in Gavin Cawthra and Robin Luckham, Eds, *Governing Insecurity: Democratic Control of Military and Security Establishments in Transitional Societies* (London and New York: Zed, 2003): 196

⁵⁹ Senaratne (2003): 196

is that of Stokke, who has published a study on the emerging state structures in the North-East based on a number of interviews with actors in the North-East, primarily LTTE-aligned.⁶⁰ Stokke makes an argument for the fact that the emerging state structures of the LTTE are very real, signified by border controls and customs, taxation, the presence of parallel judicial and police functions, and the existence of public services and economic development initiatives.⁶¹ He notes that the LTTE state 'has a primary focus on guaranteeing external and internal security in the context of protracted warfare,' but argues that there are state institutions geared towards the 'welfare of the civilian population and the economic development of Tamil Eelam'.⁶² He makes the argument that while the institutions are authoritarian and technocratic, lending them a certain administrative rigour, they are clearly embedded in the rights and welfare of the Tamil population.⁶³ It is clear, however, that there is an emphasis on the politico-military authority, understandable perhaps for an entity that has not formally renounced separatism and maintains a close eye on a potential military solution.⁶⁴ For example, a number of scholars have questioned the judicial system present in LTTE-controlled areas, arguing that they do not function with any accountability and fall below any standard of democratic governance.⁶⁵ Nonetheless, in the post-CFA period there was an upsurge of LTTE activity related to the development and socio-economic rehabilitation of the North-East. Furthermore, the political wing of the LTTE was active in organizing trips to Europe, both to lobby stakeholders and to attend seminars on aspects of

⁶⁰ Kristian Stokke, "Building the Tamil Eelam State: Emerging State Institutions and Forms of Governance in LTTE-controlled Areas in Sri Lanka," *Third World Quarterly*, 27: 6 (2006): 1021-1040

⁶¹ Ibid: 1022

⁶² Ibid: 1024

⁶³ Ibid: 1024

⁶⁴ The economist Sarvanathan has noted that what state structures the LTTE do have is its military and it employs coercive means to extort taxes from the population. The goal is maintaining security and creating an environment of fear as opposed to any drive towards rehabilitation or economic development: Muttukrishna Sarvanathan, "In pursuit of a mythical state of Tamil Eelam: a rejoinder to Kristian Stokke," *Third World Quarterly*, 28: 6 (2007): 1185-1195

⁶⁵ Audrey Rebeira, Indrakanthi Perera, Malathi de Alwis, Pradeep Jegannathan and Sumathy Sivamohan, "LTTE and the Law in the Northeast: Following up on Sasanka Perera," *Lines* 2: 1, February 2003: http://www.lines-magazine.org/Art_Feb03/audrey_etal.htm [December 18, 2006]. See also Sasanka Perera, "LTTE and the Laws in the Northeast," *The Island*, December 25, 2003.

federalism and governance. With each newly opened police station or district court, the LTTE attempted to demonstrate to the outside world their claim to running separate state structures. Simultaneously, the government (especially in the post-UNF period) would attempt to delegitimize and debunk these claims, pointing to the continuing use of central funds and the art of 'name boarding'.⁶⁶ In the absence of government funds, they argued, there would be no basis for these parallel structures. Critically, neither side attempted to convince the other on the superiority of their respective claim. Rather, the international community was the target, and the growing internationalization of the peace process encouraged these attempts to delegitimize the other by proxy. In many respects, it mirrors the debate on the 'politics of naming', and the use of terms such as 'terrorism' and 'national liberation'.⁶⁷

To put this in context, as reiterated by Sornarajah and others, the basis of the ISGA proposals is 'existing ground reality', in the LTTE's claim that it 'presently controls over 75% of the territory of the North East',⁶⁸ and secondly, the motivation behind an interim administration is premised completely on legitimizing that pre-existing *de facto* control. Once more, the target for legitimacy is the international community. These two fundamental facts underpin the LTTE negotiating strategy. Evolving from and revolving around the issue of legitimacy, reconstruction and therefore humanitarian and development activities, play a fundamental role in the wider political strategy of the LTTE. In the simplest terms, ownership of the delivery of reconstruction and rehabilitation issues brings legitimacy in the eyes of the people of the North-East. Further to arguments on legitimacy, the ISGA provides recognition. Ramasamy, like Sornarajah, a member of the LTTE constitutional affairs committee, has argued that interim administration is not so much about instituting a governmental structure for the LTTE to exercise its political and administrative control of the North-East. Rather, it is 'about accepting and bestowing legitimacy on the LTTE as the pre-eminent Tamil representative organization in the areas demarcated as

⁶⁶ Name boarding refers to operating civil structures that in reality play no actual function or are LTTE-named institutions operated by government funds and government workers.

⁶⁷ See Nadarajah and Srikandarajah (2005)

⁶⁸ M. Sornarajah, "The ISGA Proposals: The Course to Take in the Face of Government Intransigence," *Tamil Canadian*, July 3 2005: <http://www.tamilcanadian.com/page.php?cat=52&cid=3371> [December 18, 2006]

Tamil homeland'.⁶⁹ Writing prior to the drafting of the ISGA, Ramasamy noted that 'unlike the Discussion Paper, an interim administration to the liking of the LTTE must recognize the powerful presence of the LTTE, its control of the security apparatus, its control over vast tracts of land in the North and East and its vigorous revenue collection system.' Failure to recognize the existence of the LTTE's *de-facto* administration, he argues, would shift the balance in favour of the GOSL.⁷⁰

Furthermore, short of Eelam, the LTTE has never made clear what the solution to the conflict entailed. It has instead relied on terminology such as conformation to the "Thimpu principles", internal self-determination and equal rights to the Tamil people.⁷¹ The LTTE placed the onus on the government to accede to political negotiations, from where a solution to meet Tamil aspirations could stem. The ISGA, in that sense, is a significant deviation from the norm. Militant organizations are loath to commit to concrete proposals regarding their demands. This reluctance arises from a fear of their position being subject to watering down. Perera cites one former head of a South Asian intelligence organization as stating that he had never seen one such example during the course of his work. In that regard, the ISGA is a progressive step, whatever its composition, and as Perera rightly points out, 'they are open-ended proposals which, as power-sharing propositions, are incomplete'.⁷² It is axiomatic that as the GOSL proposals did not strike as high as they could have, the ISGA was not about to strike lower than it could have.

The ISGA: Framework for Negotiations or Separatist Ploy?

Understandably, outside Tamil nationalist circles, there has been no endorsement of the ISGA proposals *in toto*. Its greatest features are in being the first concrete proposals put forward by the LTTE, and providing the fact that they are open to negotiations, in representing a juncture from which counter-bargaining can

⁶⁹ P. Ramasamy (2003), "Interim administration is all about recognition," *Tamil Canadian*: www.tamilcanadian.com/pageview.php?ID=1964&SID=401&pr_v=yes [December 18, 2006]

⁷⁰ P. Ramasamy (2003), "Imagining Interim Administration," *Tamil Canadian*: www.tamilcanadian.com/pageview.php?ID=1954&SID=401&pr_v=yes [December 18, 2006]

⁷¹ Its critics maintain that Pirapaharan has never renounced his claim to Eelam, even when asked at the April 2002 press conference.

⁷² Jehan Perera, "Screening ISGA proposals through Federal frame," *Daily Mirror*, August 17 2004.

ensue. However, a former Secretary General of SCOPP John Gooneratne was of the opinion that for what started as another set of proposals for negotiation, the positions of the two sides became entrenched, the GOSL linking it to a final settlement and the LTTE remaining ideologically pure, hence a reluctance to backtrack.⁷³ This is an apparent shortcoming in the policy followed by the two sides in coming to an interim agreement, i.e. unilateral proposal-making. Leaving aside the emotive national argument of a unitary Sri Lankan state, territorial integrity and sovereignty, many of the arguments against the ISGA have great credence. It is clear, for example, that there is little regard for other Tamil parties and minorities in the North-East. Furthermore, the powers it seeks go beyond what may be envisaged in a final settlement, especially with regard to trade and resource management. Indeed, the commitment to 'explore' a federal system of governance has been bypassed. Therefore, an important consideration is ascertaining whether the ISGA is a separatist agenda masquerading as an interim proposal.

In response to this allegation, we will return to the accommodative framework referred to above, before assessing the 'ground reality' argument put forward by some Tamil commentators. In many respects, the peace process incorporates two clear agendas for both parties to the conflict. This shared incentive is best visualised in the demand for an interim administration. The LTTE endeavoured to both legitimize its *de facto* control of territory and gain contiguity throughout the North-East via shared rule with the government. This was realisable through an interim administration incorporating minimal aspects of shared rule with self rule. Likewise, the government sought to re-establish governance throughout the country, something that it could not claim as the North-East can be characterised as having 'dual power' structures.⁷⁴ The challenge underpinning LTTE-government interaction, therefore, was to arrive at a meeting point acceptable to both parties. The proposals put forward for, and the debate around, an interim administration can be seen to fall squarely into this challenge. In that regard, it is important to view the respective proposals in the framework of a process of accommodation. The two sets of government proposals can in this light be viewed as minimalist in nature – the Apex Body

⁷³ Interview with John Gooneratne, June 2006.

⁷⁴ This argument of opposing viewpoints and agendas intersecting at the need for power-sharing and cooperation was made during a personal interview with a Member of Parliament.

proposals are effectively the government's *minimalist* maximalist position – while the ISGA can be seen as maximalist in nature, indeed the LTTE's own *maximalist* minimalist position. If this fundamental dichotomy is taken as the starting point, we can address the particular advantages and drawbacks of the respective proposals, and as Uyangoda states:

Instead of dismissing the LTTE proposals as unacceptable, there is an alternative way to look at this issue in order to advance the peace process. The LTTE's maximalist proposals are a response to the UNF's minimalist proposals... From the perspective of negotiations, the next task is to find a common ground between these two incompatible positions... If the two sides are really committed to a settlement, the government cannot go down from the minimalist positions as much as the LTTE hopefully cannot go beyond its maximalist position.⁷⁵

As noted above, the LTTE has never accepted the argument that parallel negotiations on a final settlement can run concurrent to those on an interim administration. In its view, the latter is necessary to rectify 'the social problems and distortions in Tamil society wrought by war and to restore normalcy' before the LTTE 'can seriously take up the question of a permanent political settlement' with the GOSL.⁷⁶ In effect, an interim administration is important to iron out immediate issues in preparation for the final settlement.

Nonetheless, even though the LTTE have delinked the ISGA with a final settlement, there are the contours of a final settlement in the ISGA proposals. Uyangoda has noted that the LTTE have tackled core issues of the ethnic conflict in the ISGA,⁷⁷ while Sivaram has also pointed to convergences between the ISGA and in particular, the 1995 devolution package.⁷⁸ Similarly, Jehan Perera has made the argument that:

Every clause of the ISGA document needs to be screened through the frame of federalism, and limits on powers to be granted should

⁷⁵ Uyangoda (2003)

⁷⁶ Taraki (D. Sivaram), "ISGA: The chance to persuade Tamils to remain in United Lanka," *Daily Mirror*, May 13 2004.

⁷⁷ Uyangoda (2003)

⁷⁸ Taraki (2004), and Dharamartnam Sivaram, "ISGA entails concepts and structures of final solution," reproduced at www.tamilnation.org/forum/sivaram/040804.htm [December 18, 2006]

be placed accordingly. By coming up with an ISGA proposal that goes far beyond ensuring the development needs of the people of the North East the LTTE has itself brought up the core issues of a final solution for discussion. This should be welcomed, and not viewed with apprehension.⁷⁹

Former Defence Secretary Austin Fernando notes in calling the ISGA proposals 'overweight', that the LTTE's committee took on the previous GOSL proposals and added 'maximal' inputs to them and the responsibility for bringing it back down to the correct weight is the responsibility of the two parties and the Norwegian facilitator.⁸⁰ He also suggests a process of weeding out the proposals, whereby they would fall into four categories – proposals that do not require much negotiation, proposals for which limited negotiation in a medium time frame is needed, proposals that have not been rejected but require long-term negotiation, and finally those proposals that as presented can be rejected out of hand but could be retained for negotiations.⁸¹

A number of Tamil interlocutors have noted that firstly, there was no attempt to address federalism in the interim, and secondly, that there is an implicit recognition of the Sri Lankan state in the proposals. In other words, the ISGA is envisaged within the contours of a united Sri Lanka and its acceptance would be the first step towards preserving a united Sri Lanka.⁸² Owing to this, Sornarajah posits that in the event that the GOSL, 'consistent with past patterns of Sinhalese governments, is not willing to negotiate on the basis of the ISGA proposals, other avenues of legitimacy to establish the ISGA have to be explored'.⁸³ To put this in context, Sornarajah reiterates the fact that the basis of the ISGA proposals is **existing ground reality**, and it is 'axiomatic that legal consequences flow from the fact that a territory has a definite population within a well-defined boundary and is subject to the control of an administration other than that of the state of which it was earlier a part'.⁸⁴ Furthermore, the international law regime has

⁷⁹ Perera (2004a). Uyangoda (2003) has made the same argument about the LTTE committing itself to core issues.

⁸⁰ Fernando (2004)

⁸¹ Fernando (2004). As examples of the final category, Fernando cites the article governing marine and offshore resources.

⁸² See Taraki (2004) and Sornarajah (2005)

⁸³ Sornarajah (2005)

⁸⁴ Ibid

evolved to accept the fact that in certain situations comparable to the North-East, “legitimacy attaches itself to the transactions that have to be made in the course of ordinary life,” and that it would grant sufficient status to the entity in control of a territory to institute an administration necessitated on the interests of the people in the territory, i.e. based on ‘pure necessity’.⁸⁵ Critically:

The legitimacy of such an administration does not depend on recognition by other governments or states, but proceeds from the actual reality of an existing administration and its effectiveness. The gap between reality and its legal position is quickly filled through the recognition of the real situation as legitimate.⁸⁶

Sornarajah, therefore, views ‘reality’ or the ‘real situation’ as a justification for the *unilateral* establishment of an ISGA. This view is corroborated by Sivaram, who has noted the cue the ISGA proposals have taken from the Machakos Protocol signed between Sudan and the Sudan People’s Liberation Army/Movement in July 2002, which formed the basis for a negotiated, peaceful and comprehensive resolution to the Sudan Conflict within a united Sudan.⁸⁷ He argues that the LTTE have a potentially stronger case than the US-backed South Sudanese.⁸⁸ Furthermore, Sivaram stresses that international opinion should back the ISGA as it is a good historical opportunity to convince Tamils to remain within a united Sri Lanka. It is this point that Sornarajah reinforces, arguing that secession has been repudiated in the ISGA proposals, the objective of which is to remain within the contours of a united Sri Lanka. Therefore, the international community will recognise the claim as it will recognise the fact that the Sri Lankan government continues to flout the right of the Tamil people to self determination alongside its manifest failure to consider the ground reality: the ‘LTTE already has an administration. All that it has to do is to make that administration conform to the ISGA Proposals.’⁸⁹

This is a controversial but important point, one that is deepened by Ponnambalam in an address where he called for clear differentiation between the proposals for an interim arrangement and the final settlement. In response

⁸⁵ This is a derivative of the Doctrine of Necessity.

⁸⁶ Sornarajah (2005)

⁸⁷ Sivaram (2004b)

⁸⁸ Ibid

⁸⁹ Sornarajah (2005)

to charges that the ISGA went beyond a federal solution, Ponnambalam argues that it actually falls short of any federal conception as it does not address the shared rule element implicit in a federal settlement. This, of course, is the same argument put forward by those that claim the ISGA is a stepping stone to a separate state. Ponnambalam argues in this vein for two reasons: firstly, power-sharing at the centre would go beyond the scope of an interim arrangement related to rehabilitation, reconstruction, resettlement and development, and secondly, any interim arrangement would become irrelevant in the event that any new or substantial linkage took place to the present or new Constitution. Furthermore, he points out that the shared rule element was deliberately weak due to the impossibility of working within the confines of the present Constitution, borne out by the experience of SIHRN. However, Ponnambalam argues:

Whilst the ISGA is deliberately weak on the linkage with the present constitution for the reasons I have mentioned earlier, the LTTE have established their bona fides by accepting representatives of the Government of Sri Lanka to the ISGA... The LTTE, when describing the categories that will be represented in the ISGA could easily have said that there would be “Sinhala representatives from the Northeast”, like it talks of the Muslim representatives of the Northeast. Instead, the ISGA deliberately talks of the representatives of the (GOSL).⁹⁰

Indeed, he argues, the inclusion of the Government representatives sends a strong signal against secession. This is the same argument put forward by Sornarajah in combating the charge of separation, and in stating that the ISGA called for an implicit link to the Sri Lankan state. Nonetheless, it rests uneasily with his contention that in the absence of a positive reaction from the Sri Lankan state, the LTTE could legitimately *create* its own interim structure. Furthermore, in the past, Sornarajah has openly proposed the idea of a confederation, noting that confederations almost invariably fail and therefore this route would offer the best path to Eelam.⁹¹ It is an interesting aside to note that leading pro-LTTE Tamil intellectuals continue to argue that confederation is the only

⁹⁰ Speech made by Gajendrakumar Ponnambalam at the National Catholic Commission for Justice, Peace & Human Development, 23rd November 2004: <http://www.ltteps.org/print.ltte?view=493&folder=2>

⁹¹ M. Sornarajah, “Eelam and the Right to Secession,” *Tamil Canadian*, 25 June 2000: <http://www.tamilcanadian.com/page.php?cat=120&id=659> [December 18, 2006]

acceptable alternative to a separate state.⁹² Therefore, there is an urgent need for greater flexibility and debate because as Madurika Rasaratnam notes, the distance between the two contrasting nationalisms is not unbridgeable. The 'potent appeal' of Sinhala Buddhist rhetoric can be addressed by 'considering the mechanisms that block socially aspirant groups from positions of power, status and wealth'.⁹³ Similarly:

[T]he Tamil nationalist narrative also provides space for a certain amount of flexibility. The LTTE has not explicitly made an independent Tamil state its central political demand for over five years. The final political vision of the Tamil nationalist project is under-elaborated and this provides the principle agent of this narrative, the LTTE, much room for manoeuvre. A solution that offers the LTTE and therefore the Tamil nationalist project substantive autonomy can be interpreted as success within this vision.⁹⁴

As it stands, even a focus on confederation is anathema to the state and indeed, the vast majority of Sri Lankan legal and other academic experts, for whom it would not constitute an acceptable alternative. Therefore, continued debate is invaluable. To put this in perspective, we should contrast it against the consistent argument that there needs to be clarity on how an interim arrangement is linked to the final settlement, i.e. *interim to what?* Conducting interviews with those involved in the peace process often brought back this refrain, with some arguing that an interim arrangement is not possible without, at the very least, coming to a basic understanding on what the final settlement will constitute. In the absence of this and due to the cynicism and fear involved in such a sensitive area, as Professor G. L. Peiris stated, there is a fear that nothing would follow the interim structure and these structures would solidify into something permanent, akin to the merger of the Northern and Eastern Provinces.⁹⁵ The failure to explore or link how the ISGA would co-exist with existing state structures, both official and *de facto*, adds to the fear that the ISGA exists in a legal and political vacuum and

⁹² See, for example, M. Sornarajah, "Envisioning Sri Lanka", and S. Sathanathan, "Re-envisioning Sri Lanka: Ways forward and breaking the deadlock" in CJPDP (2006): 261-266 and 303-310

⁹³ Madurika Rasaratnam, "Re-envisioning Sri Lanka's Ethno-Nationalisms" in CJPDP (2006): 350

⁹⁴ Ibid: 350-351

⁹⁵ G. L. Peiris, Interview, June 2006

serves as a legitimization of state structures instituted through military force. Indeed, Nesiiah and Nanthikesan have denoted the core vision of the document as a desire to consolidate the LTTE's *de-facto* politico-military control with the 'legal stamp of interim arrangements'. This would create a legal framework to legitimately hinder the struggle to 'orient such arrangements toward greater democratization and a deeper conception of pluralism'.⁹⁶ One of the symptoms of this vision is the deference of the electoral process envisaged in the ISGA:

An interim administration that is so insulated from electoral processes as suggested by the proposal risks creating an environment that is antithetical to free and fair elections even five years hence. In the past, governments have suspended basic democratic rights ostensibly for 'interim' periods alone, only to leave a legacy that has fundamentally dismembered the possibility of democratic mechanisms for the long term.⁹⁷

In this regard and in several other key areas, the ISGA document risks mirroring the 'democratic deficit' that being so inherent in the Sri Lankan state is the underlying cause in giving rise to the Tamil struggle for greater rights. A civil society representative argued that the ISGA was not an interim document as it brought into the interim structure elements that needed to be resolved in the final settlement, such as the North-Eastern merger. Therefore, an interim administration needs to be basic, specifically focused on tackling humanitarian and reconstruction needs until a final solution takes form.⁹⁸ We have outlined the objections the LTTE would raise to this argument, specifically that it would not be cognizant of the ground realities. Nonetheless, it is evident that the ISGA proposals include elements which would raise vociferous objections from the majority of Sri Lankans *even if it was a final settlement*. These include such important areas as complete control of resource management and revenues raised from resources, both onshore and offshore. Notwithstanding Ponnambalam's argument that shared rule was not called for in an interim arrangement, it is evident that the self rule envisaged in the ISGA constitutes rule by decree,

⁹⁶ Nesiiah and Nanthikesan (2004)

⁹⁷ Ibid. The authors cite J. R. Jayawardene's decision to suspend general elections for an executive presidency and referendum, stating that it continues to have a 'pernicious and pervasive reach' to this day.

⁹⁸ Interview with Javed Yusuf, former Chairman, Muslim Peace Secretariat, June 2006

especially in a region where the primary actor has not demonstrated a tangible desire for democracy and pluralism.

It is clear that as they have different objectives in mind, the GOSL and the LTTE were working at cross-purposes with regard to an interim administration. The GOSL visualises any interim administration as being inextricably linked to the contours of a final settlement. In this respect, the only variation in the view of the two major political parties is in the timing of negotiations around 'core issues' related to the final settlement. The LTTE believes the interim administration arises from ground realities in the areas that it controls, and furthermore is unconnected to the wider issue of a final settlement. Indeed, the LTTE has been adamant in its view that a final settlement cannot be discussed in the absence of institutionalizing an interim administration. Furthermore, the interim administration ties in with its wider political strategy of gaining international legitimacy, as well as service delivery. It is therefore clear that any future progress on the issue of an interim administration would need to urgently address the wide gulf in mindset. As one account noted:

The discussion about such agreements between the major political parties in the South are dominated by a see-saw between moribund conceptions of national security and territorial integrity on the one hand, and an opportunist advocacy of 'peace on any terms' on the other. Concomitantly, in the LTTE camp, the vision is informed by a conception of self-determination that is fundamentally divorced from accountability and pluralism.⁹⁹

There has been strong criticism of the sweep of powers, the lack of accountability, and the assumption made by the LTTE that it reflects ground realities when it patently does not. All structures are answerable only to the ISGA and due to its overwhelming majority within the authority, the LTTE. Institutions set up to monitor human rights are largely a smokescreen as any perceived independence is negated by the fact that the envisioned commissions fall squarely within the auspices of the authority itself. There is no monitoring authority to attest that the ISGA itself conforms to the standards it ostensibly sets itself, especially with regard to human rights and pluralism. If negotiation is to resume on the basis of the formation of an interim administration, one route

⁹⁹ Nesiah and Nanthikesan (2004)

forward is for negotiations to resume on the 'unrejected but not totally accepted' ISGA and the 'unrejected but not totally accepted' UNF July Proposals.¹⁰⁰ Resumption of negotiations on the basis of the ISGA implies subservience to the LTTE and undermines the parity of status critical to negotiation processes. Resumption on the basis of both documents ensures that 'implied parity' is adhered to.¹⁰¹

¹⁰⁰ Fernando (2004)

¹⁰¹ Ibid

5 Inclusivity, Participation and the Politics of Exclusion

This section will focus on key issues that affected the broader peace process and illustrate the ways in which they shaped interim structures, such as SIHRN and P-TOMS. Since the larger peace process determined the outcome of the sub-processes, this section will also study the impact of these issues upon the peace process in order to better understand how they influenced the genesis, functioning, and ultimately the demise of interim structures.

The bi-polar nature of the peace process, which excluded groups such as the Muslims and women and reaffirmed the LTTE's position as the sole representative of the Tamil people, made the failure of the process inevitable. The bi-polarity of the process took note of only the armed actors and thereby led the parties to seek solutions within a restrictive framework. This bound the two parties into a relationship of 'interdependency or mutual destruction'.¹ Scholars argue that a substantive solution is not possible within such a framework as any political change made by either party would be only tactical. Hence, a paradigm shift which includes broader participation of stakeholders and discussion of issues is required in order to arrive at a substantive and sustainable solution. Another factor that led to the early demise of the peace process was Wickremasinghe's strategy of excluding President Kumaratunga. This effectively placed her outside the process; a position which absolved her of any responsibility and therefore enabled her to engage in an effective campaign against the peace process.

5.1 The Role of Civil Society

It has been argued that deep politics of society is as important as high politics of state as democratisation involves 'starting from the deep politics of society and

¹ Tyrol Ferdinands, 'Thoughts on Process', *Envisioning New Trajectories for Peace in Sri Lanka*, Centre for Just Peace and Democracy, 2006, p. 134.

asking what they imply for the high politics of the state.² Since civil society acts as a point of convergence of the politics of state and society it is important to study its role in the establishment and functioning of interim structures. While we do this we must keep in mind that civil society is not a neutral space but one that re-produces existing societal divisions and inequalities.³

Deep politics of (civil) society in Sri Lanka illustrate the marginalisation of certain groups which is reproduced in the high politics of state, in this case the peace process. In Sri Lanka the non-party political domain is dominated by certain groups such as trade unions, business organisations, welfare and social organisations, professional groupings, non-governmental, non-profit organisations that consist mainly of human rights groups and development institutions, and student unions. A common feature of these organisations is they consist mostly of people and groups that possess some agency and power to come and work together for the welfare of the group. On the other hand many groups, such as displaced persons, lack agency and hence do benefit from the power of collective bargaining in their relationships with power structures.. Where non-governmental human rights organisations are concerned, although they have attempted to transform society and the political landscape, they have mostly been reactive rather than pro-active. This was nowhere more evident than in 'civil society' involvement in the peace process and its sub-processes. The whole process has seen minimal civil society participation which was a factor that contributed to the human rights and humanitarian concerns of civilians not being given due importance. Moreover, these organisations are mostly Colombo-based and often led by persons from a privileged segment of society, leading to accusations that they are disconnected from the people. Hence, their outreach to the rest of the country and links with grassroots groups is tenuous.⁴ Due to these elements, and the fact these organisations are heavily reliant on foreign donor funding, they lack legitimacy in the eyes of the general populace.⁵ This has been exploited by groups such as the JVP which has accused civil society of being puppets of the international community and complicit in their

² Luckham, Robin, Anne-Marie Goetz and Mary Kaldor, "Democratic Institutions and Democratic Politics" in Bastian and Luckham (2003): 21

³ Ibid: 24

⁴ Orjuela (2003)

⁵ Ibid

appeasement of the LTTE.

Several problems were evident even in instances where civil society engaged with issues related to the peace process. For instance, only certain institutions with high profiles or the requisite political connections were able to engage with the parties to the CFA and the international community. Even within civil society it was these organisations that gained entry to track two initiatives. Hence, there was little space for critical debate, and dissent was not welcomed. For example, discussions on SIHRN appear to have taken place in a vacuum and failed to situate the institution within a political context. Sriskandarajah's analysis of SIHRN is illustrative of the euphoria with which civil society uncritically embraced the subcommittees. At the time he stated that 'the emerging centrality and expanding functions of the SIHRN also demonstrate the long-term time frame being adopted by the government and the LTTE'.⁶ Civil society debates on SIHRN centred around issues such as the need to ensure accessibility to the structure, and transparency and accountability, instead of exploring substantive issues such as possible problems that would be encountered during implementation of SIHRN decisions within the existing state structure. For instance, at a Berghof Foundation/Centre for Policy Alternatives workshop held in February 2003, during the discussion on the relationship between the government and SIHRN, though the possible 'communication gap among SIHRN, GOSL and the wider public, due to limited access to SIHRN' was identified as an issue of concern, SIHRN's access, or lack of access, to government mechanisms and power to ensure implementation of projects was not flagged as a potential obstacle. At the same workshop it was also said that 'the stated aims of the subcommittee (to assist the return of internally displaced people (IDPs), the needs of children and women, and the need for dignified livelihood) allow the SIHRN secretariat to serve as a *de facto* development authority for the Northeast'.⁷ Once again, structural and political impediments to the effective functioning of SIHRN were not touched upon.

Though the workshop report states it was recognised that turf issues would arise between government agencies, it does not appear an effort was made to explore this issue any further. In relation to the protection of the rights of women and children, the report states SIHRN 'was seen to be a potential middle-

⁶ Sriskandarajah (2003): 11

⁷ Ibid: 11

man⁸ capable of lobbying other government agencies with recommendations for gender sensitive and children sensitive health policy'. This appears naïve as it attributes to SIHRN power it did not possess and failed to see its vulnerable and legally precarious position. While recognising that SIHRN was not an implementing body, this was not identified as a problem that could result in the non-implementation of projects. Rather, the workshop recommendations stated that SIHRN should therefore focus on 'capacity building, monitoring, financial management, auditing, and project appraisal'. Even though the report does mention that 'it was speculated that SIHRN could possibly evolve into the framework around which an interim unit of governance could develop,' there was no recognition of the overtly political nature of the structure. Hence, there were no discussions on the political aspects of the functioning of SIHRN, such as the plight of the structure if the negotiations were suspended.

Minimal civil society participation can be attributed to both the reluctance of the parties to the CFA to provide space for participation and lack of civil society initiative in lobbying for the inclusion of issues of importance, such as human rights. Civil society reluctance to focus on sensitive issues such as human rights, and critically engage with the processes and sub-processes could be attributed to several reasons, ranging from fear of total exclusion from the process by both parties, to taking their cues from the donors who were soft peddling on such issues. Either way, the failures of civil society has resulted in its independence and commitment being called into question. As the late Kethesh Loganathan, Deputy Secretary General of SCOPP pointed out, the 'advocacy constituency' was short sighted in its conception of inclusiveness, whereby groups saw themselves as being facilitators between only the GOSL and the LTTE. Other interest groups were ignored. Instead of challenging the exclusionary practice of the parties to the CFA, civil society perpetuated it on many levels.⁹ Loganathan reiterated that critical engagement involving many stakeholders was the correct approach and felt that lack of inclusiveness may have emboldened the LTTE to continue to violate the CFA, as exclusion, for example of the Muslims, contributed to the empowerment of the LTTE without transformation.¹⁰

⁸ Please note though focusing on women's rights the term 'man' is used

⁹ Interview with Kethesh Loganathan, June 2006

¹⁰ Interview with Kethesh Loganathan, June 2006

5.2 The Gender Dimension: Were Women Ignored?

Women experience conflict in gendered ways that other members of their communities do not. Hence, their inclusion in the peace process and associated sub-processes is imperative to ensure their needs and concerns are given due attention.

Box 6: Sub-Committee on Gender Issues (SGI)

The Sub-Committee on Gender Issues consisting of members appointed by the GOSL and the LTTE (SGI) was created at the plenary sessions of the Peace Talks held in December 2002 and met twice. According to members of the Sub Committee, the interaction between the government delegates and their LTTE counterparts was conducted in a non-confrontational and constructive manner. The SGI could not continue its work when formal peace talks stalled, and was forced to discontinue formal interactions with its LTTE counterpart.

The members of the SGI were as follows:

GOSL – Dr. Kumari Jayawardena, Kumudini Samuel, Dr. Deepika Udagama, Faizun Zackariya, Dr. Fazeela Riyas

LTTE – Ms. Sivahimi Subramaniam, Ms. Renuka Sanmugaraja, Ms. Mathimalar Balasingham, Ms. Sridevy Sinnathampi, Ms. Vasanthapireminy Somasundaram

During the previous rounds of talks between the GOSL and the LTTE, women's groups consistently called for mainstreaming gender into the peace process. Continued lobbying by women's groups resulted in the appointment of the Sub-Committee on Gender Issues (SGI) at the fourth round of peace talks. In a peace process fraught with mistrust between the parties it can be difficult to find spaces to engage in informal, constructive dialogue. The SGI managed to fill this void to some extent and functioned as a body that created such a space, albeit a space that was unfortunately pigeon holed as 'women's space' and separated from the main processes.

The work of the SGI debunks the argument that women do not have the required skills to engage in difficult negotiations and undeniably illustrates that women can make a valuable contribution to the peace process. Since these informal exchanges have the potential to function as confidence building measures it is important to nurture these spaces. Since the SGI realised that the

success of finding consensus depended on building individual relationships with counterparts in the LTTE it worked in a non-combative manner to establish trust.

The success of any effort to include women in the peace process depends to a large degree on the GOSL and the LTTE, who in this case failed to realise the benefits of including women in their delegations and instead 'added-on' women for cosmetic reasons. Civil society groups in Sri Lanka failed to assist women's groups by lobbying the GOSL and the LTTE in this regard, by identifying priority issues and providing information and assistance to women's groups. This fails to recognise that these groups have worked in the conflict zone for many years and have numerous informal networks that function locally to diffuse tension and create inter-community dialogue and cooperation. They could hence have made a valuable contribution to the efforts of the Colombo-based peace groups, a fact the Colombo based groups working on peace and conflict failed to realise.

Though many who were involved in the peace process stated that the SGI was the only committee that worked, we need to ascertain why it was so and whether it is possible to replicate such a space. For instance, Bradman Weerakoon former Secretary to Wickremasinghe, said that the GOSL members of SGI were committed individuals who were very keen to make the committee work.¹¹ The reason the committee worked could be due to the fact the GOSL members were non-political, civil society rights activists, academics and community workers who were not constrained by political considerations, party affiliations or electoral success. On the other hand, the non-political nature of the Sub-Committee also meant that since the GOSL and LTTE viewed it as a means of appeasing the women's groups and international pressure groups rather than a mechanism that could play a substantive role in the peace process, it had no power or political clout which limited its effectiveness.

5.3 The Muslim Question

Until recently the conflict was understood as one between the majority Sinhalese and minority Tamils. The Muslims were not considered a minority group in their own right but were viewed as Tamils by both the GOSL and the LTTE; the GOSL, because it did not wish to deal with the demands of a second minority

¹¹ Interview with Bradman Weerakoon, July 2006

group and the LTTE, because including Muslims as part of the Tamil-speaking community helped consolidate its position as the sole representative of all Tamil speaking people. Hence, there was no political space independent of the major political parties for the Muslims to articulate their grievances and concerns *vis-à-vis* the conflict. The establishment of the Sri Lanka Muslim Congress (SLMC) by M. H. M Ashraff in the mid 1980's enabled the Muslims to articulate the multi-group nature of the conflict in the political and public discourses.¹² Even though subsequent governments, including the 2001 Wickremasinghe government, and political parties accepted the multi-party nature of the conflict it was not reflected in the initiatives and structures established to explore a negotiated settlement to the conflict.

The preamble to the 2002 CFA states:

The Parties further recognise that groups that are not directly party to the conflict are also suffering the consequences of it. This is particularly the case as regards the Muslim population. Therefore, the provisions of this Agreement regarding the security of civilians and their property apply to all inhabitants.

Though it is politically significant that the CFA recognises and clearly mentions the Muslims as an affected party, it also denies the fact they are a party to the conflict. As one of the parties to the conflict, the Muslim people demanded representation in the delegations to the peace process and active participation in the institutions that flowed from the process. Rauff Hakeem, MP, leader of the SLMC and a member of the government delegation to the peace negotiations, pointed out that the CFA was the foundation of the entire peace process i.e. the peace process flowed from the CFA. Therefore, since the CFA was bilateral, the peace process was also conducted as a strict partnership between the GOSL and the LTTE. The Muslim position was therefore diluted at the very outset and active participation of the Muslim community in the peace process was made difficult, if not impossible. As far as the Muslims were concerned this was an ominous beginning which only served to increase the insecurities of the community that it would be short-changed in the peace process.¹³

¹² D. B. S. Jeyaraj, 'A Pioneering Leader: M. H. M. Ashraff, 1948-2000', *Frontline*, 17: 20, September.30-October 13, 2000: <http://www.hinduonnet.com/fline/fl1720/17201260.htm> [December 18, 2006]

¹³ Interview with Rauff Hakeem, August 2006

Both the GOSL and the LTTE failed to realise that non-inclusion of the Muslims also meant that the structures established as part of the process did not gain legitimacy in the eyes of the community. Hence, they failed to harness the support of the Muslims for the peace process. This was echoed by Hakeem who said that lack of Muslim support for SIHRN and opposition to P-TOMS was due to the non-inclusion of Muslims in the discussions and processes that led to the establishment of these structures.¹⁴

In April 2002, at a public meeting in Mullaitivu, Anton Balasingham admitted that the expulsion of the Muslims from Jaffna was a 'political blunder, which could not be justified'.¹⁵ He further stated the 'LTTE leadership would be willing to re-settle them in the northern district when ceasefire is stabilised and normalcy is restored'.¹⁶ At the time this was considered an important step forward in the peace process that would contribute to mending Muslim-Tamil relations. The second milestone was the signing of an agreement between the LTTE and the SLMC following a meeting between Rauff Hakeem and Pirapaharan on April 13, 2002, to cooperate on affairs related to Sri Lanka's Muslim community. At the meeting it was agreed that a joint committee 'comprising representatives of LTTE and SLMC would be appointed to co-ordinate affairs related to the return of displaced Jaffna Muslims to their own homes'.¹⁷ It was reported that the agreement also focused on the contentious issue of cultivation by Muslims in untended Muslim lands in the North and East. They further agreed that a SLMC representative would be appointed to liaise with LTTE commanders in the East.¹⁸ Though it appeared the SLMC and LTTE had arrived at a formula for continued interaction to resolve the issues facing Muslims in the conflict areas, the structures met with limited success due to the political constraints faced by Hakeem, and internal problems the LTTE was experiencing at the time.

Hakeem stated that during the fifth round of negotiations at Berlin, a decision was taken to set up a separate bilateral mechanism with the LTTE to deal with land rights. He noted that this structure worked quite well in Ampara and Batticaloa where there was village level contact between the LTTE and SLMC

¹⁴ Interview with Rauff Hakeem, August 2006

¹⁵ *TamilNet*, April 5, 2002: <http://www.tamilnet.com/art.html?catid=13&cartid=6824>

¹⁶ *TamilNet*, April 5, 2002: <http://www.tamilnet.com/art.html?catid=13&cartid=6824>

¹⁷ *TamilNet*, April 13, 2002: <http://www.tamilnet.com/art.html?catid=13&cartid=6845>

¹⁸ *TamilNet*, April 13, 2002: <http://www.tamilnet.com/art.html?catid=13&cartid=6845>

nominees, and some land was released to Muslims for cultivation. The LTTE however pulled out of this structure when it withdrew from the peace talks. Hakeem said that even after negotiations broke down the LTTE and SLMC continued to collaborate in settling local disputes. This however broke down when the LTTE came under pressure from the Tamil people of the area who for years had used the Muslim lands for pasture land and were reluctant to lose it.¹⁹

Another issue that contributed to the disintegration of SLMC-LTTE-Muslim relations was the continued harassment and taxation of Muslims in the East, even after the Hakeem-Pirapaharan agreement, which stated such incidents would stop forthwith. It transpired that the LTTE leaders in the East, i.e. commanders such as Karikalan, were flouting the directives of the Wannu and submitting false reports to the Wannu.²⁰ When the matter came to light they were removed by Pirapaharan from their postings in the East. This incident indicated the existence of dissension within the LTTE and raised concerns that implementation of agreements with the Wannu could be jeopardised due to the leadership's loosening grip on its cadres.²¹

The position of the SLMC and Hakeem at the time also needs to be considered when studying the Muslim position in relation to the 2002 peace initiative. Hakeem had faced a leadership contest from the late Ashraff's widow Ferial Ashraff, who subsequently formed the National Unity Alliance (NUA). He was subjected to continued challenge and criticism by Mrs. Ashraff for conceding too much to the LTTE and not doing enough to safeguard the interests of the Muslims in the peace process. In late 2002 Hakeem faced a leadership challenge again from within the party from the Athallah faction which led to his recall from peace talks. Due to the Muslim-Tamil violence in Muttur and Valaichenai, Hakeem came under fire from those within the SLMC, NUA and even Muslim leaders within the SLFP.²² Hence, Hakeem at times was forced to adopt uncompromising positions and engage in anti-LTTE rhetoric for his own political survival and to maintain the position of the SLMC as the 'sole

¹⁹ Interview with Rauff Hakeem, August 2006

²⁰ D. B. S. Jeyaraj, "The Muslim Dimension in the Peace Process," *Sunday Leader*, September 16, 2002

²¹ Phillipson and Thangarajah (2005): 44

²² Jeyaraj (2002)

representative of the Muslim people'.²³ The LTTE also employed the divide and rule policy by inviting rival Muslim factions to meet with them in an attempt to curb Hakeem's actions. At this time the gap and inherent tensions between the Southern Muslims who were mostly traders, and the North and East Muslims who were farmers and fishermen, also came to the fore. Accusations were levelled at Hakeem that he failed to respond to the needs and concerns of the Eastern Muslims since he was not from the East.²⁴

The question whether Hakeem would be part of the government delegation or head a separate delegation to Thailand also became a contentious issue. As regarding other issues related to the peace process, in this case too there are competing narratives which vie for authenticity. According to the journalist D. B. S. Jeyaraj, the LTTE wanted Hakeem to lead a separate delegation instead of being part of the government delegation as they feared the latter would lead to a Sinhala-Muslim versus Tamil ethnic equation at the peace table.²⁵ Yet certain interviewees stated that the LTTE was not willing to accommodate Muslim third party representation which led the government to include Muslims as part of its delegation.²⁶ After much wrangling and GOSL-LTTE-SLMC shuttle diplomacy it was decided that Hakeem would be part of the government delegation for the first round but would not be considered part of the government delegation when Muslim issues were discussed. Where further rounds of negotiations were concerned it was decided that his presence and participation would be determined by the agenda of the session. Though this may appear reasonable, it is problematic since the parties appear to have assumed that only certain issues affect the Muslims and that Muslims could be included during those particular discussions. This approach compartmentalises the peace process and mistakenly ignores the fact that even issues that may not be "Muslim issues" impact upon the Muslim community, and hence their exclusion adversely affects their rights.

As stated earlier, the exclusion of the Muslims meant that the structures created by the GOSL and LTTE, such as SIHRN, failed to have legitimacy amongst the Muslims. Hakeem stated that though the Muslim parties lobbied and obtained two positions as GOSL nominees to SIHRN, the Muslim people

²³ Ibid

²⁴ Dilrukshi Handunetti, 'SLMC and the Muslim Factor,' *Sunday Leader*, Jan 19 2003.

²⁵ Ibid

²⁶ Interview with UNF parliamentarian, August 2006

did not accept the structure, as their role within it was limited. He also pointed out that scant regard was paid by both parties to the concerns of the Muslims.²⁷ For instance, though both parties increased their nominees to SIHRN, from four to five and later seven, the Muslim quota remained at two.

All these issues were played out again in the case of the P-TOMS, which clearly illustrated the outcome of the failure of the peace process to include affected parties in decision making processes. Although the Muslims were given representation in the P-TOMS they were excluded from the negotiation process. Many who were involved in the negotiation process were surprised that the Muslims vehemently opposed the P-TOMS despite being given representation.²⁸ Even when opposing the P-TOMS the Muslims had to be strategic, as, according to a SLMC official, they did not wish to be identified with the Sinhala nationalist camp.²⁹ Hence, they expressed their opposition in different ways. Ferial Ashraff for instance said that P-TOMS was necessary only in LTTE controlled areas and not government controlled areas as it was the LTTE that blocked attempts by the Divisional Secretariat to re-settle Muslims.³⁰ Although the President is said to have held extensive consultations with the Muslim community (an interviewee pointed out that paradoxically this was one of the reasons for the delay in signing the agreement; delay which ultimately led to the demise of the P-TOMS³¹) the fact that they were left out of actual negotiations is a continuation of the policy adopted towards Muslim participation in the peace process. Fara Haniffa is one of many who contend that the symbolic inclusion of Muslims is significant and means that Muslims cannot be excluded from future negotiations.³² To the contrary, we argue that the fact the LTTE gave representation to the Muslims and even agreed to some safeguards begs the question whether the LTTE viewed the mechanism as a political body which could at a later stage form a part of the negotiated settlement. Another concern of the Muslim community related to the unease and fear the community harboured about working on the ground with LTTE controlled bodies.

²⁷ Interview with Rauff Hakeem, August 2006

²⁸ Interview with Rauff Hakeem, August 2006

²⁹ Interview with A. M. Faaz, SLMC, August 2006

³⁰ Quoted in Phillipson and Thangarajah: 44.

³¹ Interview with Javed Yusuf, June 2006

³² Fara Haniffa, 'P-TOMS and Muslim Politics', *Polity*, 2: 5&6, June-July 2005: 12

Furthermore, inter-community power struggles prevent the Muslim community from presenting a unified stand on important issues, which plays into the hands of the GOSL and the LTTE who are able to exploit the dissension to their own benefit. Another factor that has to be considered is that relations between the Muslim and Tamil people and the LTTE differ geographically, which colours the ways these communities view a future settlement. Tamil-Muslim relations are said to be better North of Trincomalee, where people want a solution based on Tamil-Muslim interdependence as opposed to south of Batticaloa where the Muslim people oppose being part of any LTTE dominated structure.³³ However, the existence of different political factions within the Muslim community dilutes the Muslim position *vis-à-vis* the peace process instead of functioning to create space for active inter-community debate and providing alternatives to strengthen the Muslim position. The inter-party struggles have also diminished the Muslim people's faith in the ability of their political parties and leaders to ensure the promotion and protection of their rights.³⁴

The response to the exclusion of the Muslims was that they would be included when issues relevant to the Muslims were discussed. Even Prof. Peiris in his interview stated that Muslims can be included in the talks if Muslim issues are being discussed and expressed doubt as to whether there could be a tripartite agreement where the conflict is concerned.³⁵ It should be noted this contradicts his interview of July 25th, 2005 in the *Daily Mirror* where he stated that 'the UNF adopted the policy at the time that we were handling the peace talks that the Muslim representation had to be accommodated and this was something we constantly advocated. This was incorporated in the Tokyo Declaration of June 2003. We still stand by that position even today'. Hence, the view amongst political parties appears to be that even if the Muslims are included in the negotiation process they cannot be a party to any agreement related to the conflict. It seems this is based on the misguided belief that negotiations should take place only between the armed actors involved in the conflict, disregarding the various groups that have been severely affected by conflict and have a stake in any negotiated settlement. If the government is committed to the inclusion

³³ Phillipson and Thangarajah (2005): 10

³⁴ *Ibid*: 44

³⁵ Interview with G. L. Peiris, June 2006

of the Muslims and their concerns, then one would imagine that Muslims would have been included at least in the negotiations for the creation of the P-TOMS, supposedly a non-political body created to disburse humanitarian aid. Considering the Muslims were amongst those most affected in the tsunami, this glaring omission does not bode well for their future participation in peace processes.

6 Parity of Status: Mistaking the Carrot for the Stick?

This section will explore in detail the issue of parity of status between the parties as it is an important thread that runs through the whole process; one that highlights inherent problems with the peace process as a whole, and in particular, attempts to establish interim structures. As stated in the section on the CFA, since the CFA is a document which seeks the cessation of hostilities, the fact that the two primary armed actors, at the time of signing, were the only signatories is not problematic *per se*. It is our contention that the GOSL and facilitators should have dealt with the exclusive nature of the CFA by including all actors in the negotiation process. Hence, for the purpose of analysis, this paper views the CFA as separate from the negotiation process. Therefore, the discussion in this section takes place within the framework created by the exclusive nature of the negotiation process and the acceptance of parity of status between the parties, by both the GOSL and the facilitator. The section looks at the consequences of the establishment, and later, the erosion of parity of status by the GOSL and the resulting (re)action of the LTTE, which undermined the peace process and interim structures.

Parity of status also relates to the issue of transformation of both the GOSL and the LTTE, i.e. dual transformation. In this case, both the GOSL and LTTE have to undergo considerable transformation for a negotiated settlement to work. As illustrated by the 2001 peace process the LTTE has been more accommodative when in a perceived position of strength as evidenced by their continued assertion that they sought to negotiate with the government because they believed parity of status and a military balance had been achieved. Numerous analysts have argued that at the end of 2001 a strategic parity was achieved and state that the 'LTTE would not have entered into a ceasefire agreement from a position

of military weakness'.¹ Former Air Force Commander Harry Goonetilleke has said that the LTTE is 'talking from a position of strength and virtually calling the shots.'² Balasingham echoed this perspective when he stated that 'as the *de facto* administrators of vast areas of the northern Tamil homeland and maintaining a balance of military power, the Tamil Tigers indicated their willingness to embark on the process of political negotiations.'³ Tamilchelvan, too, reinforced this in his interview on Shakti TV in June 2006, where he rounded up the answer to practically every question by reiterating the need to maintain parity. He stated that the government began negotiating with the LTTE when the LTTE was militarily strong and hence parity and military balance were integral to the progress of the peace process. Based on this we would posit the argument that once parity was established and accepted, maintaining it was an important factor in edging the parties towards reform and transformation. At the same time in order to ensure the two-actor CFA did not adversely impact upon the rights and concerns of other parties affected by the conflict, such as the Muslims and other Tamil parties, the GOSL and the Norwegians should have made the negotiation process more inclusive.

The LTTE's insistence upon the removal of the ban prior to negotiations also relates to the issue of parity as illustrated by Rudrakumaran's assertion that 'although the proscription of the LTTE did not have any tangible impact on the organisation, the LTTE wanted the ban removed because both parties should perceive themselves, and be perceived by others, as equals.'⁴ The government's understanding of 'parity' is considerably different as evident in the articulation of the government position by a Peace Secretariat official who stated that parity of status should be maintained at the negotiations, as it is important to render equal status at peace talks, but not beyond.⁵ In his opinion the question about parity of status between the parties does not arise since Sri Lanka is a sovereign state and the LTTE is a non-state actor. Where the government negotiating team

¹ Rampton and Welikala (2005): 22

² Goonetilleke (2003)

³ Balasingham (2006): 41-2

⁴ Visuvanathan Rudrakumaran, "Asymmetries in the Peace Process: The Liberation Tigers of Tamil Eelam" in Robert Ricigliano, Ed, *Choosing to engage: Armed Groups and peace processes* (London: Accord, 2005): <http://www.c-r.org/our-work/accord/engaging-groups/asymmetries-peace-process.php> [December 18, 2006]

⁵ Official of the Peace Secretariat, Interview, June 2006

was concerned, Prof. Peiris too put forward the same opinion, and said both parties should be treated as equals as far as the dialogue is concerned but stressed the parties are in no way equal because one is a terrorist group and the other a democratically elected government.⁶ This is illustrative of the failure of state actors to acknowledge that 'the very process of engaging across a negotiating table is itself an equalizing mechanism.'⁷ Where the LTTE is concerned, Tamilchelvan's comment sums up their understanding of the issue. He stated that the LTTE 'did not enter the negotiations to be passed judgments based on classifications such as non-state actor. The CFA and the entire peace process is between two parties, it is not based on LTTE as a non-state actor and GOSL as a state actor.'⁸ The Oslo Communique also clearly shows the LTTE considers itself to be a state-like entity. The Communique says 'The *de facto* State of Tamil Eelam exercising jurisdiction over 70 percent of the Tamil Homeland, with control over the seas appurtenant there, with its own laws, independent judiciary, police force and full administrative apparatus...' Further, the LTTE's vociferous response to the SLMM ruling with regard to rights at sea⁹ illustrates that to the LTTE, parity is a fundamental, non-negotiable element upon which the entire peace process rested.

The challenge for us is to understand how this translates into reality. Firstly, what does parity mean to the parties? How does each party's understanding of parity differ? Is parity military strength alone or does it also include political legitimacy and acceptance? For practical reasons how does one maintain parity only at the table and not beyond? How would such an approach work? Particularly due to the exclusive nature of the negotiation process, which was based on a two actor model, if parity was extended only at the negotiating table, it is not surprising the process stalled when attempts were made to implement decisions taken at the table. For instance, in the context of a structure such as the P-TOMS, how would treating the other party as less than an equal impact upon the functioning of the institution? Is it not reasonable to assume that in

⁶ Interview with G. L. Peiris, June 2006

⁷ Fink Haysom, "Engaging armed groups in peace processes: lessons for effective third party practice" in Robert Ricigliano, Ed, *Choosing to engage: Armed Groups and peace processes* (London: Accord, 2005): <http://www.c-r.org/our-work/accord/engaging-groups/asymmetries-peace-process.php> [December 18, 2006]: 3.

⁸ Interview on Shakti TV, June 2006

⁹ Interview with Tamilchelvan, Shakti TV, June 2006.

reality such a strategy would at every point create rancour and mistrust between the parties and result in the non-implementation of decisions taken at the negotiations? The GOSL also sent mixed signals by, on the one hand, wrongly and misguidedly appeasing the LTTE on issues such as human rights and the rights of the Muslims, while on the other acting in a manner which undermined parity of status. It is our argument that in the circumstances existing at the time the government mistakenly used the human rights carrot and the parity stick whereas the opposite strategy might have yielded better results. There was a feeling among the GOSL, facilitators and civil society that criticizing or bringing to attention the LTTE's human rights violations would have 'rocked the boat' and caused the LTTE to get intransigent. However, if the LTTE was made to account for its violations, then a major argument against the peace process – the fact that the LTTE had violated the CFA with impunity – would have been nullified. Indeed, it is our belief that the LTTE would not have withdrawn from the peace process merely because it was taken to task over human rights violations. It was, instead, the lack of status that was a far more overwhelming concern for the LTTE, and ultimately as it frittered away, caused them to leave the peace process.

The attempt to undermine parity during the peace process was probably due to the government's belief that a military solution was still an option. This is confirmed by the statement of Trond Furuhoide, former Head of the Sri Lanka Monitoring Mission who said that 'in Colombo, many political and military leaders still believe that a military defeat of the LTTE is possible.'¹⁰ Lieutenant General Nambiar in his report on High Security Zones states that the 'SLDF commanders at various levels seem to have much difficulty in coming to terms with the reality of the status of the LTTE as a party to the peace process' and recommends that 'in so far as the status of the LTTE as a partner in the peace process is concerned it is imperative that a consensus with at least the major political parties in opposition that the ground reality cannot be changed.'

The LTTE's fears regarding parity are based on the fact that a long ceasefire erodes the 'war imperatives that give the LTTE their military supremacy and moral authority within Tamil society. It should be remembered that their reputation

¹⁰ *TamilNet*, May 12 2006, <http://www.tamilnet.com/art.html?catid=79&artid=17127> [December 18, 2006]

is based on the fact that they fought their way to the negotiating table'.¹¹ The Sri Lankan state's reluctance to extend parity of status appears to stem from the fear that such an act would constitute bartering away the sovereignty of Sri Lanka. However, TNA MP Gajen Ponnambalam points out that the CFA was based on ground realities, most importantly the military balance of power, and accuses the government of attempting to shift the balance of power in its favour.¹² Indeed, in response to a question on LTTE re-arming, Prof. Peiris's response was that the government was certainly regrouping and rearming, and that it was unrealistic to expect the LTTE not to do the same until there was real peace.¹³ This, of course, has implications for parity of status as it can be argued that in accepting the re-arming and re-grouping of the LTTE as a legitimate action, the government bestowed a certain status upon them.

In reality, however, both parties have been accused of rearming post-ceasefire. For example, 'Funding the Final War,' a Human Rights Watch Report, details the LTTE's funding activities in the diaspora for the 'final war' through intimidation, extortion and violence.¹⁴ The LTTE's recruitment drive, particularly of children also continued along with the stockpiling of arms and alleged arms transfers. The government of Sri Lanka kept apace by constructing new camps, checkpoints¹⁵ and bunkers, training new recruits and expanding its air force bases.¹⁶ The government's 'defence costs did not fall significantly despite the end of hostilities' and defence savings were insignificant,¹⁷ which signalled that the government was in the process of remilitarizing the state. This could also have been an attempt by the government to show the Sinhala nationalist, anti-peace groups that it was not jeopardizing the sovereignty of Sri Lanka, while signalling to the LTTE its military strength and ability to resort to a military solution to the conflict if necessary.

Many GOSL actions were perceived by the LTTE as attempts to undermine

¹¹ Phillipson and Thangarajah (2005): 28

¹² Interview with Gajendrakumar Ponnambalam, TNA MP, May 2006

¹³ Professor G. L. Peiris at a briefing to the diplomatic community in Colombo, February 24, 2002; cited in Bush (2003): 161

¹⁴ 'Funding the Final War: LTTE Intimidation and Extortion in the Tamil Diaspora', <http://hrw.org/reports/2006/lte0306/> [December 18, 2006]

¹⁵ Phillipson and Thangarajah (2005): 24

¹⁶ Chandrasekharan (2002)

¹⁷ Kelegama (2006): 6

parity, like the proposed Indo-Lanka Defence Agreement, through which the government sought to formalize its military cooperation with India. This led to protests by the Tamil political parties and the LTTE. Jehan Perera in his article on the proposed agreement stated that the fear of the Tamil community was that 'the defence agreement would lead to a strengthening of the Sri Lankan government's military capacity and hence reduce its willingness to yield or be politically accommodative to the LTTE's negotiating position.'¹⁸ This is echoed in Balasingham's reaction to the announcement when he says that 'a military pact with India would encourage the Sinhalese political leadership to take a hard line belligerent attitude towards the Tamils and eventually destroy the mutual trust between the estranged communities which is a crucial factor necessary for the consolidation and promotion of peace'.¹⁹

An incident which contributed to undermining the parity of status was the decision to hold the donor conference in Washington, which the LTTE could not attend because it was and remains a banned group in the United States. The majority of those interviewed including Prof. Peiris acknowledged that the Washington conference was a mistake that contributed to deepening mistrust between the parties and the breakdown of the process.²⁰ Others have pointed out that Washington was only a contributory factor²¹ and that if the conference had taken place at a more settled, less contentious period of the peace process it is quite likely the LTTE would not have reacted so strongly.²² The decision to hold the conference in Washington was probably based on the view the United States was important to the peace process and had to be given substantial visibility.²³ Furthermore, as noted by Jeyaraj, Washington was considered 'ideal' because the spring sessions of the International Monetary Fund and WB were on and key

¹⁸ Jehan Perera, "Making Conditions Right for Indo=Lanka Collaboration," November 23, 2004: http://www.peace-srilanka.org/media_statements/current_situation/Nov-23-04.htm [December 18, 2006]

¹⁹ Quoted in Perera (2004b)

²⁰ Interviews with Prof. G. L. Peiris, July 2006; Gajendrakumar Ponnambalam, May 2006; R. Sampanthan, August 2006; and World Bank Country Director Peter Harrold, June 2006

²¹ Interviews with Kethesh Loganathan, July 2006; Austin Fernando, Rauff Hakeem, and Milinda Moragoda, UNF parliamentarian and member of delegation to the peace talks, August 2006

²² Interview with Peter Harrold, June 2006

²³ See D. B. S. Jeyaraj, "Washington Aid Lanka Meet and LTTE's Exclusion," *Tamil Times*, 22: 4 (2003): 16-20

officials attending them could therefore participate in the Sri Lankan meeting.²⁴ This also related to greater internationalisation of the peace process which both parties viewed as positive in the beginning as they hoped it would advance their individual positions. The government hoped it would lead to increased pressure on the LTTE to compromise on a political settlement and the LTTE hoped for the same in relation to the government.

During the initial stages of the peace process the LTTE viewed internationalisation as beneficial, as illustrated by Balasingham's response to Pirapaharan's disappointment with the proposals for a Joint Task Force. He says he pointed out to Pirapaharan that 'the important element in the peace process was the internationalisation of the Tamil issue...' and the need to 'impress upon the international community' the seriousness and genuineness of the LTTE in pursuing peace and the need to meet the urgent humanitarian needs of the Tamil people.²⁵ However, as the government set about drawing the international safety net and countries began pressurising the LTTE, it felt it was losing its position of strength and the parity between the parties was being disturbed. LTTE's fears and reasons for withdrawing from the process are articulated by Balasingham who has stated that 'as a non-state actor caught up in the intrigue-ridden network of the international state system, the LTTE was compelled to act to free itself from the overpowering forces of containment'.²⁶ The Prime Minister in the meantime used the international safety net to counter Sinhala nationalist elements in the South and defend his handling of the peace process. This was the Prime Minister's strategy to 'contain/manage' the LTTE, the Sinhala nationalists and President Kumaratunga. Though external pressure on the parties can have a positive impact on negotiations it 'is not decisive in inducing a state of mind conducive to participation in negotiations. What is more important than external pressures is the armed group's subjective appreciation of a negotiated settlement as the first prize - as something that can actually deliver on their bottom line demands'.²⁷ This was lacking in the Sri Lankan peace process where the government in power was not in a position to ensure that even the 'bottom-line demands' of the LTTE could be fulfilled. The

²⁴ Ibid: 18

²⁵ Balasingham (2006): 385

²⁶ Ibid: 434

²⁷ Haysom (2005): 2

Rajapakse Administration stepped up its campaign to pressure the international community in order to 'manage' the LTTE and has had success in the form of the EU ban, which it viewed positively as it is seen as a means of forcing actual change upon the LTTE, which did not take place during the peace process. According to an official of SCOPP 'it cannot be but a good thing for the peace process.'²⁸

In his Shakti TV interview, Tamilchelvan explaining the LTTE's view of the international community, said the international community had failed to understand the government's attempts to undermine the parity of status. He charged the international community of ignoring the government's 'anti-Tamil' activities and said that through its actions the international community was telling the LTTE that it was not possible to achieve the aspirations of the Tamil people through peaceful means. The LTTE also accused the international community of treating the government favourably due to its 'statist' nature.

The LTTE's suspicion of the international community appears to be founded on a belief that they are unwilling to engage with them and are biased in favour of the GOSL because it is a fellow 'state' actor. Rudrakumaran states that 'by failing to engage with non-state entities, third party states were also lessening their ability to persuade or become fair arbitrators of the conflict'.²⁹ Paradoxically, the international community has been charged by several groups and political parties of the South and even by the GOSL of being biased in favour of the LTTE. This state of affairs could be due to the failure of the international community to function in a coordinated manner, particularly when using the carrot and stick approach. For instance, one country such as the United States should have consistently used the stick while the EU could have offered the incentives. However, the carrot and stick approach was used haphazardly against the LTTE. The inconsistency also extended to the manner in which the international community dealt with the GOSL. TNA MP Gajen Ponnambalam contends that the GOSL was offered only carrots which did not provide any motivation for the GOSL to engage in transformation of the state.³⁰ For example, though conflict aid had attached conditionalities he points out that the conditionalities

²⁸ Interview with Shanaka Jayasekera, Director (Policy), SCOPP, June 2006

²⁹ Rudrakumaran (2005)

³⁰ Interview, May 2006

could be ignored by bilaterals who continued providing aid.³¹ In particular, the influx of tsunami aid rendered aid conditionalities ineffective. Both the GOSL and the LTTE recognise the international community's lack of a coherent, co-ordinated strategy, mainly due to their own domestic interests and politics, and successfully exploited it to their advantage. This may be one reason why donor leverage diminished as the peace process progressed.³²

The failure of both parties to take into account the power of informal, hidden relationships and constituencies³³ also contributed to derailing the peace process through fostering the view that parity was being undermined. Furthermore, as Thangarajah and Phillipson point out, both parties did not factor in their own political weaknesses in relation to their own communities.³⁴ The government for instance did not realise that the LTTE had to maintain its position, or at least be seen to, as 'protector and provider' amongst the Tamil people by ensuring improvement in their daily lives. Hence, as mentioned in earlier sections, SIHRN was an important structure to the LTTE which the government could have used to counter the LTTE's need to assert its position of strength by taking uncompromising positions. The change of government in 2004 also worsened relations with the LTTE particularly where the issue of parity was concerned. The PA government's refusal to allow the UN Secretary-General to visit tsunami affected areas in the LTTE controlled territories was an act calculated to assert the government's position of power that only served to exacerbate existing tensions and mistrust.

Likewise, the LTTE should have allowed leeway to the government where certain issues were concerned. For instance, the LTTE's maximalist ISGA proposals were a strategic blunder coming at a time when the Wickremasinghe government was at its weakest. The proposal, which undermined the Wickremasinghe government's legitimacy in the eyes of the Sinhala electorate, was the last nail in the coffin providing Kumaratunga legitimate reason to dissolve parliament under the guise of safeguarding sovereignty. It has been argued by Sivaram that the LTTE viewed the government's lack of commitment to make structures such as SIHRN work effectively as a strategy to contain them and make them

³¹ Interview, May 2006

³² Phillipson and Thangarajah (2005): 48

³³ Ibid: 19

³⁴ Ibid: 20

appear impotent and weak.³⁵ On the flipside, it can be stated that the LTTE's withdrawal from negotiations and maximalist ISGA proposals were attempts to force the hand of the government which backfired and instead politically weakened the government and eroded the Southern constituency for peace.

Parity of status is integrally linked to the issue of legitimacy. Legitimacy, the need to seek it and deny it, stems from uncertainties surrounding engagement with the LTTE, primarily the belief that a military solution to the conflict might be the better alternative. The decisions of the GOSL and the LTTE have been shaped by certain fears that have dominated the peace process. In the case of the LTTE its desire to attain legitimacy in the eyes of the people and the international community meant that all decisions of the government were viewed through the lens of parity. Legitimacy was key to the LTTE. The government, while on one level, recognising the need to engage with the LTTE to find a negotiated settlement, also feared that engaging with and treating the LTTE as an equal partner in talks would bestow legitimacy on the group, which it in turn feared the LTTE would use to its advantage. The GOSL also harboured apprehension that if the LTTE attained legitimacy the government would be de-legitimised in the South. Hence, the need to keep the nationalist constituency in the South happy, played a prominent role in the government's strategy in handling the peace process. We argue that the issue is not whether the government should engage with the LTTE to find a negotiated settlement to the conflict but rather how it should engage with the LTTE. The late Kethesh Loganathan, Deputy Director, SCOPP proposed an alternative process which would enable the LTTE to achieve legitimacy through transformation, whereby they would be rewarded for each step they take towards democratization. In effect a roadmap for gaining legitimacy.³⁶

Petrasek argues that 'the need to feel important and to be taken seriously is a key factor for these (armed) groups; however problematic in political terms, this creates tactical opportunities for those trying to engage them. Treating groups as beyond the pale will not assist in efforts to moderate their behaviour.'³⁷ Methods

³⁵ Sivaram, 'War Remains an Option Three Years After the Ceasefire', *Daily Mirror*, February 22 2005

³⁶ Interview, June 2006

³⁷ David Petrasek, "Asymmetric Mediation: Armed Groups and Peace Processes," Working Paper, Mediators' Retreat, Oslo June 10-11, 2004

such as the one proposed by the late Loganathan are innovative means through which the peace process could have evolved to accommodate the changing nature of both parties and the circumstances. The government's method of dealing with LTTE intransigence was to undermine parity which the GOSL itself had accepted and furthered through a non-inclusive negotiation process, while mistakenly appeasing the LTTE on issues such as human rights. As Phillipson and Thangarajah point out 'a military organisation that perceives itself as beleaguered by other forces cannot switch to democratic controls immediately.'³⁸ Hence, increasing the fears of the LTTE regarding parity made it more intransigent and paranoid. The seemingly desperate desire of the LTTE to be acknowledged as an equal partner was an opportunity which the government could have utilised to take the peace process forward. Instead the fears and insecurities of both parties, the underlying belief of at least some sections of the Southern polity that a military solution was still possible, and the fact the government was at many instances held hostage by the nationalist constituency in the South, coupled with electoral exigencies contributed to the uncompromising positions maintained by both parties to safeguard their positions of strength.

³⁸ Phillipson and Thangarajah (2005): 11.

Conclusion

This paper studied the general issues surrounding the politics of the peace process and illustrated the manner in which they impacted upon interim structures. The first point that must be emphasised is that parties enter peace negotiations for a variety of reasons. Throughout this paper, we have taken the view that both the UNF administration and the LTTE entered into the CFA and subsequent negotiations with the intention of arriving at a negotiated settlement to the national question. In this regard, it is instructive to note that Prof. Peiris stated at a briefing to the diplomatic community that the government was 'not entering this in a spirit of distrust, but one of reality' based on the recognition that no party wins through war.¹ Given the difficulty of achieving a 'big bang' peace settlement at the outset, we feel that the two parties embarked on a series of interim arrangements that had the potential to build trust and pave the way for a final settlement.

The post-CFA politics of interim arrangements in Sri Lanka has been shaped by the politics of the larger peace process. Primary among these was a mistaken belief that successful negotiations could be predicated on a bilateral process involving the government (narrowly defined as the UNF) and the LTTE. Less obvious but as damaging was the inability of all stakeholders to clearly indicate a path for LTTE legitimacy, especially concerning the vexed issue of 'parity'. Did parity begin at the negotiating table and end there? If so, this made a mockery of the LTTE belief that they were 'equal partners', at least where the concern of North-Eastern reconstruction and rehabilitation was concerned. This was also associated to the debilitating 'expectations gap' that maligned the peace process, especially with regard to development and reconstruction. Hence, the

¹ Professor G. L. Peiris at a briefing to the diplomatic community in Colombo, February 24, 2002; cited in Bush (2003): 161

inherent problems with the peace process have also plagued the establishment and effective functioning of interim structures. In some instances, the 'politics' prevented any progress on more divisive discourses concerning the 'interim'. Important here is the prevalent political culture of the South and the failure to involve President Kumaratunga and the SLFP, let alone constructively engage potential 'spoilers' like the JVP and the JHU. The results were seen clearest in the dissolution of the SDN largely due to the failure to make any progress on High Security Zones, a fundamental obstacle to normalization in the North-East.

Conversely, we would also underline that the misguided notion that 'politics' did not play a part in subcommittees and proposed power-sharing arrangements was a critical impediment to their successful functioning. This was particularly prevalent in the belief that the subcommittees were essentially structures that functioned within the larger milieu of the national bureaucracy. On the one hand, the subcommittees were ultimately creatures of the peace process and therefore vulnerable to their wider dynamics. On the other hand, once construed as essentially an element of the bureaucracy, they were at the mercy of a hierarchical and restrictive system. Red tape, delays and disinterest impacted upon efficient functioning and quick results. This was particularly true of SIHRN and it led to a rapid disillusionment on the part of the LTTE. Similarly, the UNF government approached the reconstruction of the North-East as a purely economic exercise which once again ignored its intrinsically politicized nature and the paramount need to position subcommittees with a limited and focused mandate in a wider discourse of constitutional reform. We would therefore outline two key areas related to wider structures – the bilateral process and the failure to gain a southern consensus in particular, and legitimacy and the issue of parity – and to two issues specifically related to the interim arrangements – the peace through development paradigm, and the failure to recognize the politicization of bureaucracy.

1. The Bilateral Blunder

One of the main problems with the peace process was the understanding held by all major actors driving the peace process, including a significant section of civil society, that the conflict was bilateral. Though it is not surprising the CFA was signed by only the GOSL and the LTTE as the two main armed actors at the time, the GOSL and the facilitator committed a strategic blunder by structuring

the processes that flowed from it within the two actor framework. This strategy adversely affected the process at several points. For example, it marginalised the Muslims who because they were left out of P-TOMS negotiations opposed the establishment of the structure. Linked to this are faulty assumptions on which the entire process was based. The negotiations were based on three broad assumptions: the GOSL would deliver the Sinhala constituency; the LTTE would deliver Tamil constituency; the Muslims would accommodate.² It is clear that these assumptions ignored the ground reality. As the process progressed these assumptions were proven wrong and it became apparent that neither the LTTE nor GOSL could deliver the Tamil and Sinhala constituency. The Muslims, as an affected and oft ignored party, began to vociferously articulate their opposition to being sidelined from the process.

With regard to the role of civil society in the process, many argue that the peace constituency focused only on negative peace – or absence of war – and failed to link peace to human rights. Pro-peace campaigns have been accused of being too simplistic, such as ‘say no to war,’ which some say underestimates the intelligence of the public. The ‘Advocacy Constituency’ has also been accused of being short-sighted in its idea of “inclusiveness,” whereby many civil society groups saw themselves as being facilitators only between the GOSL and LTTE while ignoring other groups and interests. Since it is these Track 2 efforts that receive a high level of visibility, other groups that critique or question the process were marginalized.

The politics of the South also impacted upon the peace process, most often negatively. A fractured polity and necessities of coalition politics shrunk the space available for negotiation between the government and LTTE. For example, where demobilization and the working of the Sub Committee on De-escalation and Normalization (SDN) were concerned General Nambiar identifies one of the many obstacles that any attempt to dismantle High Security Zones would face:

The posturing of the various political parties in the South imposes limitations on SLDF commanders; they would not wish to be perceived as having endorsed measures that may be portrayed as concessions to the LTTE.³

² Phillipson and Thangarajah (2005): 19

³ Leaked Report, General Observations, Art. 2

He further asserts it is ‘imperative that a consensus is evolved with at least the major political parties in opposition that the ground reality cannot be changed.’⁴ In order to diffuse tension between the parties and facilitate reciprocity on the part of both parties Nambiar reiterates the ‘importance of some public pronouncements on these realities and securing their endorsement by all major political parties is that the pressure on senior SLDF commanders to adopt rigid and inflexible postures to portray themselves as the sole guardians of national security interests is somewhat eased.’⁵ Traditionally in Sri Lanka, all political parties have opposed peace processes when in opposition. Given that governing parties generally have weak parliamentary majorities, it is a significant fact that the UNP, even after its election defeat in 2004, continued to support a negotiated settlement to the conflict. This represented a paradigm shift from the post-independence pattern of political partisanship. It would also enable an opposing party in power to push through the two-thirds majority required for constitutional change.

2. Legitimacy: Misusing the Parity Carrot

The crux of the matter is legitimacy. The LTTE needs the link to the Sri Lankan state in order to legitimise the machinery it presently operates, and therefore, recognition of the ISGA would be the ideal route. This would help it deliver on core political strategies – rehabilitation, resettlement and so on, and it would also further deliver the LTTE two further critical objectives in parity of status and international legitimacy. In favour of this argument, the ISGA brings the LTTE structures and mechanisms into a united framework that implicitly recognises the Sri Lankan state. The flipside of the coin is that this a clever argument put forward by the LTTE in order to legitimize illegal and undemocratic structures. Following this legal recognition, the LTTE would seek to deliberately destabilise the negotiations for a final settlement, and claiming it had no redress, seek external self-determination. Nonetheless, it cannot be denied that this course of action would reconstitute pariah status on the LTTE, which would not deliver any greater symbolic or political benefits than they have available at the present day.

Ultimately, this quest for legitimacy is inextricably linked to the ‘parity of

⁴ Art. 4

⁵ Art. 5

status' issue. Once 'parity' was recognised only at the negotiating table, the LTTE quickly felt trapped in a process that was not accruing it the benefits it had conceived of. Most importantly, with the spate of bans and related recriminations from the international community, the quest for international legitimacy was severely undermined. In large part, the LTTE blamed the government for disregarding its status as a legitimate, equal partner in the peace process and actively attempting to censure it through western powers. Furthermore, issues such as the status of the Sea Tigers and the repeated usage of the term 'non-state actor' or 'terrorist' went some way towards instructing the LTTE's growing negativity towards both the peace process and the international community. Ultimately, it may have been unrealistic of the LTTE to expect equal status in areas that were not directly related to the peace process but then again, what area of policy *does not impact* on the peace process. Herein lies the dilemma in engaging non-governmental actors in a full-blown peace process, especially where a major part of the latter's rationale for involvement in the process is to cement its own status as a self-governing, state-like entity.

3. The Fallacy of the Peace through Development Paradigm

Both the Wickremasinghe administration and the LTTE were committed to development and SIHRN was an outcome of this interest. Development and reconstruction were ways in which the LTTE sought to maintain its legitimacy amongst the people of the North-East. Since the Wickremasinghe government could not offer a substantial settlement to the LTTE due to the cohabitation war with the President and the politics of the South, it saw development as a means of containing the LTTE while keeping them engaged in negotiations. Ultimately, the strategy backfired as the GOSL faced the ire of Sinhala nationalist parties and the Southern electorate as it had not paid enough attention to ensuring the South also benefited from the peace dividend. The LTTE soon found that structures such as SIHRN had little hope of living up to its lofty goals due to various factors ranging from structural problems to the reluctance of state structures to engage with an extra-legal, *ad-hoc* structure.

Two factors are relevant here. Firstly, the LTTE's disappointment in the performance of SIHRN can be put down to heightened expectations and is testament to the 'expectations gap' that surfaced frequently during the peace negotiations. A further example of this was the optimism that greeted the Oslo

Declaration, an optimism that heightened expectations especially on the part of the media. In reality, these expectations stunted progress as they trapped the actors into a pattern of onward momentum with the only possible outcome being to withdraw and regroup. Secondly, it became obvious that substantive state reform is required before any interim structure is established. Attempts to establish extra-legal, *ad-hoc* structures such as SIHRN are destined to fail if they are based upon the denial of the politics surrounding the issue and the related urgent need for state reform.

4. Mistaking "Politics" for Governance

It is evident that a successful rehabilitation and reconstruction process is influenced strongly by political will. Extra-legal institutions like SIHRN require the support of governmental directives which circumvent the ordinary bureaucratic system in order to ensure that subcommittees can function to the optimum of their ability. This is essential given that they are otherwise subservient to ordinary ministerial secretaries. Furthermore, in the absence of concrete state reform proposals bestowing legitimacy on institutes like the subcommittees, they are always likely to find severe obstacles to proper functioning.

State reform is also a core issue which is integral to the success of any attempt at a negotiated settlement. As Uyangoda points out:

[B]oth the UNF and PA have also agreed that the existing Constitution is inadequate to address the core issues of the ethnic conflict. The PA and President Kumaratunga have even gone to the extent of saying that the existing Constitution is an obstacle to making any progress towards a settlement. On that point, the PA, UNF and the LTTE share a common perspective.⁶

Hence, even leaving aside a structure such as the ISGA, mechanisms such as SIHRN cannot function within the confines of the present constitution. The lack of state reform is an issue that has come to the fore with regard to the demand for an interim structure, where, in the post-Wickremasinghe era, it was used as a political football between the major parties. The subject of the interim structure itself has been plagued by how much the GOSL is willing to give, and how little the LTTE is willing to negotiate. As noted in the paper, this

⁶ Uyangoda (2003)

dichotomy has resulted in three sets of minimalist proposals from the GOSL and the LTTE's maximalist ISGA. Both parties feared that the proposals would form the basis of the final settlement, therefore coalesced around thresholds, and consequently took positions which did not concede 'too much' or 'too little'. Furthermore, the GOSL pointed to the constraints of the Constitution and the need to link an interim administration with parallel discussions on a final settlement, while the LTTE argued that an interim administration must be set up to meet rehabilitation and development needs and take cognizance of the fact that they already run a parallel administration in the North-East. In the absence of an agreement on the interim administration they stated there could be no negotiation on the final settlement, and furthermore, failure to offer a reasonable and pragmatic set of government proposals masked an inability on the part of the Sri Lankan state to transform itself to meet the legitimate aspirations of the Tamil people. The GOSL countered this by stating that the interim is necessarily part of the final, and therefore both needed to be addressed simultaneously. In the absence of that, they feared that if a generous interim package was granted and negotiations stalled on the final settlement, the interim structure would become etched in stone. This is the basic divergence of views between the two parties.

While these factors have hampered the interim arrangements process in Sri Lanka, their potential impact should also be taken cognizance of by academics and practitioners examining comparable peace negotiations. While all five areas are pertinent to comparative perspectives, we would stress that the experience of parity in Sri Lanka could be particularly instructive to peace negotiations and the engagement of non-state actors in general. Actors that choose to become part of a negotiating process expect, above all, legitimacy. Often, the actors gaining legitimacy is tied to their willingness to engage with the state actor in a peace process. Engagement becomes impossible without an acknowledgement of partnership and position in relation to key issues such as raising international funds for development. The frittering away of this sense of position acts as an obstacle to continued and progressive engagement. In the case of Sri Lanka, we contend that the 'carrot' should have been concessions *vis-à-vis* parity, and the 'stick' should have been a firm position on human rights and violations. This may well apply to future negotiations elsewhere.

That said, the lessons learnt from the interim arrangements experience in Sri

Lanka are not limited to the legitimacy argument. It has also placed in sharp relief the overdependence on the 'peace through development' paradigm as a means towards guiding militant actors towards transformation. Given that a number of international financial institutions highlight the imperatives of the paradigm, its apparent failure in Sri Lanka – it can be argued that ignoring 'politics' contributed to this – should act to dampen their zeal. Finally, both the failure to include all relevant stakeholders and the failure, deliberate or otherwise, to recognise that governance is essentially *political* in nature are findings that bear relevance across the spectrum of peace negotiations.

In the final analysis, the path taken through the institutionalization of interim power-sharing arrangements suffered from a variety of pitfalls. In the process itself, the marginalization of certain constituencies, the lack of strategic planning and disregard of the context and particularly the politics have all contributed to shrinking the space available for future negotiations. Each failure in the peace process diminishes the space available for negotiation and reduces the moral standing of parties, which in turn creates space for opposition to the peace process. Further, where interim structures and institutions were entered into, the efforts were half-hearted, especially on the part of the GOSL which was forced into such a stance by the opposition of President Kumaratunga, the nationalist parties and elements in the armed forces. Furthermore, where many of the interim institutions were concerned the nominees to the various institutions/structures did not have the power to make decisions or decide how much they could compromise on the stated positions of their respective parties which undermined their ability to function effectively. Combined with red tape and the failure to incorporate a viable funding mechanism, this ensured that the structures themselves became powerless. In the final analysis, the interim arrangements path faced insurmountable obstacles and it is no surprise that even where some progress was made, it was limited and short-lived. It is hoped that in a future peace process, these lessons will be heeded. Most importantly, as brought out by this paper, *politics* play a fundamental role at every level and must be accounted for, tackled and indeed, incorporated.

Bibliography

- Agha, Hussein and Robert Malley (2001), *Camp David: The Tragedy of Errors*, **The New York Review of Books**, 48: 13. Available at <http://www.nybooks.com/articles/14380> [December 18, 2006]
- Balasingham, Anton (2006), **War and Peace: Armed Struggle and Peace Efforts of Liberation Tigers** (Mitcham: Fairmax)
- Bastian, Sunil (2007), **The Politics of Foreign Aid in Sri Lanka: Promoting markets and supporting peace** (Colombo: International Centre for Ethnic Studies)
- (2006), “**How Development Undermined Peace**” in Rupesinghe (2006a): 245-278
- (2005), “**The Economic Agenda and the Peace Process**,” Part of Goodhand, Klem et al, Sri Lanka Strategic Conflict Assessment, The Asia Foundation, Volume No. 5
- Bastian, Sunil and Robin Luckham (Eds, 2003), **Can Democracy be Designed? The Politics of Institutional Choice in Conflict-torn Societies** (London and New York: Zed)
- (2003), “**Conclusion: The Politics of Institutional Change**” in Bastian and Luckham: 303-320
- Bush, Kenneth (2003), **The Intra-Group Dimensions of Ethnic Conflict in Sri Lanka: Learning to Read between the Lines** (Basingstoke and New York: Palgrave Macmillan)
- Centre for Just Peace and Democracy (2006), **Envisioning New Trajectories for Peace in Sri Lanka** (Colombo: CJPD and the Berghof Foundation for Conflict Studies)
- Chandrasekheran, S (2002), “**Talking Peace and Preparing for War**,” South Asia Analysis Group, 35, August 2002: <http://www.saag.org/notes2/note156.html> [December 18, 2006]
- (2003), “**Sri Lanka: The issue of High Security Zones**,” South Asian

- Analysis Group, 42, January 2003: <http://www.saag.org/notes2/note174.html> [December 18, 2006]
- Chatterjee, Partha (2004), **Politics of the Governed** (New Delhi: Permanent Black)
- Cliffe, Lionel and Robin Luckham (1999), *Complex political emergencies and the state: failure and the fate of the state*, **Third World Quarterly**, 20: 1, 27-50
- Cohen, Stephen Philip (2003), “India, Pakistan and Kashmir,” in Sumit Ganguly, Ed, **India as an Emerging Power** (London: Routledge): 32-60.
- Fair, Christine (2004), **Urban Battle Fields of South Asia: Lessons Learned from Sri Lanka, India and Pakistan** (Santa Monica: Rand Corporation)
- Ferdinands, Tyrol (2006), “**Thoughts on Process**,” in CJPD: 131-138
- Fernando, Austin (2006), “**Peace Process and Security Issues**” in Rupesinghe (2006a): 41-92
- (2004), “**The Interim Self Governing Authority (ISGA) Revisited**,” *Daily Mirror*, December (various)
- Goodhand, Jonathan (2001), **Aid, Conflict and Peacebuilding in Sri Lanka** (London: The Conflict and Security Development Group)
- Goodhand, Jonathan and Bart Klem with Dilrukshi Fonseka, S. I. Keethaponcalan and Shonali Sardesai (2005), **Aid, Conflict and Peacebuilding in Sri Lanka**, The Asia Foundation
- Goonetilleke, Bernard (2006), “**Sri Lanka Peace Process: What Lies Ahead in Sri Lanka?**” in Rupesinghe (2006a): 303-312
- Goonetilleke, Harry (2003), “**The Challenge of HSZs**,” *Sunday Leader*, January 5
- Handunetti, Dilrukshi (2003), “**SLMC and the Muslim Factor**,” *Sunday Leader*, January 19
- Haniffa, Fara (2005), *P-TOMS and Muslim Politics*, **Polity**, 2: 5 & 6, June-July
- Harris, A. W. (2005), *Mediating Protracted Conflict*, **Journal of Conflict Studies**, Summer
- Haukland, Hagrup (2006), “**The Sri Lankan Monitoring Mission: An Interview with Hagrup Haukland**,” in Rupesinghe (2006a): 151-158
- Haysom, Fink (2005), “**Engaging armed groups in peace processes: lessons for effective third party practice**” in Robert Ricigliano, Ed, *Choosing to engage: Armed Groups and peace processes* (London: Accord): <http://www.c-r.org/our-work/accord/engaging-groups/asymmetries-peace-process.php> [December 18, 2006]
- International Crisis Group (2006), **Sri Lanka: The Failure of the Peace Process**, Asia Report No. 124, November 28.

- Jansz, Frederica (2003), "High Security Zones rock peace process," *Sunday Leader*, January 5
- Jayasekera, Bandula (2003), "High Security Zones – who started the fire?" *The Island*, January 7
- Jayatilleka, Dayan (2004), "The Darkening," *The Sunday Island*, August 15
- (2003), "High Insecurity Zone," *Island*, March 4
- Jeyaraj, D. B. S. (2003), *Washington Aid Lanka Meet and LTTE's Exclusion*, **Tamil Times**, 22: 4 (2003): 16-20
- (2002), "The Muslim Dimension in the Peace Process," *Sunday Leader*, September 16
- (2000), *A Norwegian Initiative*, **Frontline**, 17: 5, March 4-17: <http://www.flonnet.com/fl1705/17050500.htm> [December 18, 2006]
- (2000), *A Pioneering Leader: M. H. M. Ashraff 1948-2000*, **Frontline**, 17: 20, September 30 - October 13: <http://www.hinduonnet.com/fline/fl1720/17201260.htm> [December 18, 2006]
- Kadirgamar, Ahilan (2005), *Engaging the JVP on Federalism*, **Tamil Times**, 26: 6, June: 26
- Kadirgamar, Ahilan and Cenan Pirani (2006), *Internationalisation of Sri Lanka's Peace Process and Governance: A Review of Strategic Conflict Assessments*, **Economic and Political Weekly**, May 6: 1789-1795
- Kandiah, Thiru with Sandagomi Coperahewa, Lakshman Gunasekera, Jehan Perera and A. Sivanesaselvan (2001), *The Media and the Ethnic Conflict in Sri Lanka* (Colombo: Marga Institute)
- Kelegama, Saman (2006), "Transforming Conflict with an Economic Dividend: The Case of Sri Lanka" in Rupesinghe (2006a): 205-244
- Loganathan, Ketheshwaran (2006) "Indo-Sri Lanka Accord and the Ethnic Question: Lessons and Experiences" in Rupesinghe: 81
- Luckham, Robin, Anne-Marie Goetz and Mary Kaldor (2003), "Democratic Institutions and Democratic Politics" in Bastian and Luckham: 14-59
- Malley, Robert and Hussein Agha (2003), *A Durable Middle East Peace*, **American Prospect**, 14: 10: <http://www.prospect.org/print/V14/10/malley-r.html> [December 18, 2006]
- Mayer, Markus, Darini Rajasingham-Senanayake and Yuvi Thangarajah (Eds, 2003), *Building Local Capacities for Peace: Rethinking Conflict and Development in Sri Lanka* (New Delhi: Macmillan)
- Nadarajah, Suthaharan (2006), "Re-envisioning Sri Lanka: The Present, not the Past Matters Most" in CJPD: 253-260

- (2005), "Sri Lanka's Vernacular Press and the Peace Process," Part of Goodhand, Klem et al, *Sri Lanka Strategic Conflict Assessment*, The Asia Foundation, Volume No. 6
- Nadarajah, Suthaharan and Dhananjayan Sriskandarajah (2005), *Liberation struggle or terrorism? The politics of naming the LTTE*, **Third World Quarterly**, 26: 1, 87-100
- Nesiah, Vasuki and S. Nanthikesan (2003), *From ISGA to Eternity: The light at the end of the tunnel has been shut of until further notice*, **Lines** 2: 3, November: http://www.lines-magazine.org/Art_Nov03/Editorial.htm [December 18, 2006]
- Orjuela, Camilla (2003), "The Peace Process in Sri Lanka and the Role of Civil Society," Tromsø Centre for Peace Studies Working Paper No. 6 (2003): <http://uit.no/getfile.php?PageId=3324&FileId=35> [December 18, 2006]
- Perera, Jehan (2004a), *Screening ISGA proposals through Federal frame*, **Daily Mirror**, August 17
- (2004b), "Making Conditions Right for Indo-Lanka Collaboration," November 23: http://www.peace-srilanka.org/media_statements/current_sitation/Nov-23-04.htm [December 18, 2006]
- (2003), "Balancing self-rule aspect of LTTE proposals with shared rule," *Daily News*, November 20: <http://www.dailynews.lk/2003/11/20/fea01.html> [November 1, 2006]
- Petrasek, David (2004), "Asymmetric Mediation: Armed Groups and Peace Processes," Working Paper, Mediators' Retreat, Oslo June 10-11
- Phillipson, Liz and Yuvi Thangarajah (2005), "The Politics of the North-East," Part of Goodhand, Klem et al, *Sri Lanka Strategic Conflict Assessment*, The Asia Foundation, Volume No. 4
- Raghavan, V. R. and Volker Bauer (Eds, 2006), *Federalism and Conflict Resolution in Sri Lanka* (New Delhi: Lancer and Centre for Security Analysis)
- Rajanayagam, P. (2006) "Govt-LTTE Negotiations 1994/1995: Another Lost Opportunity" in Rupesinghe: 174
- Rajasingham-Senanayake, Darini (2003), "Beyond Institution and Constitution Building: Linking Post-Conflict Reconstruction and Deep Democracy" in Mayer, Rajasingham-Senanayake and Thangarajah: 107-131
- Ram, N (2006), "The Peace Process: A 2006 Reality Check" in Rupesinghe (2006a): 405-420
- Ramasamy, P (2003a), "Interim administration is all about recognition," *Tamil Canadian*: www.tamilcanadian.com/pageview.php?ID=1964&SID=401&pr_v=yes [December 18, 2006]

- (2003b), **"Imagining Interim Administration,"** *Tamil Canadian*: www.tamilcanadian.com/pageview.php?ID=1954&SID=401&pr_v=yes [December 18, 2006]
- Rampton, David and Asanga Welikala (2005), **"The Politics of the South,"** Part of Goodhand, Klem et al, Sri Lanka Strategic Conflict Assessment, The Asia Foundation, Volume No. 3
- Rasaratnam, Madurika (2006), **"Re-envisioning Sri Lanka's Ethno-Nationalisms,"** in CJPD: 345-352
- Rebeira, Audrey (2003), Indrakanthi Perera, Malathi de Alwis, Pradeep Jeganathan and Sumathy Sivamohan, *LTTE and the Law in the Northeast: Following up on Sasanka Perera*, Lines 2: 1, February: http://www.lines-magazine.org/Art_Feb03/audrey_etal.htm [December 18, 2006]
- Richardson, John (2005), **Paradise Poisoned: Learning about Conflict, Terrorism and Development from Sri Lanka's Civil Wars** (Kandy: International Centre for Ethnic Studies)
- Rudrakumaran, Visuvanathan (2005), **"Asymmetries in the peace process: the Liberation Tigers of Tamil Eelam"** in Robert Ricigliano, Ed, *Choosing to engage: Armed Groups and peace processes* (London: Accord): <http://www.c-r.org/our-work/accord/engaging-groups/asymmetries-peace-process.php> [December 18, 2006]
- (2005b), **"LTTE's Flexibility in the Current Peace Process"** in CJPD: 147-156
- Rupesinghe, Kumar (Ed, 2006a), **Negotiating Peace in Sri Lanka: Efforts, Failures & Lessons, Volume Two** (Colombo: Foundation for Coexistence)
- (Ed, 2006b), **Negotiating Peace in Sri Lanka: Efforts, Failures & Lessons, Volume One** (Colombo: Foundation for Coexistence)
- (2006), **"Analysis of the Implementation of the Ceasefire Agreement"** in CJPD: 41-50
- Samaranayake, Ajith (2005), **"Modern politics played out to ancient war drums,"** *Sunday Observer*, June 26: <http://www.sundayobserver.lk/2005/06/26/fea02.html> [December 18, 2006]
- Sambandan, V. S (2006), **"Federalism and the Media: Some Realities and Stereotypes from Sri Lanka"** in Raghavan and Bauer: 106-121
- (2003a), *An agenda for de-escalation*, **Frontline**, 20: 11, May 24 - June 6: www.flonnet.com/fl2011/stories/20030606007713000.htm [December 18, 2006]
- (2003b), *A resented visit*, **Frontline**, 20: 25, December 6-19: <http://www.hinduonnet.com/fline/fl2025/stories/20031219007113100.htm> [December 18, 2006]
- (2002), **"Relocating high security zones in Sri Lanka crucial,"** *Hindu*, October 27: <http://www.hinduonnet.com/2002/10/28/stories/2002102803021200.htm> [December 18, 2006]
- Samset, Ingrid (2004), **Trapped in the Peace Process: Ceasefire Monitoring in Sri Lanka**, Occasional Paper, Working Group on Peace Support Operations, Nordic Research Programme on Security.
- Sarvanathan, Muttukrishna (2007), *In pursuit of a mythical state of Tamil Eelam: a rejoinder to Kristian Stokke*, **Third World Quarterly**, 28: 6: 1185-1195
- Sathananthan, Sachithanandam (2005), **"Re-envisioning Sri Lanka: ways forward and breaking the deadlock"** in CJPD: 303-310
- Sathya (2004), **"Core Issues or ISGA? – A Classic Case of a False Question!"** *Daily Mirror*, May 24. Available at <http://www.lankademocracy.org/sathya.html> [August 31, 2006]
- Senaratne, Jagath (2003), **"The Security Establishment in Sri Lanka: A Case for Reform"** in Gavin Cawthra and Robin Luckham, Eds, *Governing Insecurity: Democratic Control of Military and Security Establishments in Transitional Societies* (London and New York: Zed): 181-204
- Shanmugaratnam, N. and Kristian Stokke (2004), **"Development as a Precursor to Conflict Resolution: A Critical Review of the Fifth Peace Process in Sri Lanka"** in N. Shanmugaratnam, *Between War & Peace in Sudan and Sri Lanka* (Oxford: James Currey, forthcoming, 2007). Chapter available at www.sangam.org/taraki/articles/2006/02-03_Development_Precursor_to_Conflict_Resolution.pdf [December 18, 2006]
- Sivaram, D (2005), **"War Remains an Option Three Years After the Ceasefire,"** *Daily Mirror*, February 22
- (2004a), **"The LTTE Will Negotiate Only with Parity of Military Status,"** *Daily Mirror*, January 28: <http://www.tamilnation.org/forum/sivaram/040127.htm> [December 18, 2006]
- (2004b), **"ISGA entails concepts and structures of final solution,"** www.tamilnation.org/forum/sivaram/040804.htm [December 18, 2006]
- Sornarajah, M (2005), **"The ISGA Proposals: The Course to Take in the Face of Government Intransigence,"** *Tamil Canadian*, July 3: <http://www.tamilcanadian.com/page.php?cat=52&id=3371> [December 18, 2006]
- (2000), **"Eelam and the Right to Secession,"** *Tamil Canadian*, 25 June: <http://www.tamilcanadian.com/page.php?cat=120&id=659> [December 18, 2006]

- Snodgrass, Donald R (1999), **“Economic Development in Sri Lanka”** in Robert L. Rotberg, *Creating Peace in Sri Lanka: Civil War & Reconciliation* (Washington D.C: The World Peace Foundation and the Belfer Centre for Science and International Affairs)
- Sriskandarajah, Dhananjayan (2003), **“The Returns of Peace in Sri Lanka: the Development Cart Before the Conflict Resolution Horse”** (Colombo: International Centre for Ethnic Studies)
- Stokke, Kristian (2006), *Building the Tamil Eelam State: emerging state institutions and forms of governance in LTTE-controlled areas in Sri Lanka*, **Third World Quarterly**, 27: 6: 1021 -1040
- Taraki (2004), **“ISGA: The chance to persuade Tamils to remain in United Lanka,”** *Daily Mirror*, May 13
- Thangarajah, Yuvi (2003), **“Ethnicization of Devolution Debate and Militarization of Civil Society”** in Mayer, Rajasingham-Senanayake and Thangarajah: 15-36
- Uyangoda, Jayadeva (2007), **Ethnic Conflict in Sri Lanka: Changing Dynamics** (Washington D.C.: East West Centre)
- (2006a), **“Government-LTTE Negotiation Attempt of 2000 through Norwegian Facilitation: Context, Complexities and Lessons,”** in Rupesinghe (2006b): 239-267
- (2006b), **“Federalism for Sri Lanka? Reconciling Many Solitudes”** in Raghavan and Bauer: 20-32
- (2003), **“Power struggle in Colombo: The implications for the Peace Process,”** *Daily Mirror*, November 7
- (2002), **Beyond the Talks in Thailand: Towards Transformative Peace in Sri Lanka**, draft consultation paper, available at <http://www.berghof-foundation.lk/scripts/TransPeace.pdf>
- Weerakoon, Bradman (2006), **“Initiating and Sustaining the Peace: Origins and Challenges”** in Rupesinghe: 1-40

Annexures

Annex I

AGREEMENT ON A CEASEFIRE BETWEEN THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA AND THE LIBERATION TIGERS OF TAMIL EELAM

Preamble:

The overall objective of the Government of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the GOSL) and the Liberation Tigers of Tamil Eelam (hereinafter referred to as the LTTE) is to find a negotiated solution to the ongoing ethnic conflict in Sri Lanka.

The GOSL and the LTTE (hereinafter referred to as the Parties) recognize the importance of bringing an end to the hostilities and improving the living conditions for all inhabitants affected by the conflict. Bringing an end to the hostilities is also seen by the Parties as a means of establishing a positive atmosphere in which further steps towards a lasting solution can be taken.

The Parties further recognize that groups that are not directly party to the conflict are also suffering the consequences of it. This is particularly the case as regards the Muslim population. Therefore, the provisions of this Agreement regarding the security of civilians and their property apply to all inhabitants.

With reference to the above, the Parties have agreed to enter into a ceasefire, refrain from conduct that could undermine the good intentions or violate the spirit of this Agreement and implement confidence-building measures as indicated in the articles below.

Article 1: Modalities of a ceasefire

The Parties have agreed to implement a ceasefire between their armed forces as follows:

- 1.1 A jointly agreed ceasefire between the GOSL and the LTTE shall enter into force on such date as is notified by the Norwegian Minister of Foreign Affairs in accordance with Article 4.2, hereinafter referred to as D-day.

Military operations

- 1.2 Neither Party shall engage in any offensive military operation. This requires the total cessation of all military action and includes, but is not limited to, such acts as:
- a) The firing of direct and indirect weapons, armed raids, ambushes, assassinations, abductions, destruction of civilian or military property, sabotage, suicide missions and activities by deep penetration units;
 - b) Aerial bombardment;
 - c) Offensive naval operations.
- 1.3 The Sri Lankan armed forces shall continue to perform their legitimate task of safeguarding the sovereignty and territorial integrity of Sri Lanka without engaging in offensive operations against the LTTE.

Separation of forces

- 1.4 Where forward defence localities have been established, the GOSL's armed forces and the LTTE's fighting formations shall hold their ground positions, maintaining a zone of separation of a minimum of six hundred (600) metres. However, each Party reserves the right of movement within one hundred (100) metres of its own defence localities, keeping an absolute minimum distance of four hundred (400) metres between them.
- Where existing positions are closer than four hundred (400) metres, no such right of movement applies and the Parties agree to ensure the maximum possible distance between their personnel.
- 1.5 In areas where localities have not been clearly established, the status quo as regards the areas controlled by the GOSL and the LTTE, respectively, on 24 December 2001 shall continue to apply pending such demarcation as is provided in Article 1.6.

- 1.6 The Parties shall provide information to the Sri Lanka Monitoring Mission (SLMM) regarding defence localities in all areas of contention, cf. Article 3. The monitoring mission shall assist the Parties in drawing up demarcation lines at the latest by D-day + 30.
- 1.7 The Parties shall not move munitions, explosives or military equipment into the area controlled by the other Party.
- 1.8 Tamil paramilitary groups shall be disarmed by the GOSL by D-day + 30 days at the latest. The GOSL shall offer to integrate individuals in these units under the command and disciplinary structure of the GOSL armed forces for service away from the Northern and Eastern Province.

Freedom of movement

- 1.9 The Parties' forces shall initially stay in the areas under their respective control, as provided in Article 1.4 and Article 1.5.
- 1.10 Unarmed GOSL troops shall, as of D-day +60 days, be permitted unlimited passage between Jaffna and Vavuniya using the Jaffna - Kandy road (A9). The modalities are to be worked out by the Parties with the assistance of the SLMM.
- 1.11 The Parties agree that individual combatants shall, on the recommendation of their area commander, be permitted, unarmed and in plain clothes, to visit family and friends residing in areas under the control of the other Party. Such visits shall be limited to six days every second month, not including the time of travel by the shortest applicable route. The LTTE shall facilitate the use of the Jaffna - Kandy road for this purpose. The Parties reserve the right to deny entry to specified military areas.
- 1.12 The Parties agree that as of D-day individual combatants shall, notwithstanding the two-month restriction, be permitted, unarmed and in plain clothes, to visit immediate family (i.e. spouses, children, grandparents, parents and siblings) in connection with weddings or funerals. The right to deny entry to specified military areas applies.
- 1.13 Fifty (50) unarmed LTTE members shall, as of D-day + 30, for the purpose of political work, be permitted freedom of movement in the areas of the North and the East dominated by the GOSL. Additional 100 unarmed LTTE members shall be permitted freedom of movement as of D-day

+ 6. As of D-day + 90, all unarmed LTTE members shall be permitted freedom of movement in the North and East. The LTTE members shall carry identity papers. The right of the GOSL to deny entry to specified military areas applies.

Article 2: Measures to restore normalcy

The Parties shall undertake the following confidence-building measures with the aim of restoring normalcy for the all inhabitants of Sri Lanka:

- 2.1 The Parties shall in accordance with international law abstain from hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion and harassment.
- 2.2 The Parties shall refrain from engaging in activities or propagating ideas that could offend cultural or religious sensitivities. Places of worship (temples, churches, mosques & other holy sites etc) currently held by the forces of either of the Parties shall be vacated by D-day + 30 days and made accessible to the public. Places of worship which are situated in their respective "high security zones" shall be vacated by all armed personnel and maintained in good order by civilian workers, even when they are not made accessible to the public.
- 2.3 Beginning on the date on which this Agreement enters into force, school buildings occupied by either party shall be vacated and returned to their intended use. This activity shall be completed by D-day + 160 at the latest.
- 2.4 A schedule indicating the return of all other public buildings to their intended use shall be drawn up by the Parties and published at the latest by D-day + 30.
- 2.5 The Parties shall review the security measures and the set-up of checkpoints, particularly in densely populated cities and towns, in order to introduce systems that will prevent harassment of the civilian population. Such systems shall be in place from D-day + 60.
- 2.6 The Parties agree to ensure the unimpeded flow of non-military goods to and from the LTTE-controlled areas in accordance with Annex A. Quantities shall be determined by market demand. The GOSL shall regularly review the matter with the aim of gradually removing any

remaining restrictions on non-military goods.

- 2.7 In order to facilitate the flow of goods and the movement of civilians, the Parties agree to establish checkpoints on their line of control at such locations as are specified in Annex B.
- 2.8 The Parties shall take steps to ensure that the Trincomalee - Habarana road remains open on a 24-hour basis for passenger traffic with effect from D-day + 10.
- 2.9 The Parties shall facilitate the extension of the rail service on the Batticaloa-line to Welikanda. Repairs and maintenance shall be carried out by the GOSL in order to extend the service up to Batticaloa.
- 2.10 The Parties shall open the Kandy - Jaffna road (A9) to non-military traffic of goods and passengers. Specific modalities shall be worked out by the Parties with the assistance of the Royal Norwegian Government by D-day + 30 at the latest.
- 2.11 A gradual easing of the fishing restrictions shall take place starting from D-day. As of D-day + 90, all restrictions on day and night fishing shall be removed, subject to the following exceptions : i) fishing will not be permitted within an area of 1 nautical mile on either side along the coast and 2 nautical miles seawards from all security forces camps on the coast; ii) fishing will not be permitted in harbours or approaches to harbours bays and estuaries along with coast.
- 2.12 The Parties agree that search operations and arrests under the Prevention of Terrorism Act shall not take place. Arrests shall be conducted under due process of law in accordance with the Criminal Procedure Code.
- 2.13 The Parties agree to provide family members of detainees access to the detainees within D-day + 30.

Article 3: The Monitoring Mission

The Parties have agreed to set up an international monitoring mission to enquire into any instance of violation of the terms and conditions of this agreement. Both Parties shall fully cooperate to rectify any matter of conflict caused by their respective sides. The mission shall conduct international verification through on-site monitoring of the fulfilment of the commitments entered into in this Agreement as follows

- 3.1 The name of the monitoring mission shall be the Sri Lankan Monitoring Mission, hereinafter referred to as the SLMM.
- 3.2 Subject to acceptance by the Parties, the Royal Norwegian Government (hereinafter referred to as the RNG) shall appoint the Head of the SLMM (hereinafter referred to as the HoM), who shall be the final authority regarding interpretation of this Agreement.
- 3.3 The SLMM shall liaise with the Parties and report to the RNG.
- 3.4 The HoM shall decide the date for the commencement of the SLMM's operations.
- 3.5 The SLMM shall be composed of representatives from the Nordic countries.
- 3.6. The SLMM shall establish a headquarters in such places as the HoM finds appropriate. An office shall be established in Colombo and in Wannai in order to liaise with the GOSL and the LTTE, respectively. The SLMM will maintain a presence in the districts of Jaffna, Mannar, Vavuniya, Trincomalee, Batticaloa and Amparai.
- 3.7 A local monitoring committee shall be established in Jaffna, Mannar, Vavuniya, Trincomalee, Batticaloa and Amparai. Each committee shall consist of 5 members - two appointed by the GOSL, two by the LTTE and one international monitor appointed by the HoM. The international monitor shall chair the committee. The GOSL and the LTTE appointees may be selected from among retired judges, public servants, religious leaders or similar leading citizens.
- 3.8 The committees shall serve the SLMM in an advisory capacity and discuss issues relating to the implementation of this Agreement in their respective districts, with a view to establishing a common understanding of such issues. In particular, they will seek to resolve any dispute concerning the implementation of this Agreement at the lowest possible level.
- 3.9 The parties shall be responsible for the appropriate protection of and security arrangements for all SLMM members.
- 3.10 The Parties agree to ensure the freedom of movement of the SLMM members in performing their task. The members of the SLMM shall be given immediate access to areas where violations of the Agreement are alleged to have taken place. The Parties also agree to facilitate the

widest possible access to such areas for the local members of the six above-mentioned committees, cf Article 3.7.

- 3.11 It shall be the responsibility of the SLMM to take immediate action on any complaints made by either Party to the Agreement, and to enquire into and assist the Parties in the settlement of any dispute that might arise in connection with such complaints.
- 3.12 With the aim of resolving disputes at the lowest possible level, communication shall be established between Commanders of the GOSL armed forces and the LTTE area leaders to enable them to resolve problems in the conflict zones.
- 3.13 Guidelines for the operations of the SLMM shall be established in a separate document.

Article 4: Entry into force, amendments and termination of the Agreement

- 4.1 Each Party shall notify their consent to be bound by this Agreement through a letter to the Norwegian Minister of Foreign Affairs signed by Prime Minister Ranil Wickremasinghe on behalf of the GOSL and by leader Velupillai Pirabakaran on behalf of the LTTE, respectively. The agreement shall be initialled by each Party and enclosed in the abovementioned letter.
- 4.2 The Agreement shall enter into force on such date as is notified by the Norwegian Minister of Foreign Affairs.
- 4.3 This Agreement may be amended and modified by mutual agreement of both Parties. Such amendments shall be notified in writing to the RNG.
- 4.4 This Agreement shall remain in force until notice of termination is given by either Party to the RNG. Such notice shall be given fourteen (14) days in advance of the effective date of termination.

Annexes:

Annex A: List of goods Annex B: Checkpoints.

Annex A:

The Parties agree to ensure the flow of non-military goods to and from LTTE dominated areas of the Northern and Eastern Province, as well as unimpeded flow of such goods to the civilian population in these areas. Non military goods

not covered by article 2.6 in the Agreement are listed below:

- Non military arms/ammunition
- Explosives
- Remote control devices
- Barbed wire
- Binoculars/Telescopes
- Compasses
- Penlight batteries

Diesel, petrol, cement and iron rods will be restricted in accordance with the following procedures and quantities:

Diesel and Petrol

The Government Agents (GA) will register available vehicles; tractors and motorcycles in the LTTE controlled areas. The GA will calculate the required weekly amount of diesel and petrol based on the following estimate:

- Trucks/Buses - 250 litres/week
- 4 wheel tractors - 310 litres/week
- 2 wheel tractors - 40 litres/week
- Petrol vehicles - 30 litres/week
- Motorcycles - 7 litres/week
- Fishing vessels - 400 litres/week

Cement

Cement required for rehabilitation and reconstruction of Government property; registered co-operatives; or approved housing projects implemented by the GOSL and international NGOs and more affluent members of the society; will be brought in directly by relevant institutions under licenses issued by Government Agents. The GA shall stipulate the monthly quantities permitted for such projects based upon planned and reported progress.

Cement required for individual shops/construction/house owners/ rehabilitation - initiatives will be made available through the co-operations on a commercial basis. The monthly import for this purpose will be limited to 5,000 bags during the first month and thereafter 10,000 bags/month. Individual sales by the co-operatives will be registered and limited to 25 bags per household.

Iron rods

Iron rods for building constructions will be brought in to the LTTE controlled areas under licenses issued by the GA.

A monthly re-assessment will be made to assess the possibilities of removal of the above restrictions.

Annex B

Checkpoints agreed in Ch.2.7 are as follows:

- Mandur
- Paddirupur
- Kaludaveli Ferry Point
- Anbalantivu Ferry Point
- Mamunai Ferry Point
- Vanvunateevu
- Santhiveli Boat Point
- Black Bridge
- Sitandy Boat Point
- Kiran Bridge
- Kinniyadi Boat Point
- Valachenai
- Makerni
- Mahindapura
- Muttur
- Ugilankulam
- Omanthai.

Annex II – Proposals Related to Demobilization

2.1 Sarath Fonseka De-Escalation Plan, 20th December 2002

PREAMBLE

1. GOSL and security forces appreciate the most important humanitarian need to resettle people back in their houses in areas affected by the war. In this sense expansion of HSZ from time to time has caused displacement of people in the Jaffna peninsula thus creating a humanitarian problem. Therefore GOSL and Security Forces has realized the need to expedite the resettling of displaced people and are keen to find a workable solution to solve this issue.
2. It is also understood resettling civilians in HSZ can bring about a big political success to the LTTE and any other interested parties. Therefore it can have a direct impact on political situation in Jaffna which may be most probably go in favour of LTTE under present political situation. While appreciating this situation it should also be born in mind that when talking in term of political situation, political criticism in the south of Sri Lanka also cannot be ignored. Therefore any adjustment or variations in Security Zones should not create a political turmoil in the south and should be considered as critical.
3. While appreciating the humanitarian achievements, consequences which will affect the Sri Lankan security forces and military gains the LTTE will achieve due to resettling civilian in HSZ should be also taken in to consideration. Therefore resettling civilians in the HSZ should go hand in glove with a de-escalation process agreed by both GOSL and LTTE. While appreciating the urgent need to resettle people in HSZ it is imperative that political mileage which the GOSL has to maintain through out the peace process should not be hindered by creating a weak security environment in the North.

NEED FOR SECURITY

4. As existence and strength of HSZ is utmost vital for success of defences' and security of Jaffna peninsula and islands, no risks or chances should be taken, to weaken security by making HSZ vulnerable.
5. As the present dimensions of HSZ are meant to face the present threat weakening HSZs should be done in relation to reduction of LTTE military

options ranging from major conventional attacks to asymmetric attacks.

6. Any normalizing plan which affects the sy [system] of HSZ should go hand in glove with reducing military options available to LTTE.
7. Armed groups having the ability to get cover behind civilians should not be ignored and leave terrorist to take maximum advantage.
8. Armed groups if mixed up with civilians to enter HSZ or get Int about HSZ will find it easier to launch physical attacks rather than firing long range wpns as presence of civilians in HSZ may hinder the freedom to fire long range wpns.
9. Any armed groups attacking HSZ will want to physically capture or destroy command elements and resources within HSZ rather than trying attack to with long range weapons.
10. If attacked from rear benefited due to the increased ability to close in by mixing up with civilians while facing any attack from front, SF defences in HSZ will fall and face disastrous effects losing lot of life and resources.
11. If the civilians are allowed to enter, threat on survivability of all HSZ are equally increased including the once facing uncleared areas.
12. As peace or development will never come without security it is not advisable to weaken security of Jaffna peninsula and also aim at peace and development.
13. As SF presently does not have 100% superiority over the LTTE military capability, it is not advisable to take risks unless SF capabilities are developed to be able to remain 100% superiority over LTTE thus any short term drawbacks can be overcome and regain initiative to avoid disasters
14. If there is a threat for HSZ from immediate front/close proximity, rear or within due to resettling in HSZ to cater for such a situations, additional troops deployments will be required.

FACTORS AFFECTING RESETTLEMENT

15. **Humanitarian Requirement.** Resettlement in HSZ deserves serious concern as per the Humanitarian angle and the whole issue should be seen from following perspectives.
 - a. There are about 10000 houses affected due to existence of HSZ..

- b. Due to prolonged displacement education of Jaffna students have been hampered.
 - c. Due to displacement cultural values and traditions are been disturbed.
 - d. Due to displacement civilian have become more vulnerable to the activities undemocratic forces.
 - e. Displaced people have been socially handicapped and virtually face discrimination.
 - f. Displaced people will be deprived of the services and infrastructure facilities afforded to normal civilians.
 - g. Having displaced people will have a direct adverse impact on the economy of the region.
16. **Political agenda of the government.** As the government is committed to the peace process to bring about lasting peace for Sri Lanka it is of paramount importance for the government to be concerned about the plight of the displaced people. Government should take all possible measures in this regard without disturbing the security requirements in order to retain its initiative to achieve long term success. Fol areas should be included in the political agenda of the GOSL.
- a. Take sufficient interest on resettlement followed up with rehabilitation.
 - b. Request for foreign donor assistance for development of affected areas and people.
 - c. Take necessary steps to win hearts and minds of people affected.
 - d. Mobilize all government ministries and departments etc for the purpose of successful resettlement of people by solving infrastructure facility problems.
 - e. Provide an environment which encourages and assist in practicing democratic politics.
17. **Security.** This is given the highest consideration as resettlements are going to take place within the areas declared as HSZs where most of the key installations are situated.
- Following factors needs to be given due consideration in order to ensure

- security is not compromised.
- a. Resettlement of civilians should be arranged in a such a way that SF should not compromise its security at any stage.
 - b. Security can be relaxed only in stages in relation to de-escalation of LTTE. *ie disarming of cadres and decommission of LTTE long range weapons.*
 - c. Effective and accurate system of activities has to be planned out for both LTTE and GOSL in coordination with SLMM to ensure the security will not be hampered and because of the resettlement of troops the defence layout should not be exposed to the civilians.
 - d. Security of command and logistic elements to be ensured. Vulnerable and sensitive defenses, air and sea communication agencies should not be sacrificed.
 - e. Security of IDPs also to be considered as equally important because, they may be vulnerable to terr activities, mines/IEDs which are available in HSZs.
 - f. Govt infrastructure -facilities transport agencies are vulnerable.
 - g. Security of law enforcement agencies had to be considered for smooth functioning of the govt authority.
18. **Infrastructure Facilities** It is important that following facilities are required to be provided before the resettlement proper takes place in the HSZs.
- a. Electricity
 - b. Transport
 - c. Housing.
 - d. Medical
 - e. Repairs to the road network.
 - f. Communication systems,
 - g. Education
19. **Finance and rehabilitation.** This requirement will go hand in glove as civilians will require financial assistance to reconstruct their dwellings and also arrangements to be made regarding dry rations. Financial assistance will also be required to develop infrastructure facilities to readjust SF deployment. Assistance may be sought from NGOs.

20. **SLMM representatives.** It is required to make an understanding between the SLA and LTTE in many areas. Following requirements to be looked into.
- Expansion of the monitoring mission by additional numbers.
 - Enhance the mandate to cover more security issues.
 - Since the LTTE is indirectly interfering with the deployment of security forces, SLMM assistance is required to minimize the security threat. For this purpose SLMM mandate should be amended to give more authority / power.
21. **Neutral body to supervise De-escalation.** It is essential to have a neutral organization with sufficient number of staff to make a formidable force to monitor the implementation of the de-escalation process. This neutral body should be in a position to act as mediators with the respective theatres during the implementation of the de-escalation process. This body should work in liaison with the govt, Norwegian facilitators and LTTE regarding the progress of the implementation of de-escalation. SLMM may perform this task better.

DE-ESCALATION PROPOSALS IN RELATION TO RESETTLEMENT IN HSZs

22. De-escalation proposals in relation to resettlement in HSZs are given at annex 'A'.

IMPLEMENTATION PLAN

23. Implementation plans for resettlement has to be worked out in relation to de-escalation proposals given in this proposal under following headings. It is also required to come to an agreement by the govt with the LTTE under SLMM supervision to work out the implementation.
- Areas to be resettled including boundaries to be identified.
 - Clearing of mines.
 - Demarcation of prohibited areas/No Go areas.
 - Enumerate the legitimate ownership.
 - Financial support and rehabilitation.
 - Providing infrastructure facilities.
 - Essential services.

- Working out of a detail security system which will be revised from time to time as per deployments on ground.
 - Action plan for de-escalation in relation to resettlement.
24. Following hotels and houses can be vacated for intended use / resettlement as early as possible as follows.
- Subash Hotel - By Mid June 2003.
 - Gnanam Hotel - By End March 2003.
 - Houses around above two hotels in Jaffna Town - About 80 in numbers - By Mid July 2003
 - Private houses in Chavakachcheri - By End 2003.*
 - Private houses in other areas - By Mid 2004.*
- * *Above 'd' and 'e' would facilitate handing over of houses occupied by the Security Forces on a continuing basis, as and when alternative accommodation is constructed.*
25. As recommended by the Sub-committee on Deescalation and Normalisation on 14 December 2002, it is expected financial requirements are provided by the government to SLA, commencing mid January 2003. Further, as stated in Oslo during the last negotiations, the SLA does not anticipate any objections from the LTTE on new relocation sites, as such responses would cause further delay.
26. Following areas can be considered for early resettlement provided De-escalation proposals have been finalized and agreed as per the security requirements stated in the annex 'A'.
- Area west of Keerimalai. (Annex A)
 - Kovilakkandy. (Annex B)
27. This report / proposals will have to be studied and approved by the higher authorities.

Date: 20 December 2002

GSC FONSEKA RWP RSP rcds psc

Major General

Commander

Security Forces (Jaffna)

Annex III – Proposals Related to North-East Interim Administration

3.1 Government Apex-Body Proposals, 31st May 2003

AGREEMENT BETWEEN THE GOVERNMENT OF SRI LANKA (GOSL) AND THE LIBERATION TIGERS OF TAMIL EELAM (LTTE) REGARDING ADMINISTRATIVE AND FINANCING ARRANGEMENTS TO EXPEDITE EFFICIENT IMPLEMENTATION OF PROGRAMMES AND PROJECTS RELATING TO RELIEF, REHABILITATION AND DEVELOPMENT IN THE NORTH-EAST

Policy Level

1. There shall be a representative Apex Body (Council) for decision making in regard to all immediate and medium term rehabilitation, reconstruction and development work in the North-East and advising on policy development.

The Apex Body shall be an interim measure pending negotiations and final agreement as per the principles for a political settlement reached in Oslo in December 2002, which provides for internal self determination in areas of historical habitation of the Tamil speaking peoples based on a federal structure within a united Sri Lanka on the basis that the solution is acceptable to all communities and ensuring the legitimate rights and interest of the ethnic groups constituting the north-east.

The Apex Body shall be a policy advisory and review board and carry responsibility for planning, prioritising and monitoring of the implementation of Programmes and Projects undertaken in the North-East.

(The terms “rehabilitation, reconstruction and development” will include relief, rehabilitation, resettlement, reconciliation, humanitarian mine action, and development activities such as reconstruction of roads, production infrastructure, health facilities, schools and similar matters supporting the return of IDPs)

The Apex Body shall ensure that various implementing agencies do not work at cross-purposes and impede the efficient utilization of relief and development funds.

2. The Apex Body shall be constituted in a manner that it reflects the ethnic composition in the North-East and comprises members who are truly representative of the ethnic groups constituting the north-east. In doing

so, provisions will be included to safeguard the legitimate interests of the Muslims and Sinhalese of the North-East.

The functions and powers of the Apex Body would include appropriate authority for the formulation and approval of plans schemes, programmes and projects for reconstruction and development of the North-East and progress review. It shall examine such plans and schemes, allocate funds and release funds for the implementation of the same to State agencies, non-governmental organizations including Tamil Relief Organizations and the private sector. The Apex Body shall ensure the appropriate distribution of resources, having regard to ethnic representation in the North-East to adequately safeguard the legitimate concerns of the Muslims and the Sinhalese in the North-East. Procedures, including the function of decision making of the Apex Body will be worked out by the Parties in consultation with other stakeholders.

3. The Apex Body will direct the use of all funds derived from the Government and the Donors that would be utilised by the State Agencies, NGOs (including TRO), International Agencies and the private sector for undertaking rehabilitation, reconstruction and development projects, schemes and programmes.

4. North-East Rehabilitation Fund (NERF)

The Government of Sri Lanka, the LTTE and the Facilitator will actively encourage all Donors to contribute through the NERF. The Government will provide funding through the NERF whenever practical. Utilisation of resources from the NERF will be directly determined and supervised by the Apex Body.

5. Special Fund

There shall be created a Special Fund for the North-East, dedicated for North-East reconstruction, rehabilitation and development in respect of aid, principally loans but also grants. The Special Fund will be an accounting mechanism to monitor all resources for the North-East that are not channelled through the NERF and any Government Funds that are not channelled through the NERF. This accounting mechanism will monitor resources allocated by the Government of Sri Lanka and resources from the Donors other than those given to NERF. The purpose of the Special Fund

will be to ensure that the Apex Body can direct and supervise the utilisation of all resources to the North-East, including loans and other funds which cannot be channelled through the NERF.

Operational Level

7. There will be a legal obligation on the State agencies to implement relevant development schemes approved by the Apex Body in accordance with applicable criteria.
8. The GOSL in consultation with the LTTE shall appoint a Special Commissioner. The Special Commissioner will be constituted with adequate authority and legal status to ensure rapid implementation by the State agencies of all development activities that are approved by the Apex Body. The Special Commissioner will be a non-voting member of the Apex Body who will report and be responsible to the Apex Body on the implementation of its decisions, clarify issues, prepare and provide reports on the status of the Funds and present proposals to the Apex Body.
9. The Special Commissioner shall have authority to supervise the implementation by any State Agency of the plans, programmes and projects that are agreed upon by the Apex Body. *(Such as those indicated in the Needs Assessment)*

The Special Commissioner shall be assisted by a Secretariat. The Secretariat shall comprise of specially selected persons with proven skills in planning, management and execution of projects.

The Special Commissioner will secure the services of professional staff including Project Managers from both within and outside the public service including the recruitment of expatriates.
10. Administration of the North-East is the responsibility both of the North-East Provincial Council and the Central Government. Therefore a Board to coordinate the administration of the North-East will be set-up. This Board will act as an interface with the Apex Body. The Board will be a support mechanism to ensure the effective management and speedy implementation of the decisions of the Apex Body. It will have the power to issue directions to all State agencies in order to expedite work and effect efficient delivery of services and programmes. The Board will also ensure

capacity building of the administrative agencies in the North-East, and their ability to function effectively to implement the approved plans and programmes of the Apex Body. The Special Commissioner will be the Chief Administrative Officer of the Board. The powers of the Board will be delegated to the Special Commissioner, when required.

(See Appendix 1 for further details of composition and functions of the Board)

11. The implementing agencies for rehabilitation, reconstruction and development work will be State Agencies, Local Authorities, TRO/TRO Agencies, NGOs and the Private Sector and where appropriate, International Agencies. The organisational structures set-up by the North East Community Organisation Restoration and Development (NECORD), North-East Irrigated Agriculture Project (NEIAP), North-East Emergency Reconstruction Project (NEERP) and "Triple R" would also come under the purview of the Special Commissioner. Local level agencies of the State would be provided with the requisite delegated authority to carry out their assigned tasks.
12. Proposals for rehabilitation, reconstruction and development could be submitted by all stakeholders to the Apex Body. This would include in particular the Development Committees referred to in paragraph 13 below.
13. Representatives of the LTTE could also be represented at the District and Divisional level "Development Committees" in the North-East.
14. **Donor Coordination**

Subject to the agreement of the Donor Community there would be a Consultative Committee of Donors (CCD) which will meet on a quarterly basis to review progress on implementation and utilisation, including the distribution of such utilisation according to communities.
15. While the above proposals on structures and mechanisms relate to rehabilitation, reconstruction and development activities, the Parties agree that humanitarian relief and human rights protection activities remain a priority and need to be carried out in accordance with international norms.

(For schematic representation of relationships described above, please refer to Appendix 2)

Appendix 1

The Board will consist of the following members selected by the Prime Minister:

- Chairman
- Three Public Officers, at the level of Secretary/Senior Public Officer chosen for their efficiency.
- Chief Secretary of the NEPC (Ex Officio)
- The Special Commissioner (Chief Administrative Officer)
- Three other persons with proven skills in planning and project management.

The appointments will be made in consultation with the LTTE.

3.2 Government Proposals – 17th July 2003

Discussion Document

Introduction

Based on a request from the Liberation Tigers of Tamil Eelam the Government of Sri Lanka (GOSL) has developed the framework below for establishing a provisional administrative arrangement which will enable the LTTE to participate significantly in decision making and delivery related to administration and rebuilding of the war damage infrastructure and economy, in the Northern and Eastern Provinces.

The objective of establishing such an arrangement is to ensure rapid improvement in the life of the population in the eight districts in the north and east, while the LTTE and GOSL at the same time are actively engaged in a dialogue to arrive at a negotiated settlement based on the agreement reached during the third session of the negotiations in Oslo in December 2002.

Therefore – being an integral part of the process towards a negotiated settlement of the ethnic conflict – the establishment and continued operation of this interim administrative arrangement will depend on a continued dialogue between the parties both in the context of this administrative structure as well in the negotiations towards a final solution of the conflict.

Given the importance attached to a continued dialogue at all levels the proposal for an administrative arrangement is presented as framework— not

a final document— which in itself must be subject for dialogue between the parties.

Given the understanding between the Parties during plenary sessions of negotiations that a Muslim delegation should be accommodated when issues of concern to the Muslim population is being deliberated, it is the view of GOSL that:

- A Muslim delegation must participate in the discussions relation to establishment of a provisional administrative structure for the Northern and Eastern Provinces; and
- that it should be open to the SLMC to submit separate proposal pertaining to the establishment of the above mentioned structure.

Provisional Administrative Structure for the Northern and Eastern Provinces—
Proposal for Discussion

□ Provisional Administrative Council

It is proposed that a body called the Provisional Administrative Council of the Northern and Eastern Provinces (Council) will be set up for the administration of this region.

1. The Council shall consist of such number of members as may be determined by the parties.
2. The composition of the Council shall consist of the following:
 - a. Members nominated by GOSL, which will include the nominees of the People's Alliance.
 - b. Members nominated by the LTTE.
 - c. Members nominated by Sri Lanka Muslim Congress (SLMC)
3. The number of members will be determined to ensure:
 - a. A majority of the LTTE in the Council
 - b. Subject of (a) above, the Muslim and Sinhala Communities will have weighted representation.
4. Chairperson

Two alternatives are presented concerning chairpersons for the Council:

Alt.1. There shall be two chairpersons, one representing the LTTE and the

other the GOSL elected by and from amongst the members of the Council. Each chairperson shall have the right to veto any proposal brought before the Council.

Alt.2. There shall be one Chairperson elected from amongst the members of the Council. If alternative 2 is selected the following para shall be included concerning decisions of the Council:

Any decision of the Council, which affects either the Muslim or the Sinhala Community can only be made valid if the decision is supported by:

- a. A majority of the Members of the Council and
- b. A majority of the representatives of the Muslim or the Sinhala communities as the case may be.

□ Powers and Functions of the Provisional Administrative Council

1. It is proposed that the powers and functions of the Council will extend to:

Adequate arrangements to enable the Council to participate effectively in the exercise and performance of such powers and functions as are at present being exercised and performed by the Government in respect of regional administration—except the area of police and security; land; and revenue - but including rehabilitation, reconstruction and resettlement.

2. The participation mentioned above shall include policy making, implementations and monitoring.
3. The detailed modalities required to give effect to the above 1) and 2) shall be subject for discussion between the parties.

□ *The Special Commissioner*

It is further proposed that:

1. A “Special Commissioner” is appointed with the authority to utilize the State machinery for the implementation of the decision of the Council;
2. The Special Commissioner will be appointed by GOSL with the consent of the majority of the Council;
3. The Special Commissioner will be a non-voting member of the Council and accountable to this body;

4. The Council may designate another person or an organization to coordinate rehabilitation or development work implemented by non-State agencies and organisations.

□ Finances

1. The Council will—giving due consideration to equitable distribution—determine the use of funds placed at its disposal. The Council will further identify such utilization by State agencies, NGOs, International Agencies, private sector agencies for administration, rehabilitation, reconstruction and development in the North-East region. The funds made available to the work of the Council will include—but not necessarily be limited to such funds as:

- a) received from Donors to the North East Reconstruction Fund (NERF)
- b) allocated by GOSL to NERF; and
- c) such resources as are received for rehabilitation and reconstruction of the Northern and Eastern Provinces other than through NERF.

2. North East Reconstruction and Rehabilitation Fund (NERRF)

It is recognized that NERF was established to cater for meeting the immediate needs of the population in the North and East. In order to enlarge the scope of this fund it is suggested that the fund should be modified to deal with both rehabilitation and reconstruction as well as cover medium term requirements. It is therefore suggested that the NERF is renamed NERRF.

It is further proposed that the GOSL and the LTTE shall actively encourage contributions to NERRF. The Government will provide funding through NERRF wherever practical. Utilization of resources from NERRF will as mentioned above be directly determined and supervised by the Council.

3. The Special Fund

A “Special Fund” is proposed instituted as an information, accounting and monitoring device for resources from donors or the Government that is not channelled through NERRF. The purpose of this mechanism is to enable the Council to be aware, and become responsible for effective

utilization of resources to the North and East including loans and other finances that cannot be channelled through NERRP.

❑ The District Committees

It is also proposed to institute a District Committee for each of the eight Districts in the Northern and Eastern Provinces.

1. Chairperson, Composition and Relationship to the Council
 - a) The Chairperson of the District Committee will be appointed by and from amongst the members of the council in order to serve as a link between the Council and the District Committee.
 - b) The other members will also be appointed by the Council. In appointing such members, due consideration will be given to ensure adequate representation of the ethnic composition of the District in question.
 - c) The District Committee will function directly under the Council and will be charged with carrying out the decisions of the Council.
 - d) The District Secretary will be the Secretary and the Chief Executive Officer of the District Committee.
 - e) All activities within the District relating to the powers and functions of the Council will be co-ordinated through the Secretary to the District Committee.
2. Functions of the District Committee

It is proposed that the functions of the District Committee will consist of:

 - a) Implementation of the decisions of the Council;
 - b) Co-ordination of all development activities within the district; and
 - c) Formulation of proposals for consideration by the Council.
3. Powers of the District Committees
 - a) Each District Committee will function as a delegate of the Council and ensure the effective implementation of the decisions of the Council.
 - b) For all purposes a District Committee will be responsible for the district for which it is established and will function as an administrative mechanism at district level.
 - c) A District Committee may, with the concurrence of the Council,

obtain the assistance of individuals or a body of persons for the effective discharge of its functions.

❑ District Sub-Committees

It is proposed that each District Committee may establish such number of District Sub Committees as may be necessary for such sub-divisions in the district in order to ensure effective implementation of the decisions of the Council and the District Committees at local level. The members of the District Sub-Committee will be nominated by the District Committee with the concurrence of the Council.

❑ Committees of the Provisional Administrative Council

1. It is further viewed as advantageous for the Council to establish the following special committees to strengthen its work;
 - a. An Economic Affairs Committee
 - b. An Infrastructure Committee
 - c. An Essential Services Committee
2. Each Committee should consist of not more than four members of the Council, and such persons—including experts and officers—as may be determined by the parties.
3. The Chairman of the Committee should be a member of the Council.
4. Each Committee will function under the direction of the Council.

❑ Period of Operation

It is proposed that the contemplated arrangement will be in operation for a limited period as agreed upon by the parties, however, subject to the arrangement being reviewed by the parties every six months.

3.3 LTTE Proposal for an Interim Self-Governing Authority, 31st October 2003

THE PROPOSAL BY THE LIBERATION TIGERS OF TAMIL EELAM ON BEHALF OF THE TAMIL PEOPLE FOR AN AGREEMENT TO ESTABLISH AN INTERIM SELF-GOVERNING AUTHORITY FOR THE NORTHEAST OF THE ISLAND OF SRI LANKA

Consistent with the principles of the rule of law, the human rights and equality of all persons, and the right to self-determination of Peoples,

Determined to bring lasting peace to all persons of the island of Sri Lanka,

Acknowledging with appreciation the services of the Royal Norwegian Government, the Norwegian People, and the international community in attempting to bring peace to the island,

Recognizing that a peaceful resolution is a real possibility, despite the challenging history of the peace process between the Tamil people and the Sinhala people.

Determined to establish an interim self-governing authority for the NorthEast region and to provide for the urgent needs of the people of the NorthEast by formulating laws and policies and, effectively and expeditiously executing all resettlement, rehabilitation, reconstruction, and development in the NorthEast, while the process for reaching a final settlement remains ongoing.

Being aware that the history of the relations between the Tamil People and the Sinhala People has been a process of broken promises and unilateral abrogation, by successive governments of Sri Lanka, of pacts and agreements solemnly entered into between the government of Sri Lanka (GOSL) and the elected representatives of the Tamil People,

Bearing in mind that successive Governments of Sri Lanka have perpetrated persecution, discrimination, State violence and State-orchestrated violence against the Tamil People,

Noting that the Tamil people mandated their elected representatives to establish an independent sovereign, secular State for the Tamil people in the elections subsequent to the Vaddukoddai Resolution of 1976,

Bearing in mind that the Tamil armed struggle as a measure of self-defense and as a means for the realisation of the Tamil right to self-determination arose only after more than four decades of non-violent and peaceful constitutional struggle proved to be futile and due to the absence of means to resolve the conflict peacefully,

Recalling that the Liberation Tigers of Tamil Eelam (LTTE) first took measures towards peace by unilaterally declaring the ceasefire in December, 2000 and again in December, 2001, opening highways, facilitating trade and the free movement of people, and entering into peace negotiations in good faith in the hope of creating an environment conducive to the return of normalcy and a just resolution of the conflict,

Taking Note of the political courage of the present GOSL in reciprocating to the 2001 cease-fire,

Realizing that the war in the island of Sri Lanka was principally confined to the NorthEast, resulting in the destruction of the social, economic, administrative, and physical infrastructure of that area, and that the NorthEast still remains the region in the island of Sri Lanka affected by war,

Recognising that the majority of the Tamil people in the NorthEast, by their actions in the general elections held in the year 2000, gave their mandate acknowledging the LTTE as their authentic representative,

Knowing that the LTTE exercises effective control and jurisdiction over the majority of the NorthEast area of the island of Sri Lanka,

Realising that reaching a final negotiated settlement and the implementation thereof is expected to be a long process,

Affirming the necessity for the safe and free return of all refugees and displaced persons and their urgent need for unimpeded access to their homes and secure livelihoods at land and sea in the NorthEast,

Mindful that institutions and services provided by the GOSL have proved to be inadequate to meet the urgent needs of the people of the NorthEast,

Recognising the failure of the Sub-committee on Immediate Humanitarian and Rehabilitation Needs (SIHRN) and other Sub-Committees formed during the peace negotiations, which failure was due to the composition of such Sub-Committees, which repeatedly led to inaction,

Acknowledging the recognition by the GOSL of the necessity for an Interim Authority, as mentioned in its 2000 election manifesto,

Realising that maintenance of law and order is an essential pre-requisite for a just and free society,

Recognising the need for raising revenue to meet the urgent needs for the Resettlement, Rehabilitation, Reconstruction and Development of the NorthEast region, which has been devastated by war, and for the carrying out of any function of Government,

Recognising the importance of control over land in resettlement, rehabilitation, reconstruction and development,

Mindful that the Tamils did not participate in the making of the 1972 and 1978 constitutions, which institutionalized discrimination and denied them an effective role

in the decision-making process,

Noting the practice in international relations over the last decade of solving conflicts between Peoples through agreement between the parties to the conflict on terms of equality and through innovative and imaginative measures,

Relying on international precedents for establishing interim governing arrangements in war-torn countries having the force of law based solely on pacts or agreements between the warring parties recognized by the international community,

Noting that measures such as the Ceasefire Agreement, including the role of the Sri Lanka Monitoring Mission (SLMM), and, the establishment of the SIHRN and the NorthEast Reconstruction Fund (NERF) constitute valid precedents for making such arrangements,

Wherefore, the Parties, namely the Liberation Tigers of Tamil Eelam and the Government of Sri Lanka, hereby agree to the following provisions:

1. Interim Self-Governing Authority

An Interim Self-Governing Authority (ISGA) shall be established comprised of the eight districts namely: Amparai, Batticaloa, Jaffna, Kilinochchi, Mannar, Mullaitivu, Trincomalee and Vavuniya in the NorthEast, until a final negotiated settlement is reached and implemented.

Representatives of the Muslim community have the right to participate in formulation of their role in the ISGA.

2. Composition of the ISGA

- 2.1. The ISGA shall consist of such number of members as may be determined by the Parties to this Agreement.
- 2.2. The composition of the ISGA shall be:
 - 2.2.a. Members appointed by the LTTE,
 - 2.2.b. Members appointed by the GOSL, and
 - 2.2.c. Members appointed by the Muslim community in the NorthEast.
- 2.3. The number of members will be determined to ensure:
 - 2.3.a. An absolute majority of the LTTE appointees in the ISGA.
 - 2.3.b. Subject to (a) above, the Muslim and Sinhala Communities in the

NorthEast shall have representation in the ISGA.

- 2.4. The Chairperson shall be elected by a majority vote of the ISGA and shall serve as the Chief Executive of the ISGA.
- 2.5. The Chairperson shall appoint the Chief Administrator for the NorthEast and such other officers as may be required to assist in the performance of his/her duties. The Chairperson shall have the powers to suspend or terminate any such appointment.

3. Elections

The provisions of Clauses 2.2 and 2.3 shall continue until elections for the ISGA are held. Such elections shall be held at the expiry of five years of the coming into force of this Agreement, if no final settlement has been reached and implemented by the end of the said period of five years. An independent Election Commission, appointed by the ISGA, shall conduct free and fair elections in accordance with international democratic principles and standards under international observation.

4. Human Rights

The people of the NorthEast shall be accorded all rights as are provided under international human rights law. Every law, regulation, rule, order or decision of the ISGA shall conform to internationally accepted standards of human rights protection. There shall be an independent Human Rights Commission, appointed by the ISGA, which shall ensure the compliance with all such human rights obligations. The Commission will seek the assistance of international human rights bodies to facilitate the rapid establishment of an effective regime for protecting human rights. The Commission shall be entitled to receive petitions from any individual person, award compensation to any such affected person, and ensure that such person's rights are restored.

5. Secularism

No religion shall be given the foremost place in the NorthEast.

6. Prohibition against Discrimination

The ISGA shall ensure that there is no discrimination on grounds of religion, race, caste, national or regional origin, age or gender in the NorthEast.

7. Prevention of Bribery and Corruption.

The ISGA shall ensure that no bribery or corruption is permitted in or under its administration.

8. Protection of All Communities

No law, regulation, rule, order or decision that confers a privilege or imposes a disability on any community, which is not conferred or imposed on any other community, shall be made concerning culture or religion.

9. Jurisdiction of the ISGA.

9.1. The ISGA shall have plenary power for the governance of the NorthEast including powers in relation to resettlement, rehabilitation, reconstruction, and development, including improvement and upgrading of existing services and facilities (hereinafter referred to as RRRD), raising revenue including imposition of taxes, revenue, levies and duties, law and order, and over land.

These powers shall include all powers and functions in relation to regional administration exercised by the GOSL in and for the NorthEast.

9.2. The detailed modalities for the exercise of such powers and the performance of such functions shall be subject to further discussion by the parties to this agreement.

10. Separation of Powers

Separate institutions for the administration of justice shall be established for the NorthEast, and judicial powers shall be vested in such institutions. The ISGA shall take appropriate measures to ensure the independence of the judges.

Subject to Clauses 4 (Human Rights) and 22 (Settlement of Disputes), of this Agreement, the institutions created under this clause shall have sole and exclusive jurisdiction to resolve all disputes concerning the interpretation and implementation of this agreement and any other disputes arising in or under this agreement or any provision thereof.

11. Finance

The ISGA shall prepare an annual budget.

There shall be a Financial Commission consisting of members appointed by the ISGA. The members should have distinguished themselves or held high office in the fields of finance, administration or business. This Commission shall make recommendations as to the amount out of the Consolidated Fund to be allocated to the NorthEast. The GOSL shall make its good faith efforts to implement the recommendation.

The ISGA will, giving due consideration to an equitable distribution, determine the use of funds placed at its disposal. These funds shall include the NorthEast General Fund, the NorthEast Reconstruction Fund (NERF) and the Special Fund.

The GOSL agrees that any and all of its expenditures in or for the NorthEast shall be subject to the control of the ISGA.

11.1. NorthEast General Fund

The NorthEast General Fund shall be under the control of ISGA and shall consist of:

11.1.a. The proceeds of all grants and loans made by the GOSL to the ISGA and the proceeds of all other loans made to the ISGA.

11.1.b. All allocations by the GOSL from agreements with states, institutions and/or other organizations earmarked in any such agreements for the NorthEast.

11.1.c. All other receipts of the ISGA, other than the funds specified below.

11.2. NorthEast Reconstruction Fund

The NERF shall continue to exist in its present form except that control over it will be transferred to the ISGA.

All grants given for the reconstruction of the NorthEast, will be received through the NERF. Utilization of resources from NERF will be directly determined and supervised by the ISGA.

11.3. Special Fund

All loans and any grants which cannot be channeled through the NERF for the specific purpose of RRRD will be received into the Special Fund. As in the case of other Funds, the ISGA shall control the Special Fund.

12. Powers to Borrow, Receive Aid and Trade.

The ISGA shall have powers to borrow internally and externally, provide guarantees and indemnities, receive aid directly, and engage in or regulate internal and external trade.

13. Accounting and Auditing of Funds.

- 13.1. The ISGA shall appoint an Auditor General.
- 13.2. All Funds referred to in this Agreement shall be operated, maintained and audited in accordance with internationally accepted accounting and auditing standards. The accounts will be audited by the Auditor General. The auditing of all moneys received from international sources shall be subjected to approval by an internationally reputed firm appointed by the ISGA.

14. District Committees.

- 14.1. In the effective exercise of its legislative and executive powers, the ISGA may create District Committees to carry out administration in the districts and delegate to such Committees, such powers as the ISGA may determine. The Chairpersons of such committees shall be appointed by the ISGA from amongst its members in order to serve as a liaison between the ISGA and the Committees.
- 14.2. The other members of the Committees shall also be appointed by the ISGA, which shall have the powers to suspend or terminate any such appointment. In appointing such members, due consideration shall be given to ensure representation of all communities.
- 14.3. The Committees will function directly under the ISGA.
- 14.4. The Chief Administrator of the ISGA shall appoint Principal Executive Officers in the districts, who shall also function as the Secretaries to the Committees. The Chief Administrator shall have the powers to

suspend or terminate any such appointment.

- 14.5. All activities and functions of the Committees shall be coordinated through the respective Secretaries to the Committees.
- 14.6. Sub-committees may also be appointed to facilitate administration.

15. Administration

As part of the exercise of its executive powers the ISGA shall have direction and control over any and all administrative structures and personnel in the NorthEast pertaining to the powers set out in Clause 9 of this Agreement.

The ISGA may, at its discretion, create expert advisory committees in necessary areas. These areas will include but are not limited to Economic Affairs, Financial Affairs, Judicial Affairs, Resettlement and Rehabilitation Affairs, Development of Infrastructure, and Essential Services.

16. Administration of Land

Since land is vital to the exercise of the powers set out in Clause 9 (jurisdiction of the ISGA), the ISGA shall have the power to alienate and determine the appropriate use of all land in the NorthEast that is not privately owned.

The ISGA shall appoint a Special Commission on Administration of Land to inquire into and report on the rights of dispossessed people over land and land subject to encroachment, notwithstanding the lapse of any time relating to prescription.

The ISGA shall determine the term of competencies of the Special Commission.

17. Resettlement of Occupied Lands

The occupation of land by the armed forces of the GOSL, and the denial to the rightful civilian owners of unfettered access to such land, is a violation of the norms of international law. Such land must be immediately vacated and restored to the possession of the previous owners. The GOSL must also compensate the owners for the past dispossession of their land.

The ISGA shall be responsible for the resettlement and rehabilitation of displaced civilians and refugees in such lands.

18. Marine and off-shore resources

The ISGA shall have control over the marine and offshore resources of the adjacent seas and the power to regulate access thereto.

19. Natural Resources

The ISGA will have control over the natural resources in the NorthEast region. Existing agreements relating to any such natural resources will continue in force. The GOSL shall ensure that all monies due under such agreements are paid to the ISGA. Any future changes to such existing agreements should be made with the concurrence of the ISGA. Future agreements shall be entered into with the ISGA.

20. Water Use

Upper riparian users of river systems have a duty to ensure that there is a fair, equitable and reasonable use of water resources by lower riparian users. The GOSL and the ISGA shall ensure that this internationally recognized principle is followed in the use of water resources.

21. Agreements and contracts

All future agreements concerning matters under the jurisdiction of the ISGA shall be made with the ISGA. Existing agreements will continue, but the GOSL shall ensure that all proceeds under such agreements are paid to the ISGA. Any changes to such existing agreements should be made with the concurrence of the ISGA.

22. Settlement of Disputes

Where a dispute arises between the Parties to this Agreement as to its interpretation or implementation, and it cannot be resolved by any other means acceptable to the Parties including conciliation by the Royal Norwegian Government, there shall be an arbitration before a tribunal consisting of three members, two of whom shall be appointed by each Party. The third member, who shall be the Chairperson of the tribunal, shall be appointed jointly by the Parties concerned. In the event of any disagreement over the appointment of the Chairperson, the Parties shall ask the President of the International Court of Justice to appoint the Chairperson.

In the determination of any dispute the arbitrators shall ensure the parity of status of the LTTE and the GOSL and shall resolve disputes by reference only to the provisions of this Agreement.

The decision of the arbitrators shall be final and conclusive and it shall be binding on the Parties to the dispute.

23. Operational Period

This Agreement shall continue until a new Government for the NorthEast, pursuant to a permanent negotiated settlement, is established. The Parties will negotiate in good faith to reach such a settlement as early as possible.

Provided, however, that at the end of four years if no final agreement has been reached between the Parties to this agreement, both Parties shall engage in negotiations in good faith for the purpose of adding, clarifying, and strengthening the terms of this Agreement.

Annex IV**MEMORANDUM OF UNDERSTANDING (MOU) FOR THE ESTABLISHMENT OF A POST-TSUNAMI OPERATIONAL MANAGEMENT STRUCTURE (P-TOMS), 27th June 2005****Preamble**

WHEREAS the tsunami that struck Sri Lanka on December 26, 2004 (the “tsunami”) destroyed human lives and property on an unprecedented scale; WHEREAS there is an urgent need for all communities, Sinhala, Tamil, Muslim and others, to cooperate on humanitarian grounds in the face of this common adversity;

WHEREAS the equitable allocation of post-tsunami funds to all parts of Sri Lanka struck by the tsunami will be based on accepted needs assessments;

WHEREAS in recognition of this urgent humanitarian need and in a spirit of partnership, the Government of Sri Lanka (the “GOSL”) and the Liberation Tigers of Tamil Eelam (the “LTTE”) (the “Parties”) have resolved to work together, in good faith and using their best efforts, to deliver expeditious relief, rehabilitation, reconstruction and development to the coastal communities in the six districts of Ampara, Batticaloa, Jaffna, Kilinochchi, Mullaitivu and Trincomalee (“the Six Districts”) and to facilitate and expedite the process of rebuilding the affected areas;

WHEREAS there is a need for establishing P-TOMS to facilitate such cooperation among communities, and between the Parties;

NOW, THEREFORE, in consideration of the foregoing the Parties have entered into this MOU and agreed as follows:

1. Structure

- a. An integrated operational management structure shall be established for the purpose of planning, implementing and coordinating post-tsunami work. Such structure shall consist of:
 - The Post-Tsunami Coastal Reconstruction Committee (the “High-Level Committee”);
 - The Post-Tsunami Coastal Reconstruction Committee for the Six Districts (the “Regional Committee”); and

- Post-Tsunami Coastal Reconstruction Committees for each of the Ampara, Batticaloa, Jaffna, Kilinochchi, Mullaitivu, and Trincomalee districts (the “District Committees”).

- b. The High-Level Committee, the Regional Committee and the District Committees shall discharge of their functions in such a manner as to address the concerns of all persons in the Tsunami Disaster Zone (the “TDZ”, as defined below) and shall do so without discrimination against any person on grounds such as ethnic origin, sex, language, religion, political or other opinion, social origin, birth or other status.

2. Scope

- a. The scope of the High-Level Committee, the Regional Committee, and the District Committees shall be limited to performing the functions defined in Sections 5(b), 6(b), and 8(b), respectively, and having effect exclusively within the TDZ (as defined below), as further specified by Section 6(a) in the case of the Regional Committee and by Section 8(a) in the case of the District Committees.
- b. The Tsunami Disaster Zone (the “TDZ”) shall be defined as the area affected by the tsunami.
- c. The TDZ shall include all that tsunami-affected land area of Sri Lanka, which is adjacent to the sea, lying within a limit of 2 kilometres landwards from the mean low water line.
- d. The High-Level Committee may decide to bring additional land areas within the TDZ; provided, however, that all such land areas must have been directly impacted by the tsunami or directly affected by the displacement and resettlement of persons as a result of the tsunami.
- e. New proposals for measures to be adopted in, or affecting the coastal areas covered by seawater, shall be undertaken under the aegis of an international agency. Such proposals might include measures to recover material lost to the sea during the tsunami, the cleaning up of shores and beaches affected, even when covered by seawater, and the repairing and construction of jetties or commercial fisheries harbours affected by the tsunami.
- f. The Ceasefire Agreement, dated as of 23 February 2002, between the GOSL and the LTTE, shall continue in full force and effect, and nothing

in this MOU shall be construed to prejudice such agreement or alter its terms in any way.

3. Period of Operation

- a. This MOU shall enter into force from the date it is executed by both Parties (the “Commencement Date”), and continue in operation for a period of one year from the Commencement Date.
- b. The Parties shall by consensus have the option to extend this MOU for an additional period or periods.

4. Cost and Expenses

The donors shall be requested to cover all costs and expenses incurred relating to the establishment and functioning of the P-TOMS.

5. High-Level Committee

- a. Geographic Scope. The High-Level Committee shall act exclusively in relation to the TDZ.
- b. Functions. The High-Level Committee shall perform the following functions:
 - Formulation of policies for the equitable allocation and disbursement of donor funds in the TDZ based on needs assessments submitted to the High-Level Committee, guided by the principle that funds should be allocated in proportion to the number of affected persons and the extent of damage;
 - Provision of advisory services; and
 - Monitoring of the functioning of P-TOMS.
- c. Composition. The High-Level Committee shall consist of the following members:
 - 1 nominee by GOSL;
 - 1 nominee by LTTE; and
 - 1 nominee by Muslim parties.
- d. Alternates. Each nominating party shall designate one alternate, who will be authorized to attend meetings and act on behalf of the member only

in the event he or she is unable to attend due to illness, necessary travel or other exigent circumstances.

- e. Chairperson. The High-Level Committee shall select one of the members of the High-Level Committee to serve as the chairperson to conduct and coordinate its meetings. The role of the chair shall rotate among the members, with each chairperson serving for two months.
 - f. Observers. The High-Level Committee shall have one observer representing multilateral donors and one observer representing bilateral donors attend its meetings. The observers shall be nominated by the multilateral donor community and the bilateral donor community, respectively.
 - g. Decision Making.
 - i. The High-Level Committee shall strive to make decisions based on consensus. All members shall work together in good faith and use their best efforts to reach a common agreement before the High-Level Committee makes any decisions.
 - ii. In the event that consensus cannot be reached, the members shall immediately enter into an extensive consultation procedure with their nominating parties and the donor community with the aim to reach an agreement and to ensure continued cooperation in the High-Level Committee.
 - iii. In the event that consensus can still not be reached the nominating parties may, after having followed the consultation procedure laid down in Section 5(g, i and ii) and after having given 14 days notice, suspend the cooperation in the High-Level Committee.
 - Location. The High-Level Committee shall be located in Colombo.
 - Procedures. The High-Level Committee shall determine its own procedures for the discharge of its functions.
 - Servicing Secretariat. The High-Level Committee shall establish a small, independent secretariat with adequate staff.
- ### 6. Regional Committee
- a. Geographic Scope. The Regional Committee shall act exclusively within those areas of the TDZ in the Six Districts.

- b. Functions. The Regional Committee shall perform the following functions:
- i. Development of strategies for implementation and prioritization of post-tsunami emergency relief, rehabilitation, reconstruction and development measures;
 - ii. Project approval and management, with respect to projects for post-tsunami relief, rehabilitation, reconstruction and development;
 - iii. Overall monitoring of projects; and
 - iv. Fund management, with respect to the fund specifically defined in Section 7.
- c. Composition. The Regional Committee shall consist of the following members:
- i. 2 members nominated by GOSL, out of which one will serve as Deputy Chairperson;
 - ii. 5 members nominated by LTTE, out of which one will serve as Chairperson;
 - iii. 3 members nominated by the Muslim parties, out of which one will serve as Deputy Chairperson;
 - iv. The Regional Committee shall have a proper gender balance.
- d. Observers. The Regional Committee shall have one observer representing multilateral donors and one observer representing bilateral donors attend its meetings. The observers shall be nominated by the multilateral donor community and the bilateral donor community, respectively. Other observers may be invited to attend the meetings of the Regional Committee.
- e. Decision Making.
- i. The Regional Committee shall strive to make decisions based on consensus. All members shall work together in good faith and use their best efforts to reach a common agreement before the Regional Committee makes any decisions.
 - ii. In the event that consensus cannot be reached, decisions shall be made by a simple majority of the Regional Committee. In the event of equality of votes, the Chairperson can exercise a casting vote.

- iii. Notwithstanding paragraph iv below, in the event that a decision is taken on an issue having an adverse effect on a minority group, acknowledged by at least two members of the Regional Committee, approval will require two thirds majority (seven members) of the Regional Committee.
 - iv. In the event that a proposal from a District Committee does not get a simple majority in the Regional Committee and at least two members of the Regional Committee request redressing of the decision relating to the proposal, the rejection will require two thirds majority (seven members) of the Regional Committee.
- f. Location. The Regional Committee shall be located in Kilinochchi.
- g. Procedures. The Regional Committee, in consultation with the High-Level Committee, shall determine the procedures for the discharge of its functions.
- h. Servicing Secretariat. A small Secretariat for the Six Districts shall be set up and may draw staff from the Secretariat for Immediate Humanitarian and Rehabilitation Needs (SIHRN). The Secretariat shall be named as the Regional Secretariat for Post-tsunami Coastal Reconstruction and Development (RSPCRD), and shall provide secretarial and administrative services to the Regional Committee.
- i. Project Management Unit. A Project Management Unit (the "PMU") shall be established to manage the projects approved by the Regional Committee.
- j. Accounting. The Regional Committee shall appoint a suitably qualified, independent accountant.
- 7. Regional Fund**
- There shall be a Post-Tsunami Coastal Fund for the Six Districts (the "Regional Fund"), consisting of unspecified (program) and secretariat funds. The unspecified (program) funds shall consist exclusively of foreign funds while the secretariat funds shall consist of both foreign and local funds.
 - The Parties shall appoint a suitable multi-lateral agency to be the Custodian of the Regional Fund.

- The purpose of the Regional Fund shall be to expeditiously make available funds, following proper approved procedures, to facilitate and accelerate the relief, rehabilitation, reconstruction and development program in the tsunami-affected areas of the Six Districts.
- The Parties and the Custodian shall agree on a mechanism for the establishment and operation of the Regional Fund.

8. District Committees

- a. Geographic Scope. Each District Committee shall act exclusively in relation to those areas of the TDZ within its district.
- b. Functions. Each District Committee shall perform the following functions within its district:
 - i. Identification of needs;
 - ii. Prioritization of needs;
 - iii. To generate, receive, appraise and prioritize project proposals from various stakeholders and submit recommendations to the Regional Committee; and
 - iv. To monitor and report on project progress to the Regional Committee.
- c. Composition and Decision Making. The Districts Committees, already established and well-functioning, shall continue their work. The District Committees may further discuss and decide on issues relating to their composition and decision-making. Adequate Muslim representation shall be ensured. The District Committee shall also have a proper gender balance.
- d. Location. Each District Committee shall be located within its district.
- e. Servicing Secretariat. A small Servicing Secretariat shall provide secretarial and administrative services to the District Committees.

9. Execution

This MOU may be executed in duplicate, both texts being equally authentic.

Ambika Satkunanathan is a researcher and activist and has worked at the International Centre for Ethnic Studies, Colombo and the Law and Society Trust. In her work she has focused on rule of law and accountability issues, enforceability of socio-economic rights, peace and conflict, violence against women, trafficking and post-conflict justice issues. She has been actively involved in initiatives to bring about legislative reform and in this regard has contributed to initiatives on drafting equal opportunity legislation, increasing women's political participation, prevention of domestic violence and protecting the right of women to work. Ambika has worked in a consultative capacity with the International Labour Organisation (ILO), the Centre for the Study of Developing Societies, New Delhi (CSDS) and the United Nations Development Programme (UNDP). Ambika holds degrees from Monash University, Australia and the University of Nottingham from where she has a Master of Laws (Human Rights). She is currently working as National Legal Consultant with the United Nations.

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Mistaking Politics for Governance: The Politics of Interim Arrangements in Sri Lanka 2002-2005 examines the origins, structures and outcomes of interim arrangements, proposed and implemented, in Sri Lanka between 2002 and 2005. The use of 'interim arrangements' as a means to guide a peace process towards a final settlement has become an accepted strategy in peace processes following its employment in the Israel-Palestine conflict. The 'peace process' between the government of Sri Lanka and the Liberation Tigers of Tamil Eelam became the latest repository for the study of interim arrangements as part of post-conflict transition.

The study examines, through an empirical and theoretical approach, the successes and failures of these bodies. Its emphasis is on the need to look beyond the workings of the respective institutions, and focus on the politics that underpin and permeate their implementation and functioning. Without understanding, accounting and successfully incorporating politics, interim institutions faced increasing obstacles – legal, bureaucratic and personnel related issues. By highlighting key successes and failures and pinpointing lessons learned, the study hopes to provide both an analysis of what went wrong in the Sri Lankan case and insights into the pitfalls and benefits of employing an interim approach in peace processes.

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