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LTTE troopers with a Sri Lanka Army major in Chenkaladi, Batticaloa Pix by Buddhika Weerasinghe

## Direct talks despite deadline lapse

By A Staff Correspondent

Direct talks between Prime Minister Ranil Wickremesinghe and LTTE leader Velupillai Pirapaharan are expected to be held in the latter part of this year. Government and LTTE sources said that groundwork on the matter would proceed despite hiccups in implementing the Memorandum of Understanding (MOU).

"The LTTE will keep insisting on the government's obligations under the agreement to restore normalcy in the northeast. But the D Day + 160 which falls on August 2 will not be a stumbling block in taking the process forwards," an LTTE official in Kilinochchi said. Direct talks between the government and the Liberation Tigers will not take place until after the LTTE's political advisor Anton Balasingham confers with Pirapaharan in September - October this year.

Prospects of a meeting later this year between Wickremesinghe and Pirapaharan have been raised in the wake of the landmark meeting last Saturday between Sri Lankan cabinet minister, Milinda Moragoda, and Balasingham.

The London-based 'Tamil

Guardian' reported Wednesday that when asked about the possibility of the two leaders meeting, Balasingham had said that whilst no request had been made to the LTTE by the Sri Lankan government, "it would certainly be favourably considered."

Balasingham also told the paper he expected to meet with LTTE leader in September to discuss matters related to the peace efforts. "The details [of the visit] have not been finalised, but I expect to discuss our strategies with Mr. Pirapaharan at about that time," he said.

Asked by 'Tamil Guardian' about the meeting last week between Wickremesinghe and US President George Bush, Balasingham welcomed the US expressions of support for the Sri Lankan Premier and the Norwegian peace effort.

"In urging Sri Lanka to peacefully negotiate a solution to the ethnic question with the LTTE, [the US] is also recognising us as the political entity representing Tamil interests," Balasingham said, pointing out that this also reflected the sentiments of the majority of Tamil-speaking peoples in Sri Lanka.

Balasingham said the LTTE was observing developments closely,

noting that "given Kumaratunga's opposition to a negotiated solution with the LTTE, the stability of the [Wickremesinghe] government has a direct bearing on the Norwegian peace initiative."

President Kumaratunga, in an acrimonious letter to Wickremesinghe last week, asserted she has the power to sack cabinet ministers and rejected the Premier's contention that she cannot do so without consulting him.

In its editorial this week, the 'Tamil Guardian,' which is published in Britain, Canada and Australia, hailed the meeting between Moragoda and Balasingham as "tangible proof of fresh progress towards peace."

"That these talks covered thorny subjects - implementation of the ceasefire agreement, agenda for future talks in Thailand and the question of an interim administration - and yet left both sides pleased with the results gives the greatest cause for optimism," the paper said.

But arguing that "the serious contradiction at the heart of the Sinhala establishment poses an immediate threat to the Norwegian peace initiative" the 'Tamil Guardian' warned that "the odds of the Parliamentary government being able to survive the duration of a meaningful peace process look considerably weaker."

"[It] is now quite clear, the risk [Kumaratunga] poses to the Norwegian initiative cannot be removed by repeatedly placating the President

in the name of southern consensus but by ensuring that she is manifestly unable to veto its progress," the 'Tamil Guardian' said.

## Minister's resettlement plan thwarted

The army told Hindu Affairs Minister T. Maheswaran that only eight devotees and a priest would be allowed to visit and conduct rituals at the Rajarajeswary Amman temple, which is in the high security zone in Valikamam North.

At a conference held last Tuesday at Palaly main army camp, it was agreed to allow devotees to this temple from 1st August. The number of persons to be allowed was not decided. Maheswaran participated at the discussion presided by Major General Sarath Fonseka, security forces commander, Jaffna.

The army allowed a group of devotees led by the minister to visit the temple and clean its premises, overgrown with shrub jungle. Maheswaran said at the time that the army would allow

the family of the temple's priest to resettle there. Initially, about ten families connected to the temple would be permitted to go back to their abandoned homes on Kalliamman Street, a once populous neighbourhood of Palaly. The minister indicated that the army may eventually agree to resettle about hundred families around the Rajarajeswari Amman Temple.

Military sources in Jaffna dismissed the minister's claim.

More than 2000 thousand families were evacuated from this area by the army in 1987 and in 1990.

Refugee organisations estimate that more than ten thousand families were driven out by the military from Valikamam north in Jaffna since 1986.

The displaced families staged a protest demanding resettlement last month.



# Army leaves Hartley, Navy closes Velanai school road

By our Jaffna Correspondent

The Navy closed the sole access road to the Velanai Duraisamy Central College on July 29, last Monday, amid objections by parents and civilians in the area. Following a series of protests by students and parents, the Navy agreed to vacate the school building earlier this month. However, the school still remains within the defence perimeter of the Velanai Naval detachment.

The Navy opens the access road to the school only twice during the day – at 8.30 a.m. and 2.30 p.m. to let students and teachers in and out of the camp. The Navy does not permit parents to visit the school.

Hundreds of students and parents blocked roads in Velanai on July 16 to protest against Sri Lanka Navy defence positions around Velanai Duraisamy Central College. The Duraisamy Central College is inside the SLN base in Velanai. The SLN has been encamped in the Velanai Duraisamy Central College from 1992. Troops vacated the school's buildings on 9 July in terms of the cease-fire agreement. However, the college still remains inside the SLN base.

Article 2.3 of the MOU states: '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.'

"The MOU speaks only about school buildings and not about the environs occupied by the army. The armed forces have interpreted to the letter and not in spirit. There is not point leaving a school building and continue to have an army camp around it", a parent said.

Parents and students say that the Velanai Duraisamy Central College should be accessible to everyone at all times during the day. "Our children are at risk inside the camp. They are scared to be there", a parent said.

Meanwhile, Last Monday the army handed over the keys of Poornampillai Hall and Lower Hall, named after two past principals of Hartley College in Point Pedro, to Mr. Murugupillai Sripathi who is the school's principal now.

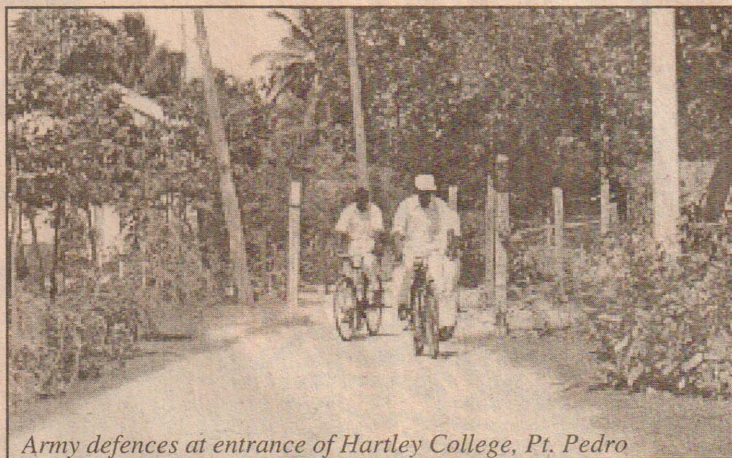
But parents complain that the army still checks students and the public at the College Road junction that leads to Hartley College.

However, the army continues

to stay in the buildings of the Pt.

Pedro law courts, and the Jetty, close to Hartley College.

Principal M. Sripathy said the two buildings; Poornampillai Hall and Lower Hall have been badly damaged. The two buildings in the school which were occupied by the army are 15,840 sq ft. The Poornampillai Hall is on the verge of collapse due to severe damages to its main beams. Until necessary repairs are done the school buildings cannot be used, he added.



Army defences at entrance of Hartley College, Pt. Pedro

## Indian trawlers maraude in Mannar

Over 300 hundred Indian trawlers were seen fishing in Sri Lanka's territorial waters on Monday night on the seas off Talaimannar, Pesalai and Palimunai on Monday night preventing Sri Lankan fishermen from plying their trade in the Gulf of Mannar.

Fishermen said these trawlers that had made nightly incursions into the same seas last year had desisted from doing till two weeks ago due to political and diplomatic pressure brought on the Indian and Tamil Nadu governments by Sri Lanka and the Sri Lanka navy and police firing into the air to disperse them.

With the signing of the Ceasefire

Agreement however, which has placed restrictions on the use of firearms by the security forces on the northern seas, these trawlers have begun showing up again in the past two weeks. Though the navy and police had tried to chase them away without firearms their attempts were only partially successful.

Indian trawlers are reported to anchor as close 400 meters from the shore on Monday, Wednesday and Saturday. On these days local fishermen do not go out to sea in fear of clashing with the Indian fishermen who are armed with knives, fishhooks and clubs and have not been averse to using them on locals.

The trawlers which are mostly from the Indian coastal town of Rameswaram anchor in Sri Lankan waters by 6 p.m. and remain till dawn the following day.

The trawlers not only pose a danger to local fishermen, but to the ecology. Fishermen complain that trawlers not only catch fish, but rake in undersea plants and organism that that are part of the ecology and vital for fish breeding.

The lights of 300 – 500 trawlers against a dark background of the ocean gives the impression of a carnival, but to us fishermen whose livelihood is threatened, it is no carnival," said Mariam Croos of Pesalai.

## Army urged to free Jaffna hospital environs

The military ban on using roads around Jaffna teaching hospital, which presently come under the high security zone, should be removed immediately as it causes severe hardship to patients and medical staff, the visiting Health Ministry Secretary Dr. Reggie Perera was told at a conference last week.

The Ministry Secretary met medical officers, doctors and administrators at the Jaffna Teaching Hospital Saturday to hear their views on the shortcomings and needs of the institution. The headquarters of the 52-1 brigade is in this high security zone.

The medical officers made a plea to the ministry secretary that at least for the time being ambulances should be allowed to use these roads to avoid

deaths due to the delay in bringing critical patients for medical attention.

The roads - Victoria Road and Clock Tower road - just behind the Jaffna Teaching Hospital are now barricaded and barred from use by the public. The army occupies Ashok Hotel and Gnanams Hotel located in the high security zone.

Medical officers and ambulances now use roads that are far away from Jaffna hospital causing delay in admitting serious patients in time, the delegation told the Ministry Secretary.

The Health Ministry Secretary went to Jaffna Saturday on a two-day official tour to review the health problem in Jaffna district. Dr. Reggie Perera will visit other hospitals in the peninsula Sunday.



An enterprising youth from Kilinochchi recently opened a roadside kiosk at the mine ridden entrance of Elephant Pass. "I got a small area cleared here to open the shop, but business is picking up", he says. The Police had a checkpoint here before the Eelam War began. Two armoured vehicles blown up by the LTTE lie near the shop.



# Government tells Trinco IDPs - 'Wait until permanent peace'

Last Sunday at Kanniya, a Tamil village, seven kilometres north of Trincomalee town a group of internally displaced persons were seen clearing their lands after twelve years spent in welfare centres. An army officer in charge of the SLA camp in the area came over to the spot and inquired whether they were new to the area.

Mr. Iynkaran, LTTE's Trincomalee district administrative secretary, who happened to be at the scene told the SLA officer that all of them had been driven out of Kanniya in 1990. 'They had been living in welfare centres and camps for about twelve years. They are returning to their own lands now,' Mr. Iynkaran explained. Mr. Iynkaran requested the army officer to assist the internally displaced to resettle in their own lands.

The army officer obliged. Now the IDPs are busy clearing their lands. More than a thousand families lived in Kanniya before the army moved into the area in 1990. Today only a few brick houses remain in the 'Ten House Project' which the SLA took over and occupied since 1990. The lands are overgrown with shrub jungles. The Tamil government school, post office, and multi purpose co-operative society have been destroyed. The water wells of the village are ruined.

Steps have been taken to provide drinking water by bowzers to the resettling internally displaced families. Only ten families were able to start their life afresh in the village.

Kanniya comprises several the hamlets of Peeliyadi, Ravanan Veethi, Mankaiyootu and Sirupiddy. Animal husbandry was the main source of income for most of the villagers before they were driven out of their

homes by the army in 1990. They lost their cattle herds when they were forced to flee the village.

Some of them depended on paddy cultivation.

They now return to Kanniya with some hope that they could rebuild their ruined livelihoods.

The Trincomalee District Development Association (TDDA), a local non-governmental organization, provides them things necessary to restart their lives from scratch in Kanniya such as hurricane lamps, mammoties and other implements needed to clean their lands.

The Eastern Human and Economic Development (EHED) and the Methodist Church too have come forward to provide basic assistance to the IDPs for resettling in Kanniya.

However central government authorities have advised NGOs not to build permanent shelters for the IDPs.

'They say that providing houses to IDPs is the responsibility of the central government', said TDDA President Mr. S. Lakshmanan.

But NGO's can provide toilets and drinking water facilities to the resettlers.

So far, no government assistance has been promised to the people resettling in Kanniya although more IDPs are seen returning to the village to locate their lands and to start clearing the shrub jungle.

This is the first Tamil village in the northern sector of the Trincomalee district where internally displaced families are returning in large numbers to resettle after the Ceasefire Agreement was signed.

More than fourteen Tamil villages in northern Trincomalee district were abandoned when entire populations there were driven out by the army between 1984 and 1990.

Thennamaravadi, Thiriyai, Kallampaththu, Kaddukulam,

*"More than 56,740 families were driven out of their homes, villages and towns of Trincomalee in the wake of Sri Lanka army operations in 1990. Most of them stayed in welfare centres and refugee camps within the district. Others sought asylum in foreign countries," states a report of the Trincomalee district Consortium of NGOs.*

Kuchchaveli, Pankulam, Panmadawachchi, Nochikulam, Veppankulam, Velveery, Mudaliyarkulam are some of the abandoned Tamil villages.

"More than 56,740 families were driven out of their homes, villages and towns of Trincomalee in the wake of Sri Lanka army operations in 1990. Most of them stayed in welfare centres and refugee camps within the district. Others sought asylum in foreign countries," states a report of the Trincomalee district Consortium of NGOs.

According to official reports maintained by the District Secretariat, under the resettlement programme started in 1990, around 49 thousand IDP have been resettled in Trincomalee district so far.

The report of the NGOs Consortium disputes this claim. It says "IDPs were forcibly taken and left in their lands without being provided basic amenities and without necessary resources

to rebuild their ruined economy. They were not resettled as per accepted guidelines. Because of the indifferent attitude, most of the resettled IDPs have returned to welfare centres and refugee camps".

Resettlers in Kanniya receive tin sheets and roof tiles from some NGOs to put up temporary huts. The central Government has not assisted them in any manner so far to resettle.

The government authorities have told the IDPs that once permanent a solution to the ethnic conflict is found foreign assistance can be obtained to help them financially to build new homes on their own lands.

The UNP government in power before 1994 paid 2000/= as Setting in Allowance (SIA) 4,000/= as Productivity Enterprise Grant (PEG) and Rs 15,000/= for housing.

The People Alliance government later enhanced the package as SIA- Rs: 2000/=, Rs.1000/=

for implements, Rs 4,000/= as PEG, Rs 7000/- for temporary shelter and Rs 25,000/= as housing assistance.

Changes were made again in the package by the PA government increasing the housing assistance to Rs: 50,000/=.

The increased assistance for housing was not paid to the earlier resettlers. The Trincomalee NGOs Consortium has asked the government authorities that there should be uniformity in paying housing allowance for resettlers.

The Rehabilitation and Resettlement Unit working in the Peace Secretariat under the Prime Minister's office has been formulating a scheme to provide enhanced financial assistance to resettlers with foreign funding, officials say. This scheme will be implemented once a political solution to the ethnic problem is found and permanent peace is achieved, Peace Secretariat sources said. Until such time the displaced who are now resettling in their villages will have to depend on assistance provided by NGOs'.

Restarting life in villages abandoned for more than a decade is fraught with other calamities too, for which NGOs in Trincomalee are ill prepared. Many villages such as Kanniya where the army has been present for a long time, may have unexploded ordnance and landmines. Paddy fields have lain fallow for 12 years. Cultivation could be dangerous if these fields are not checked for mines, a spokesman for the Trincomalee District NGOs Consortium says. "We have suggested that a mine clearing operation should be undertaken to ensure the safety of displaced who are returning to settle in their villages," he said.

## Repeal of the Prevention of Terrorism Act is a must

By K. Sivapalan

Thanks to Honourable Rauf Hakeem, the Emergency Regulation (EMR) was allowed to lapse last year. The Prevention of Terrorism (temporary Provisions) Act had to wait for the Government of Sri Lanka and the Liberation Tigers Of Tamil Eelam to sign the Ceasefire Agreement to meet its Waterloo at least temporarily.

It is a pity that there had been no concerted effort on the part of the Human Rights Organisations, United Nations Agencies, Interna-

tional Institutions and Organisations interested in good governance and Rule of law to get these draconian Laws repealed. It is commendable that the Centre for Human Rights and Development (CHRD) has recently organised Symposiums with the participation of eminent persons and have also raised their concerns in the Press against PTSA and its direct contribution to violations of Human Rights and norms of good governance in our country.

It is perhaps a good time to re-

flect on the grave violations of the past in order to stop its repetition.

As Patricia Lawrence, a Mc Arthur Research Fellow and Fulbright Scholar who conducted PhD research in the discipline of cultural anthropology in Batticaloa District in the years 1991,92, 93, and 94, stated in her letter to Late Justice Palakidnar, Chairman of the Presidential Commission of Inquiry into Involuntary Removal and disappearance of persons in the Northern and Eastern Provinces, although Brigadiers seem to have been given power to authorize or deny

historical realities, people will remember what cannot be erased from anguished memory.

In fact this Presidential Commission Report is loaded with facts and figures on the S a t t h u r u k k o n d a n, Vantharumoolai Eastern University Refugee Camp, Paddiruppu, Veeramunai Pillaiyar Templecamp, Trincomalee Mc Heyzer Stadium, Trincomalee Base Hospital Group Arrests and massacres et al.

According to this report, during the period 1988 to 1995/6, in Trincomalee District 499 Tamils, 54 Muslims and 3 Burghers and in

Batticaloa District 1100 Tamils, 95 Muslims 18 Sinhalese and 6 Burghers are said to have been arrested and disappeared.

Although the Commission has placed the responsibility for this on certain persons and also has made its recommendation to H.E. the President long ago no action seems to have been taken at all so far against the perpetrators of these crimes. This encourages them to act with impunity.

If we are to avoid such arbitrary arrests in the future, repeal of the Prevention of Terrorism (Temporary Provisions) Act is a must.



# Funding inadequate to rehabilitate schools in Kilinochchi, says official

By T. Sittampalam

The battered walls of Kilinochchi Central College stand grim testimony to the carnage that once surged down Sri Lanka's Highway of Death – the A9. Now, in peacetime, the wind and rain eat further into the crumbling masonry, while shrubs and creepers invade the cemented floors.

Some of the structures have long since disintegrated after taking round after round of artillery bombardment. Other buildings show signs of recent rehabilitation. There is one, which is a long hall that can accommodate between 75 and 100 students at any given time. It is gaily decorated and chock-a-block with gaunt furniture that is an unmistakable part of school environments in Sri Lanka.

Despite being a Saturday, activity in the school is remarkable. Sound of classes in progress can be heard.

"These are special classes for students sitting the year five scholarship exam," a teacher explained.

The year five scholarship exam is about the only thing that is 'normal' in this setting. In 100s of schools throughout the island teachers must have been at that very moment trying to impress upon their young charges facts such as the length of the Mahaweli, or the saga of Elara and Dutugamunu.

School syllabi drawn up by the Department of Education in remote Colombo and implemented through the equally remote Provincial Ministry of Education in Trincomalee, are among the few ties that bind the lives of the children in war torn Kilinochchi with their counterparts in the rest of Sri Lanka.

Kilinochchi Central College is

among the 94 schools in the district. The number includes those in Palai as well. Of them, 50 are displaced and 37 have been relocated in Kilinochchi. Schools in Palai, an area that witnessed fighting as recently as the first quarter of 2001 during operation Agni Kheela, are yet to be rehabilitated. Kilinochchi saw the last of the Sri Lankan military in November 1999 and is therefore limping back to normality faster.

Disruption in education has taken an enormous toll on the lives of the people in the area. Displacement has dislocated families, leading to an alarming dropout rate. Second to displacement is the shortage of teachers, most of whom have either gone in search of greener pastures or to havens of safety as war snuffed out hopes of normalcy and stability.

"Teachers are a big problem here. We have 33,300 students in the Kilinochchi district and only 680 teachers of whom 400 are volun-

teers," said P. Ariyaratnam, zonal director of education.

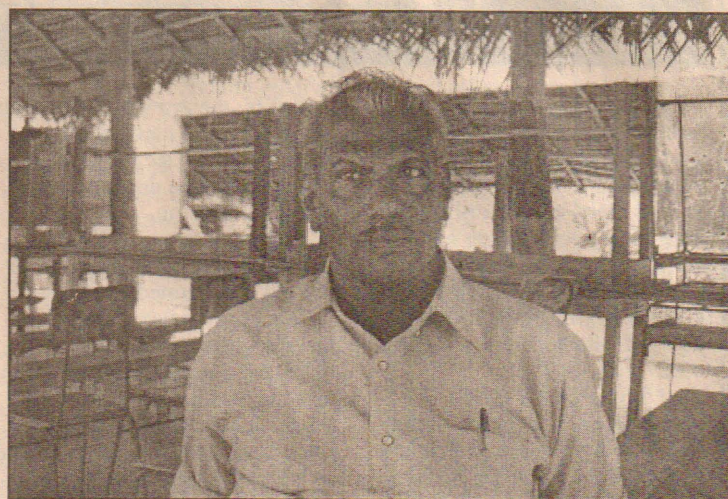
He said that 50 percent of the 400 volunteer teachers are only given a monthly stipend of Rs.500/-. Teachers who retire or are transferred out are not replaced. The shortage is most acute to teach English, followed by maths, science and aesthetics in that order. The district's teacher requirement for aesthetics alone is 128, but only six posts have been filled.

Though there is an enormous shortfall, the government has done virtually nothing to recruit new teachers, which is a phenomenon witnessed not only in Kilinochchi, but in other districts of the northeast too.

"An important reason for this is because 78 schools in the district do not have residential facilities for teachers on the premises. This makes them reluctant to serve in these areas," said Ariyaratnam.

Despite such trying conditions, 17

*"There was hardly any rehabilitation in the area prior to the Ceasefire Agreement. UNICEF disbursed monies, but not on a regular basis. Though there was much damage to buildings and other infrastructure, only temporary sheds were put up because government had banned the transport of cement into these areas," explained Ariyaratnam.*



Zonal Director of Education P. Ariyaratnam

schools offer A/Ls in the district. Though the cut-off mark for students entering universities from Kilinochchi is lower than Jaffna's in disciplines such as mathematics and science, it is higher for commerce and arts, Ariyaratnam stated.

"Though there was displacement and chaos, 72 students entered university from the district in the last batch," said Ariyaratnam proudly.

He attributes the comparatively high success rate to children being spared of entertainment and other distraction in the war-ravaged area. "The LTTE is also very strict. It does not allow loitering," he said.

An oft-heard lament is that funds voted by the government for reconstructing and rehabilitating educational infrastructure in the district, are pathetically inadequate. Unless immediate steps are taken to arrest the situation by capitalising on the fragile peace, the problems are expected to multiply.

An example is a government project to donate computers to schools teaching A/Ls. Ariyaratnam said six schools were selected in Kilinochchi for the implementation of the project.

"Of the six, four schools do not have electricity, nor do they have generators. Only two schools – Kilinochchi Central College and a school in Paranthan – are actually benefiting from this scheme," said Ariyaratnam.

Since 1996 there has not been any infrastructure development in schools of the area worth talking about. This year however, under the Provincial Special Development Grant the district will receive Rs.2.5 million. The paltriness of the sum scandalises Ariyaratnam.

"This is much too little. You can see the destruction at Kilinochchi Central College. Rupees 2.5 million will be finished by the time you repair this school, let alone others in the district," he said.

With the signing of the Ceasefire Agreement a further Rs.20 million has been promised by the government for repairing buildings and purchasing furniture. However Ariyaratnam said the scheme is yet to be finalised.

The only alternate source of fund-

ing has been from the NGOs. But here again the responses have been far from satisfactory. Ariyaratnam said that UNICEF has promised Rs.4.5 million for development. So has FORUT, the Norwegian NGO.

"There was hardly any rehabilitation in the area prior to the Ceasefire Agreement. UNICEF disbursed monies, but not on a regular basis. Though there was much damage to buildings and other infrastructure, only temporary sheds were put up because government had banned the transport of cement into these areas," explained Ariyaratnam.

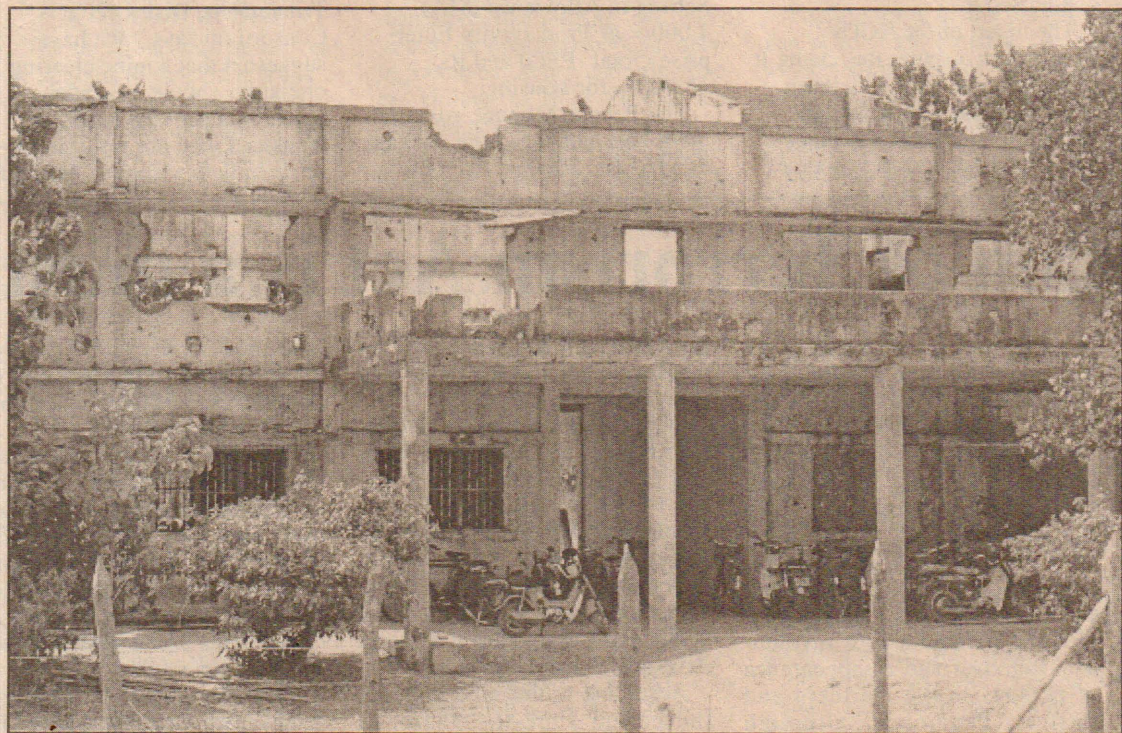
International NGOs in Kilinochchi as well as in other areas in the northeast are gearing up for new priorities in humanitarian assistance. With the Ceasefire Agreement in place they believe that their support to the conflict-ridden areas such as Kilinochchi should graduate from a relief phase to rehabilitation and reconstruction. But there are hurdles ahead.

"The LTTE does not want the NGOs to have direct dealings with the schools due to problems in financial accountability in the past. On the other hand the NGOs themselves insist that they will not go through the LTTE, but work directly with the schools," said Ariyaratnam.

It appears that the LTTE has demanded that some NGOs working in the area submit accounts of their financial dealings because it believes the cost of certain projects had been inflated artificially with nefarious ends in view.

As a compromise, all project proposals will have to be forwarded through the NGO Consortium of Kilinochchi for funding. In turn, NGOs will submit accounts to the Consortium for approval.

"There is a long way to go before education is restored to acceptable standards in Kilinochchi. We have to deal with the problem of infrastructure rebuilding followed by proper teacher recruitment. But for all that peace has to hold," said Ariyaratnam.



Central College Kilinochchi



# Flat tyre before the race?

By V.T. Thamilmaram

It is reported that very soon there will be another Amendment to the Constitution, this time to amend the 17th Amendment itself. The purpose of the proposed amendment is to make the members of the Constitutional Council (CC) of Sri Lanka be immune from judicial proceedings for their actions relating to the appointment of members to various independent commissions and the scheduled officers mentioned in Article 41C of the Constitution.

The debate over the propriety making of the Council answerable to the upper echelon of the judiciary is gaining momentum in political and legal circles.

From its very inception the CC seems to be running into stormy waters, the latest being the turbulence that has been caused by the request made by the members of the CC that they are provided with full immunity from judicial proceedings for their actions.

It is said that, having acceded to the request, the government is already armed with another amendment to the constitution.

If that is the case then it amounts to taking away the fundamental rights jurisdiction of the Supreme Court which has been to some extent an effective control mechanism in checking the excess of administrative/ executive actions.

Before we analyse the pros and cons of excluding the actions of the CC from judicial scrutiny, it is pertinent to look at certain relevant issues related to the composition, powers and functions of the CC.

Talk of creating a Constitutional Council had been in the air from the time of Peoples Alliance (PA) coming into power in 1994. After succeeding in cohabiting, for a short while, the PA government managed to pass the much expected 17th Amendment to the Constitution in October 2001.

The very term 'Constitutional Council' is by no means a strange one to any constitutional lawyer as he/she may be familiar with it in drawing parallels from the Constitution of the Fifth French Republic.

However, one cannot easily ignore the fundamental difference between the French CC and that of the Sri Lankan when it comes to their composition and the very purpose of establishing them. In Sri Lanka, the word 'Constitutional' remains a misnomer in that the CC is created not to perform any constitutional duty as the

French one does. Generally, in the constitutional parlance whether it is a Constitutional Court or Council, using the word 'Constitutional' would presuppose assigning special duties to that body in dealing with the very Constitution that has created it.

This is well so in the case of the French Constitution. Under the French system, the basic membership of the CC is nine people appointed for nine-year terms. Three of these are chosen by the president of the Republic, another three by the president of the National Assembly, and the last three by the president of the Senate (Art.56). Former

Presidents of the Republic are also members of the CC as of right.

The French CC has a number of functions. For example, it is in charge of supervising elections. If the government asks it to do so, it decides whether the President is so incapacitated that his/her powers should be exercised by the president of the Senate. But its primary duty is constitutional interpretation. More typically, the French CC is involved before a law is passed. Here, its function is not about declaring a law unconstitutional but simply relieving the Government, if it agrees with the latter of having to alter a disagreeable law by having new legislation passed and permitting it to make the changes itself.

However, in another type of situation, the French CC can declare a law unconstitutional and hence void. Under Article 61 of the Con-

*Some analysts are of the view that consulting the leaders of political parties and independent groups in parliament in nominating five members to the CC as prescribed under 41A (e) is not satisfactory since it could cast a doubt over their independence in making crucial decisions.*

stitution, any bills or standing orders may be referred to the CC by the president, the prime minister, the president of the National Assembly, the president of the Senate, or 60 deputies (MPs) or 60 senators. If the CC agrees with the challenge the bill can't be passed.

What matters here is the substantial function of the CC is constitutional interpretation. Hence the name of the institution has greater meaning in the French system. It provides some defense of liberties and helps to prevent the legislative-

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executive balance from being totally lop-sided.

In this backdrop, looking at the composition, powers and functions of the Constitutional Council created by the 17th Amendment to the Constitution of Sri Lanka makes one feel very disappointed. The borrowing of the name is nowhere matched with any real 'Constitutional' characteristics or duties of the Council.

According to Article 41A(1), the CCI is established consisting of the following members:

- (a) The Prime Minister;
- (b) The Speaker;

- (c) The Leader of the Opposition in Parliament;

- (d) One person appointed by the President of the Republic;

- (e) Five persons appointed by the President on the nomination of both the Prime Minister and the Leader of the Opposition;

- (f) One person nominated by the majority of the members of parliament from a political party or independent group other than from the ruling party and the opposition party and appointed by the President.

It is interesting to note that except the ex-officio members of the ten-member Council, all the seven members are appointed by the president and hold office for a period of three years.

Here again, the president's direct nominee (d) enjoys a special status among the seven so appointed in that this nominee can neither be removed from the Council unless he/she resigns on his/her own volition nor be prevented from being re-appointed by the president for further terms.

The other six of the seven nominees cannot be re-appointed in that capacity. Strictly speaking, the possibility of the president's nominee becoming the permanent member of the CC cannot be ruled out. This is so, because even the prime minister and the leader of the opposition may have to be replaced if the following general elections fall earlier than expected.

Some analysts are of the view that consulting the leaders of political parties and independent groups in parliament in nominating five members to the CC as prescribed under 41A (e) is not at all satisfactory since it could cast a doubt over their independence in making crucial decisions.

However, their decisions are limited to making recommendations to the president for the appointment of members to the seven independent commissions and the scheduled officers under Article 41C.

The CC under the Constitution of Sri Lanka is meant to be an advisory body to the President of the Republic on making certain key appointments.

Hitherto, all the appointments referred to in the 17th Amendment were made by the president exercising the discretionary powers of the executive presidency. Now, the President is under the legal obligation to act on the advice (recommendation) of the CC (Art.41B(1)).

Since, inter alia, the chief justice and the judges of the Supreme Court, the president and the judges of the Court of Appeal, the members of the Judicial Service Commission and the attorney-general are to be appointed by the President of the Republic on the recommendation of the CC, concerns are being expressed from various quarters as mentioned at the beginning as to availability of judicial review and invocation of fundamental rights jurisdiction of the Supreme Court.

The pertinent question at this juncture is whether the actions of

the members of the CC are subject to judicial scrutiny or not and, if so, then at what stage? Can the very people who recommend the appointments of judges to the upper echelon of the judiciary be made answerable to the same judges by way of judicial scrutiny?

Those who advocate strict adherence to the principle of constitutionism would like to argue that since no officer can be treated as superior to the constitution under which he/she derives authority to act, there is an implied legal obligation on the part of that authority to submit its actions to the judicial scrutiny for testing their constitutionality.

As the members of the CC derive their powers from the Constitution, their actions should conform to the very provisions of the Constitution which authorised them to exercise those powers. The arguments of these advocates' can be further strengthened by the fact that the basic tenets of democracy would not tolerate absolute powers at any level including that of the judiciary. Hence there is no harm in making the CC subject to the process of judicial review.

On the other hand, one may raise the issue that if members of the CC are answerable to the judiciary, particularly the Supreme Court, for certain appointments, how could they effectively and independently perform their functions?

It would be a mockery of the CC if it were to appoint a judge to the Supreme Court and the Court rules that the appointment is invalid.

Under the Constitution of Sri Lanka, the President has immunity from judicial proceedings. If again that immunity is to be extended to another set of officers then where would this finally lead to?

How do you prevent the system from adding on to the list of a super category of people who would not care about anything including, if they wish, the Constitution?

This would definitely culminate in finding answer to the question about the real nature of the functions of the CC. Are those functions going to be purely executive?

Are these members going to enjoy an equivalent status of the judges of the highest court of the land? In other words, are they really part of the executive or the judiciary?

If the proposed 18th Amendment is going to create another distinct and super group of people then we have to go a long way in the direction of constitutionalism. If that is the case, we cannot help envying the many who would be comfortably overtaking us and marching proudly in that direction.



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## Political vision needed for civil society action

The civil society action is necessary to strengthen democracy and good governance. But often in the discourses of well established NGOs, the impression is conveyed that civil society action is an end in itself.

The focus on a proactive civil society should not detract from the fact that any achievement by NGOs and social activists in the struggle for social, cultural and political rights can eventually be meaningful only when there is a political system in place that recognises them in its constitutional system and law.

The promotion of civil society action and the propagation of the idea that a proliferation of civil society groups and NGOs have the potential to distract people from addressing the fundamental issues and causes behind the problems that affect them.

Civil society action against the evil effects of the Prevention of Terrorism Act is a case in point. The work of numerous human rights NGOs and some grass level civil society groups, including journalists' groups in the Northeast, in recent years helped reduce to some degree, arbitrary arrests and detention by the armed forces. Efforts were also taken by Tamil journalists to educate people about the nature of the PTA and the Emergency Regulations.

Ultimately, all these could be nothing more than palliatives to treat the symptoms and but not the disease.

Civil society action against human rights abuses in the Northeast was circumscribed by the PTA and the Emergency Regulations.

Sadly, even the temporary suspension of the draconian law could not be brought about by 23 years of civil society action but had to wait for the political expedient underpinning the ceasefire agreement between the LTTE and Prime Minister Ranil Wickremesinghe's government.

In the absence of political vision, civil society NGOs working in conflict situations could unwittingly be drawn into the political project of oppressive states. Modern counter insurgency doctrines promote 'civil society action', largely through unilateral confidence building measures by the state and the work of NGOs, as a means of 'pacifying' conflict zones.

Towards this end, civil society NGOs in conflict situations are expected to build grassroots influence and pressure among an ideally war weary population to weaken its collective resolve to negotiate advantageously with the state. NGOs working in sensitive areas can hardly avoid such pitfalls as they are accredited to the state. Hence it is important that civil society groups working in the Northeast should have a clear vision of the fundamental issues and causes underlying the people's demand for social, political and economic rights.

The proliferation of independent civil society groups with such vision should be encouraged in the Northeast as a foundation for strengthening democracy pluralism and, above all, the will of the people.

## Political confrontation in South irks Tamils

By J. S. Tissainayagam

**L**TTTE leader Velupillai Prabhakaran's words when addressing the press conference at Kilinochchi on 10<sup>th</sup> April this year, have, due to developments in past few months, acquired almost a prophetic status.

Prabhakaran said the LTTE was pressing for an interim administration in the northeast because it would help to de-escalate the conflict and allow the rebels to participate in development programmes in the region.

But more significantly, it would also give the new UNF government, which had only legislative but not executive (presidential) powers, time to consolidate and be in a position to deliver on the peace package, the LTTE chief said.

But when you compare these words with others uttered almost eight years ago, the seer in Prabhakaran pales. He is merely repeating what has become a cliché in Sri Lanka's political discourse.

In an interview with V. Jayanth that appeared in the 21<sup>st</sup> October 1994 issue of 'Frontline', LTTE's ideologue Anton Balasingham said, "We want a stable government to resolve the problem. Chandrika Kumaratunga has to have a stable government, otherwise she will find it difficult to solve the issue."

Balasingham's interview to the Chennai-based journal came when Kumaratunga was prime minister and apparently fighting for political consolidation to push the peace process forward in a polity dominated by a UNP president cast in the mould of racism and reaction.

Today however, Kumaratunga is the ogre, while Wickremesinghe's UNF is presented as offering the best hopes of a settlement. But as Kumaratunga in 1994, Wickremesinghe too is bedevilled by an inability to achieve political stability to implement the peace process.

As Prabhakaran said in April and Balasingham eight years ago, parties in power in the legislature are incapable of delivering peace. The presidency has, due to almost untrammelled power vested in it under the constitution, including that of commander-in-chief, able to thwart the will of the party in power in parliament.

It is in this light the president vs. government confrontation being played out at present must be viewed. The motive for Kumaratunga to clash with her government could be due to one or both of the following factors.

The UNF is insecure as long as the president has power to dissolve parliament after it has been one year in office and proposes to bring in legislation to prevent this happening. She is then fighting to save her skin.

The second possibility is that Kumaratunga wants confrontation to create such chaos that the UNF will become preoccupied with the southern crisis and have neither the wherewithal nor the energy to concentrate on the peace process.

In this event, two things may very

well happen. The UNF would not be able to reduce CoL and other people-friendly measures it promised. And the JVP and PA will be ready to stoke the fires of public resentment for their own benefit when such a crisis surfaces. At the same time, the LTTE could become restive at the slow pace of the peace process and recommence war. Then once again Kumaratunga would be sitting pretty because as an active proponent of the philosophy of not compromising with the LTTE she could take the upper hand over the UNF.

Meanwhile, the UNF too has not let off the president easily, creating the atmosphere for Kumaratunga clash with it. It appears they too would be willing to delay – the prime minister has said as much – to create a trouble-free process of negotiation.

It cannot be gainsaid that the easing conditions of travel to the northeast, the suspension of the pass system in Vavunia and search operations in Colombo, a partial let up on victimising Tamils under the PTA and lifting the economic embargo are all very welcome.

But these have not been followed by any substantial work in matters that matter. Though the UNF promised economic development in the northeast, except for consumer goods being transported to towns in that region no substantial development activity is evident. It is also well known that any big-time investment of international capital, public funds, or private investment depends on long-term stability. What is more, even certain mega development projects such as leasing out the Trincomalee oil tank farm to India have definite security-related dimensions to it.

Meanwhile, the record of the government – and this is the UNF's initiative despite the president remaining the commander-in-chief of the armed forces – in discussing the Acquisition and Cross Services Agreement with the US and other matters such as requests for assistance in intelligence gathering, indicates the UNF does not repose much confidence in the peace process. Ties in defence-related matters with India and China bolster this trend.

Therefore it appears the government is consolidating itself militarily through various agreements and by entering economic agreements with strategic interests, rather than seeking political stability in order to carry on with the peace process.

If these are the UNF's priorities, confronting Kumaratunga could very

well be a tactic to delay talks till preliminary work on defence and related security matters are put in place. The sincerity of the UNF's exercise will then be questionable.

There are some who say that if there are any further delays on the part of the south, the LTTE will go to war as soon as the 2<sup>nd</sup> August deadline comes to an end. This idea is farcical when seen in the light of what the LTTE has stated the Norwegians including on not insisting the Ceasefire Agreement be implemented 100 percent before entering talks.

Moreover, the Tigers are consolidating themselves politically in the northeast and exploring avenues of generating revenue and controlling administration. They too do not seem hot on getting talks going fast and will favour disunity between president and government.

Therefore, three categories of political actors are not particularly affected by talks getting off to a delayed start. To Kumaratunga and

other ultra-right groups such as the JVP, delays would inevitably propel the country towards war, as the LTTE cannot handle long-term peace. To the UNF, it will allow economic development to take off in the south, while laying the foundations for military co-operation with other countries. For the LTTE, a long delay is not unfavourable to

put into motion its political, administrative and revenue-gathering agenda. Anyway, the Tigers are not major direct players in PA-UNF politics to change anything.

It is Tamil civilians who have been most affected by the peace process being put in limbo through southern political confrontation. It is they who cannot resettle in the high security zones or their in homes due to military presence, they who are the victims of international financial organisations who will deliver on pledges only if there is long term peace and it is their children who remain in prison, arrested under PTA.

It appears that the government and the president are quite willing to abandon the Tamils while they fight it out among themselves. But the UNF should realise that preoccupation over bickering with the president is not helping its image in the eyes of the Tamils. The Tamils have seen a variety of excuses to delay negotiations in the past 50 years and grown disgusted with them. Therefore, the UNF should either find political stability by itself, or cohabit with the president to achieve it. Only then can meaningful talks commence.

*If these are the UNF's priorities, confronting Kumaratunga could very well be a tactic to delay talks till preliminary work on defence and related security matters are put in place. The sincerity of the UNF's exercise will then be questionable.*



# Balance of forces, peace cornerstone

By D. Sivaram (Taraki)

The government of Sri Lanka and the Liberation Tigers agreed to negotiate and sign the MoU at the juncture when the offensive capability of the Sri Lankan army at optimum concentration of its 'bayonet strength' was patently circumscribed and the balance of the opposing forces in the theatres of the north and east was headed towards a balance of forces.

The Liberation Tigers entered the 'peace process' and signed the MoU despite criticism that negotiations with the GOSL mediated by Norway could entrap the movement into a well laid out strategy of containment that would ultimately and inexorably favour the Sri Lankan state.

To reinforce their point, the critics of the LTTE's decision to enter negotiations with the government argued that the Norwegians were not unaware of the SLA's preparations for launching Op. Agnikheela during the cessation of hostilities unilaterally declared and observed by the Liberation Tigers from December 24 to April 24.

The critics drew a parallel between the plight of the Palestinians consequent to the Norwegian brokered Oslo Accord and the future of the Tamil movement 'framed' by the MoU and an interim administration, both manipulated by the west to the advantage of the Sri Lankan state.

Nevertheless, the LTTE signed the MoU and agreed for negotiations on an interim council, apparently satisfied that a strategic parity of forces had been brought about in the north and east.

A brief overview of the points raised by some Tamil critics of the LTTE's engagement in the process will throw some light on the organisation's stand on the MOU, the interim administration and on eventually forging a permanent settlement.

The LTTE signed the MOU in February. The government agreed to fulfil four conditions aimed at restoring normalcy in the Northeast. It also agreed to time frames for fulfilling these conditions. The last deadline that was agreed upon in the MOU falls tomorrow on August 2.

Despite this fact, a litany of voices from many quarters began castigating the LTTE for not agreeing to start talks on substantive issues in May. There was considerable international pressure too. The British High Commissioner went as far as telling the LTTE to publicly renounce violence.

Although it was denied that the call to renounce violence directly implied demobilization, it was a clear attempt to

make the Tigers recognize the Sri Lankan state's sole right to bear arms in this country, the challenge to which is one of the cornerstones of the Tamil militant movement's ideology.

Critics of LTTE's peace policy say that the Sri Lankan government and the international system, aided in no small measure by influential opinion makers here and abroad, were trying hard to push the organisation into direct negotiations on substantive issues while overlooking the fact that there is no consensus in the south on a solution or on the structure of the interim administration.

The basis for discussing any substantive issue regarding a solution to the conflict has to be a consensus in the south. The Tamil side achieved a general consensus on fundamental issues and has already put its cards on the table. On the other hand, in the south, divisions and differences over the nature of a solution multiply by the day.

Yet, the LTTE is consistently, blamed, faulted for not going to Thailand as early as possible, the critics say.

"The LTTE should understand that Arafat was led up the same garden path," one of them said.

The PLO signed the Oslo Accord on September 13 1993. It recognized 'the right of the State of Israel to exist in peace and security,' and formally accepted U.N. Resolutions 242 and 338. The PLO renounced terrorism and promised to control Palestinians who practiced it. PLO Chief Yasser Arafat declared that clauses in the PLO Charter calling for the destruction of Israel were 'now inoperative and no longer valid.'

While the PLO recognized Israel as a nation-state, Israel was not bound under the agreement to do the same *vis a vis* the Palestinians. Israel agreed to a series of tentative deadlines for the withdrawal of its occupation forces from the Gaza Strip and Jericho.

A transitional or 'interim' period was to have begun in July 1994, with 'permanent status' negotiations to have commenced no later than July 1997. Issues to be taken up in these negotiations included "Jerusalem, refugees, settlements, security arrangements, border relations and cooperation with other neighbors, and other issues of common interest". Israel denied the possibility of an independent Palestinian state and saw nothing in the accord to prevent it from ceasing to build additional settlements in areas of the West Bank or East Jerusalem under its control.

The Declaration of Principles of the Oslo Accord was to enter into force one month after its signing.

The following articles and annexes of the Oslo Accord were key to any amicable solution to

*The notion that a strategic parity or even superiority has to be necessarily sustained until the 'legitimate aspirations of the Tamils' are realised is derived from the perception entrenched in the Tamil polity that the government would implement any constitutional scheme for regional autonomy only under overwhelming military pressure. The food drop by the Indian Air Force in Jaffna, days before President Jeyawardene agreed to sign the Indo-Lanka accord is a case in point.*

the Palestinian question.

Article IV: Jurisdiction of the Council will cover West Bank and Gaza Strip territory, except for issues that will be negotiated in the permanent status negotiations. The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period.

ARTICLE XIII: REDEPLOYMENT OF ISRAELI FORCES

After the entry into force of this Declaration of Principles, and not later than the eve of elections for the Council, a redeployment of Israeli military forces in the West Bank and the Gaza Strip will take place, in addition to withdrawal of Israeli forces carried out in accordance with Article XIV.

In redeploying its military forces, Israel will be guided by the principle that its military forces should be redeployed outside populated areas.

Further redeployments to specified locations will be gradually implemented commensurate with the assumption of responsibility for public order and internal security by the Palestinian police force pursuant to Article VIII above.

ARTICLE XIV: ISRAELI WITHDRAWAL FROM THE GAZA STRIP AND JERICHO AREA

Israel will withdraw from the Gaza Strip and Jericho area, as detailed in the protocol attached as Annex II.

ANNEX II: PROTOCOL ON WITHDRAWAL OF ISRAELI FORCES FROM THE GAZA STRIP AND JERICHO AREA

The two sides will conclude and sign within two months from the date of entry into force of this Declaration of Principles, an

agreement on the withdrawal of Israeli military forces from the Gaza Strip and Jericho area. This agreement will include comprehensive arrangements to apply in the Gaza Strip and the Jericho area subsequent to the Israeli withdrawal.

Israel will implement an accelerated and scheduled withdrawal of Israeli military forces from the Gaza Strip and Jericho area, beginning immediately with the signing of the agreement on the Gaza Strip and Jericho area and to be completed within a period not exceeding four months after the signing of this agreement.

The above agreement will include, among other things:

Arrangements for a smooth and peaceful transfer of authority from the Israeli military government and its Civil Administration to the Palestinian representatives.

Structure, powers and responsibilities of the Palestinian authority in these areas, except: external security, settlements, Israelis, foreign relations, and other mutually agreed matters.

Arrangements for the assumption of internal security and public order by the Palestinian police force consisting of police officers recruited locally and from abroad holding Jordanian passports and Palestinian documents issued by Egypt). Those who will participate in the Palestinian police force coming from abroad should be trained as police and police officers".

Citing this section of the Oslo Accord, critics of LTTE's peace policy say, "Arafat was coaxed by the west and its allies in the Middle East into accepting the interim arrangement before Israel fulfilled any of its obligations under the Oslo Accord. It gave the

Israelis' the advantage they wanted, politically and militarily. Arafat made a fool of himself and is helpless against Israel military onslaught on the people of in Palestine. The same might happen to the LTTE, given the role played by the west and Norwegians in facilitating a peace deal for the Tamils."

The Tigers patently have studied the causes that led to the Palestinian's plight today. Yet they are confident of their position in the process of negotiating peace with the government.

In drawing the Palestinian parallel, the critics of the LTTE's peace policy failed to look at two aspects. One, that the Tigers are insisting, though with a politically judicious measure of flexibility, that the government should fulfil its obligations under the MOU. Two, that the LTTE has brought about 'internally induced' balance of military power in Sri Lanka. The fact that the LTTE achieved a strategic parity on the ground by April 2001 without the patronage of a regional or global power means that the current balance of forces in Sri Lanka is internally induced.

The Tigers have, at this juncture, raised three brigade groups in the east and at least four in the north supported and reinforced by auxiliary units such as the Special Border Force. This almost equals the total bayonet strength of the eight divisions deployed fully (22, 51, 52, 55, 56) or partially (23, 21, 54) by the SLA in the north and east.

This balance of military forces sets apart the LTTE from the PLO. It is seen as the necessary condition for achieving peace.

The notion that a strategic parity or even superiority has to be necessarily sustained until the 'legitimate aspirations of the Tamils' are realised is derived from the perception entrenched in the Tamil polity that the government would implement any constitutional scheme for regional autonomy only under overwhelming military pressure. The food drop by the Indian Air Force in Jaffna, days before President Jeyawardene agreed to sign the Indo-Lanka accord is a case in point.

Underscoring the point, a senior commander of the LTTE said in a recent interview: "Neither Norway nor the GOSL would have been seriously talking about peace if we did not rout the SLA's Agnikheela Operation last year".

The leadership of the Liberation Tigers appears to be content that the MoU reflects the parity of forces described here.

It is left to the government and the opposition to ponder the international ramifications of the 'internally induced' balance of forces.



## Memories of terror fresh in their minds

# Students, parents boycott school handing over

By Shan Thavarajah

After 12 years and 11 days of occupation, the Sri Lanka Army has vacated the school buildings of the Morokottanchenai Ramakrishna Mission School (RKMV) in Batticaloa. A special function to hand over the school took place last Monday, 29th July where Major General Sunil Tennekoon, the General Officer Commanding of 23 Division, proudly said that the security forces had fulfilled the obligations in the Memorandum of Understanding between the government and the LTTE.

Is it so? Then why did students and parents of the school boycott the handing over ceremony?

The fact is that the school is still within the defence perimeter of the camp. Technically the army is correct in stating that it has vacated the school building. But it has adhered only to the letter and not the spirit of the MOU about restoring normalcy in the northeast. Tennekoon would readily agree that the primary, if not sole, duty of the army in our war-torn countryside is to create a peaceful and normal conditions for the public. The army is for the people. But the stark facts behind the handing over of the school building would reveal a murky and bloody picture.

The Morokottanchenai army camp (generally known as the Siththandy camp, about 22 kilometres north of Batticaloa) is located in the heart of the village. The military occupies as many as 47 houses, the local reading room, nursery, village council, the market and a temple there. The Station Road and the Lagoon Coast Road are still closed. The camp straddles the main road from Valaichenai to Batticaloa. Traffic is diverted through a hump-ridden detour through the western sector of the village.

Villagers who boycotted the handing over ceremony called it an "eyewash" (hoax).

Technically the armed forces have vacated eight schools in the Batticaloa district which they have occupied for more than a decade. They are: Kayankerny Saraswathy Vithiyalayam, Bt/Pillayarady Government Tamil Mixed School (GTMS), Kinnaiday Saraswathie Vithiyalayam, Kommathurai Siththivinayagar Maha

Vithiyalayam, Puthur Vigneswara Vithiyalayam, Valaiyiravu Methodist Mission Tamil Mixed School, Mandoor 13th. Colony GTMS, Kaluwanchikudy Vinayagar Vithiyalayam and Morokottanchenai RKMV.

But the truth is that only the Kayankerny Saraswathy Vithiyalayam and the Kaluwanchikudy Vinayagar Vithiyalayam were vacated completely by the armed forces.

In all the other schools, the armed forces are either next to the schools

the memory of the atrocities committed by the army and paramilitary groups of the Morokottanchenai Camp for more than a decade are still fresh in their mind.

School children have been killed, gone missing and were maimed due to the indiscriminate or deliberate actions of the soldiers encamped in the middle of the village.

On 23rd January 2000, two children, 10-year-old S. Pushpalatha, and Sinnathamby Vijeyan, 14, both students of the Morokottanchenai RKMV's makeshift premises near the

*On 23rd January 2000, two children, 10-year-old S. Pushpalatha, and Sinnathamby Vijeyan, 14, both students of the Morokottanchenai RKMV's makeshift premises near the camp, were shot dead by the army in retaliation for a grenade attack by the LTTE on a sentry point of the camp (Two civilians were also wounded in the army firing). The girl, Pushpalatha, was living close by the army camp and was often seen playing with the soldiers. Yet there was no mercy shown to the child.*

or the schools are within the defence perimeter of camps. This exposes the real thinking behind the actions of the security forces.

The schools in Valaiyiravu and Puthur are inside the Sri Lanka Air Force base near Batticaloa town. The Kinnaiady and Kommathurai schools are also within the defence perimeters of army camps.

The people of Morokottanchenai fear to send their children to the school vacated by the army because

camp, were shot dead by the army in retaliation for a grenade attack by the LTTE on a sentry point of the camp (Two civilians were also wounded in the army firing). The girl, Pushpalatha, was living close by the army camp and was often seen playing with the soldiers. Yet there was no mercy shown to the child.

Teachers at the school have often told education officials that the performance of many of their students was declining due to constant stress induced by apprehensions about being so close to a flash point that could erupt anytime.

When Eelam war II broke out in June 1990, the army had no presence in Morokottanchenai. In the later part of June, the Rapid Deployment Force of the military advanced south from Valaichenai killing many people it saw on the way before reaching Batticaloa town. The people of the village fled across the lagoon at the time to escape death at the hands of the RDF.

Then in July the army advanced north from Batticaloa town and put up camps at Sathurukkondan, Chenkalady, Morokottanchenai and Kumpurumoolai along the main road to Valaichenai.

The Morokottanchenai army



Batticaloa Brigade Commander V. R. L. Anthoniesz with an official of the ministry of education at the handing over ceremony

Camp started to function on 18th July 1990.

And from then a reign of terror was unleashed in and around the area.

The army's first action was at the Sittandy Murugan temple where thousands of people had taken refuge, fearing a massacre. On 15th August 1990 the army rounded up the temple and arrested 15 youth. All of them disappeared.

The villagers who sought refuge in the temple were rounded up again a week later on the 21st of August. This time 47 youths were taken away by the soldiers and nobody has heard about them since. All are presumed murdered.

Rani Alagaratnam, a member of the Citizens' Committee, who went to the Morokottanchenai Army Camp to inquire about the fate of the youth who were taken away from the Sittandy temple also disappeared. She too is believed to have been murdered in the camp.

Some notorious members of the paramilitary groups working with the army here have also had a direct hand in the disappearance of several persons in the village over the years. One of the most dreaded operatives among them known as Saba arrested a Grama Niladhari (village officer), Sellathurai Tharmalingham and his friend Perinpam Prabakaran, a cooperative employee in front of the public.

The two were allegedly tortured and killed by Saba in the camp.

A youth called Letchumanan, a public address system operator, also went missing in this manner.

Suruli Marimuthu, from Thihiliveddai, a village on the west coast of the lagoon, was reported missing after she was arrested by the army in Morokottanchenai.

Villagers have been harassed, beaten and terrorized often by soldiers and members of the paramilitary groups in the midst of the village.

The cold blooded decapitation of Arunasalam Santhiramohan, 20 years, on 9th August 2000 drew the world's attention to the bloody brutality to which the people were often subject.

In retaliation to an LTTE ambush

in the area, four soldiers of the camp beheaded Santhiramohan who was working in a field nearby. Another young man, a father of four was also killed. Later the army refused to release Santhiramohan's body and the head to relatives. A boy who gave evidence at his inquest said: "I heard Santhiramohan pleading with the soldiers to spare his life. He was telling them he was poor and was married to a poor girl. Then there was silence. I came out of the thicket where I was hiding after some time when it appeared that the army had left the place. I found Santhiramohan's headless body lying naked in the field. I ran to his house and told his wife that the soldiers had killed him and lopped off his head."

The people of Morokottanchenai have many such stories to tell though few are prepared to heed them.

The memories are still fresh in the mind of their minds. That's why they hesitate to send their children in to the 'lion's den'.

One cannot expect them to forget everything overnight because you want to show the world that everything is all right here and that you are abiding by the MOU.

On the other hand, it is alleged that the army is not willing to leave its barracks in the village centre because there may be a number of mass graves there. Villagers believe that the large number of persons in around the area who went missing since 1990 may be buried inside the camp premises.

If the army wants to win the hearts and minds of the people in Batticaloa it has to show in practice that it is genuinely concerned about their welfare. This is the best time to do it.

Be that as it may, the people of Morokottanchenai are now planning to stage a series of protests demanding the withdrawal of the camp from the midst of their village.

It will not augur well for the government and its efforts to find a solution to the conflict if the Tamil people have to still fight for their indisputable rights as fellow citizens of this country even in times of peace.





# 'Sri Lankan Tamils have the right of self-determination'

At the 14th Annual Convention of the Federation of Tamil Sangams of North America held on 6th July, Francis Boyle, professor of law at the University of Illinois and counsel at the War Crimes Tribunal in Bosnia delivered a lecture on 'Self-determination of the Tamils.' Excerpts from the first part of his address:

First, we must understand the Tamils in Sri Lanka have been the victims of genocide as defined by the 1948 Convention on the Prevention of Genocide.

I say that as the first person to have ever won anything from the International Court of Justice in the Hague on the basis of the Genocide Convention. Let me quote here from the relevant provision of the convention: "Genocide means any of the following acts committed with intent to destroy in whole or in part a national, ethnical, racial or religious group, as such."

Its intent to "destroy in whole or in part." As we know 65,000 people have been killed, the predominant majority of whom are Tamils and certainly that qualifies as "in part." It's not necessary for the Sinhala government to want to kill all Tamils, national and ethnical. This is an ethnic war and the Tamils are certainly covered as such under the Genocide Convention. Killing members of the group - that's very clear.

The widespread murder, disappearances, torture and rape of the Tamil people by the Sinhala government have been documented by most of the major human rights organizations in the world. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. That has clearly been the policy of the Sinhala government against the Tamil people.

Destroying their national heritage, culture, symbols, libraries, churches, temples. Inflicting on the Tamil people a genocidal economic embargo, not only in violation of the laws and the customs of warfare, but also in violation of this provision of the Genocide Convention.

Now the fact that genocide has occurred here is very important for these negotiations. When a conflict gets reduced to a point where a government attempts to inflict genocide on another race or people, it requires special remedies and protections in the event that ultimately there are going to be good faith peace negotiations on the part of the government.

I have reviewed the record of the so called negotiations the last time it was clear that under Mrs. Kumaratunga there were no really

good faith negotiations to begin with.

But at least this time the government has agreed to a ceasefire in February; very detailed, very good, well negotiated with monitors. It does appear that the Sinhala government is taking this matter more seriously than it did the last time. Of course the good faith on the part of the Tamils, the Tamil Tigers is there without a doubt.

But the fact that the Tamil people have been victims of genocide, the fact that the Sinhala government has perpetrated genocide, which is the most awesome crime imaginable in the international community today, indicates that special protections have to be built into whatever this peace settlement is going to produce.

Most human rights' treaties only protect individuals as individuals. They do not protect groups of people. The problem here is that we have seen the government of Sri Lanka sign on to almost every human rights' treaty on the books and yet when it has come to the Tamils, they have violated every human rights' treaty up to and including the Genocide Convention.

It's excellent propaganda that the government of Sri Lanka used. Not only in the third world where one might normally expect support for national liberation struggles but also in the west. Sure it looks good on paper but in practice it hasn't helped the Tamils one bit. Even more distressing, despite the fact that all these treaties, (they) have been willfully and wantonly violated by the Sinhala government.

*Most human rights' treaties only protect individuals as individuals. They do not protect groups of people. The problem here is that we have seen the government of Sri Lanka sign on to almost every human rights' treaty on the books and yet when it has come to the Tamils, they have violated every human rights' treaty up to and including the Genocide Convention.*

The Genocide Convention itself has a requirement, in Article One that all parties must act to prevent genocide and I quote: "The contracting

*Let me say what are alternatives then open to the Tamil people. They are set forth as follows: "The establishment of a sovereign and independent state or the free association or integration with an independent state or the emergence into any other political status freely determined by a people constitute the molds of implementing the right of self-determination of that people."*

parties confirm that genocide is a crime under international law which they undertake to prevent and punish." And yet no one has fulfilled their obligations under the Genocide Convention to stop the genocide against the Tamils of Sri Lanka. Because of this exterminationist mentality on the part of the Sinhala government.

Whatever happens in these negotiations must somehow protect the rights of Tamils not just as individuals mentioned in these treaties, but Tamils as an ethnical group. Tamils

have a right of self-determination.

The second point that I want to make is the Tamils as a group of people in Sri Lanka, and that is the right to self-determination under international law and practice. I want to quote from an international treaty to which the government of Sri Lanka is party, thus implicitly recognizing that the Tamils of Sri Lanka have a right of self-determination.

This is from the International Covenant on Civil and Political Rights. They are bound by their own treaty, which says quite clearly in Article One, "All peoples have the right of self-determination by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Those are rights that the Tamils have today even as recognized by the government of Sri Lanka and those are rights that must somehow be protected in these peace negotiations. Those are group rights and not just individual rights.

Since Tamils have been victims as a group, they must be protected as a group. And one of the basic rights of all that the Tamils have is this right of self-determination.

Another component of this right of self-determination, must be protected in these negotiations, and let me continue from this Article One of the International Covenant of Civil and Political Rights to which the government of Sri Lanka is a party.

"All the peoples may for their own ends freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation based upon the principle benefit and international

law. In no case may the people be deprived of its own means of subsistence."

Yet we know the Sinhala government has done everything it possibly can to deprive the Tamil people of their own means of subsistence to a level that is now constituted genocide. In violation of that provision, I quoted to you before about inflicting on a people conditions of life calculated to bring about their physical destruction in whole, or in part. Notice they are related to each other. The one must protect the other.

Since the Tamils have been victims of genocide, they must serve economic rights as well to freely dispose of their natural wealth and resources. That right should be protected in these negotiations, so the Tamil people, not the Sinhala government, control their land, their farms, their minds, their plantations and their water.

Now this also then ties into what is, or can be the outcome of these negotiations. It has been publicly reported in the news media in Sri Lanka that negotiations in part will call for the negotiation of an interim agreement, an interim administration. Now it doesn't say interim to what. According to the press, it just says an interim administration.

However, let me give you some idea of the latitude of what that might mean. I've already established that the Tamil people in Sri Lanka have a right to self-determination, even in accordance with the Sinhala's own treaty, one of the sums of the political consequences of this right of self-determination.

These are set forth in what is known as the Declaration on Principles of International Law, concerning friendly relations and cooperation among states in accordance with the UN Charter. The government of Sri Lanka approved this declaration in the United Nations General Assembly, so I am not quoting here any provision of law that they have not already approved.

Let me say what are alternatives then open to the Tamil people. They are set forth as follows: "The establishment of a sovereign and independent state or the free association or integration with an independent state or the emergence into any other political status freely determined by a people constitute the molds of implementing the right of self-determination of that people."

So again, it's not for the Sinhala government to determine what might be the ultimate outcome here. It is for the Tamil people to determine which of those options they fulfill.



# Negotiating peace at sea

*Negotiating peace at sea remains a vexed question in Sri Lanka's current efforts to settle the ethnic conflict. In this issue we publish excerpts of a case study by Vijay Sakhuja, research fellow at the Institute for Defence Studies and Analysis in New Delhi, which may illuminate issues the Sea Tigers and the navy have to grapple with to stabilise the peace process.*

**D**uring the early years of the Cold War, US maritime superiority was clearly visible at sea. American domination went unchallenged except when the US ships sailed close to Soviet waters. In such situations, the smaller Soviet navy responded aggressively. The naval build-up of the 1960s resulted in the Soviet naval fleet expanding substantially. Soviet naval ships began venturing into the Atlantic and Pacific oceans, and the Mediterranean sea.

The deployments resulted in close encounters between the American and Soviet maritime forces. The aggressive tactics that the Soviets had employed in their home waters were being tested in the open oceans of the world. Admiral Elmo Zumwalt described these encounters as "an extremely dangerous, but exhilarating, running game of chicken." The two sides harassed, interfered and tested each other's resolve to dominate an incident. There were several reported cases of close encounters between the US and Soviet maritime forces during the Cold War. Some of the incidents resulted in collision as also loss of life. The two sides were so shaken by these "incidents at sea" that they eventually began thinking about ways to prevent them.

## International Regulations for Prevention of Collision at Sea

The term "incident at sea" can be applied to any dangerous or close quarter situation that arises due to non-compliance of rules and regulations as prescribed by the 1972 International Regulations for Prevention of Collision at Sea. It can also arise due to irresponsible and irrational acts at sea by ships, aircraft, and their crew. Therefore, any act that disturbs or impedes safe navigation by a ship or aircraft almost by definition is an incident at sea. A variety of incidents take place at sea:

(a) **Dangerous Maneuvers.** A vessel passing dangerously close, crossing the bows or moving at high speed in close vicinity of another is considered un-seamanlike. Such maneuvers can result in collision and are not permitted by the regulations. It is mandatory for a vessel to make its intentions clear to the other vessel to avoid any embarrassment. The Soviet and US maritime forces had engaged in maneuvers that resulted in col-



Indian PM A.B. Vajpayee



Pakistan President P. Musharraf

*Finally, some of the harassment can also be attributed to the crew of the maritime forces. The captains of certain vessels have sometimes resorted to dangerous maneuvers to display bravado. Some would maintain course with little or no fear of collision, the basic psyche being that of "who chickens out first?"*

lisions. During 1965 to 1971, the US navy recorded 46 incidents of this type.

(b) **Restricted Maneuvers.** Vessels engaged in replenishment at sea, launch/recovery of aircraft or engaged in search and rescue missions are termed as vessels restricted in their ability to maneuver. The regulations demand that other vessels keep clear and avoid hampering operations. In November 1970, a Soviet destroyer cut across the path of the HMS Ark Royal, resulting in a collision.

(c) **Aircraft Operations.** Offensive maneuvers like passing low over a vessel, dropping sonobuoys, opening bomb bay doors, and firing tracers violate the rules for safe and peaceful navigation by vessels. Both Soviet and US aircraft have indulged in dangerous aircraft operations. In one incident in the Norwegian Sea, a Soviet TU-16 bomber aircraft crashed into the sea as it made a low pass over a US naval vessel.

(d) **Weapons and Sensors.** Aiming and training of weapons and sensors by a ship or an aircraft is a provocative act. It can also be an indication of offensive intent and has the potential of a preemptive response from the other side. Such actions have generated tension in the past. The endangered vessel may be forced to upgrade its degree of readiness and assume battle stations.

(e) **Misleading Signals.** Display of misleading signals by ships makes navigation unsafe. These could be in the form of no lights or incorrect display, leading to accidents or close quarter situations. In March 1984,

a Soviet Victor I class submarine running without lights in the Sea of Japan collided with the US carrier Kitty Hawk. Soviet vessels allege that US warships use powerful flashlights to blind personnel on the bridge. The Soviet maritime forces have been accused of firing flares at US vessels. A Soviet carrier fired flares at the USS Harold E. Holt. Three of the flares hit the frigate and one of them went past 30 feet from the captain.

## Dangerous maneuvers to display bravado

Finally, some of the harassment can also be attributed to the crew of the maritime forces. The captains of certain vessels have sometimes resorted to dangerous maneuvers to display bravado. Some would maintain course with little or no fear of collision, the basic psyche being that of "who chickens out first?"

Naval security environment in the Indian subcontinent

It is common practice for the Pakistan Navy to "shadow" and "buzz" Indian navy ships and aircraft while operating in the Arabian Sea or on passage to the Persian Gulf. However, the Indian navy too cannot be exonerated on this count. The Indian navy routinely undertakes similar activities when the Pakistan navy ships and aircraft engage in exercises or are on their passage to Southeast Asia. Both sides have remained silent for reasons of pride or ego. The "buzzing" and "formatting", as these incidents are called, have continued without an incident so far. Some of these are:

(a) In 1983, an Indian Kashin II

class destroyer nearly opened fire on a Pakistani Atlantique.

(b) In 1996, there was a near collision between a Pakistan navy SA316B Alouette III helicopter and an Indian navy Sea King, shadowing the Pakistan navy's annual Sea Spark exercise in the Arabian Sea.

(c) Pakistan navy Atlantiques and P3C Orions have been repeatedly warned off by Indian Sea Harrier V/STOL fighters scrambled from the aircraft carrier INS Virat.

(d) In August 1995, Pakistan navy Allouettes flew dangerously low over an Indian warship at anchor in the port of Tanjung Priok, Jakarta. Both the Pakistan and Indian navies had been invited to the Indonesian International Fleet Review.

## Cold War in the Arabian Sea

The present condition of bilateral relations between India and Pakistan is one of suspicion, mistrust, and hostility. A careful review of the existing military CBM agreements between India and Pakistan reveals a rather disturbing trend, except for the following.

(a) The Indian navy and the Pakistan navy will avoid holding major military maneuvers and exercises in close proximity to each other. The strategic direction of the main force being exercised will not be towards the other side and no logistic build-up is to be carried out close to it.

(b) Any exercise involving six or more ships of destroyer/frigate size and above, exercising in company or crossing into each other's Exclusive Economic Zone (EEZ) will constitute a major exercise.

(c) The schedule of major exercises will be transmitted in writing to the other side through diplomatic channels, 30 days in advance.

(d) Information on the type of exercise, the latitude and longitude of the area, the duration of exercise and the type of formations participating, is to be intimated.

(e) Naval ships and submarines are not to come closer than three nautical miles from each other so as to avoid any accident while operating in international waters.

(f) Aircraft of either country will refrain from buzzing surface units and platforms of the other country in international waters.

It is difficult to ascribe any specific reason for the absence of exhaustive naval CBMs as also detailed mechanisms for their implementation. Be that as it may, both the Pakistan navy and the Indian navy have grown in size and capabilities. Their maritime ambitions have also altered, in view of the changing world order. There is a new appreciation of the maritime environment as also the changing strategic and tactical vision of naval planners. The naval forces, both aircraft and ships, now meet more often than before. They are routinely engaged in monitoring each other's activities and come dangerously close to each other. These activities are

similar to those of the US and Soviet maritime forces during the Cold War. Both Washington and Moscow came to realise the gravity of their actions, and negotiated the Incidents at Sea Agreement (INCSEA).

## Success with INCSEA

It has been argued that the INCSEA between the United States and Soviet navies was negotiated largely due to the climate of détente that pervaded during the signing of the treaty.

David F. Winkler lists at least seven reasons that contributed to the INCSEA success story. First, both the US and the Soviet maritime forces came to realise that irresponsible and irrational actions at sea could lead to loss of life. Any inadvertent action could result in an undesirable major confrontation. Neither side could afford to lose expensive ships and aircraft. Besides, the bravado of inexperienced junior commanding officers was questionable.

Second, the agreement was simple. The entire agreement was "sailor made and tailored for sailors". It called upon commanding officers to observe the rules of the road. A ship's crew was expected to be judicious in its actions keeping in mind the other side's interests and safety.

Another important reason for the success of the agreement was that both sides conducted discussions with utmost frankness and professionalism. Any violation of the agreement was accepted and responsibility was fully shouldered. Each side was in a position to place itself in the other's shoes, and appreciate the problem. Professional naval officers were able to communicate better with each other than with officers from a sister Service. The bond among sailors comprised an important factor.

The bilateral nature of the agreement helped ensure confidentiality. It precluded political posturing to a multilateral audience. The INCSEA did not require Senate ratification. Therefore, it was possible to overcome the politicisation which had proved fatal to other agreements. The INCSEA did not receive any major press coverage and its low profile further contributed to its success. The verification and accountability of an incident during annual consultations added to a sense of responsibility. Documentary evidence was well received by the other side, and it acted as a deterrent to any similar adventure in future.

Finally, the main reasons were that both sides were interested, the agreement was simple in execution, it was created by naval officers, the atmosphere was conducive, and it lacked publicity and visibility. It had all the ingredients for verification and accountability.

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# We need truth and not TRc – and no barbecue

By Rajpal Abeynayake

**A** national Truth and Reconciliation Commission as in South Africa is being touted in many quarters as the band-aid that will bring about cathartic healing. As usual we need to import it from abroad (South Africa) — and South African whites need to be touting the Truth and Reconciliation Commission.

The truth needs to be told after there is healing. How does one do hypnosis on a patient who is still quite unconscious?

The Truth and Reconciliation Commission brought about healing in South Africa. Albeit, under vastly different circumstances. But, as usual, the Truth and Reconciliation Commission is being used here (even before such is established) to create more animus between the Sinhala and Tamil communities. There is a feeling among those who advocate the South African Truth and Reconciliation (TRc) model that the Sinhala South should be dragged kicking and screaming towards Truth and Reconciliation.

In his book 'Half A Life,' V. S. Naipaul has his main character pondering life in a London pub. "They were collecting money," he says "for the great Tamil war be-

ing fought far far away." Naipaul's character doesn't say where the great Tamil war is being fought. But he knows it was not fought in Chennai.

The great Tamil war has been made synonymous with Sri Lanka. Most Sri Lankans led half a life since that war began as well. Not the kind of half a life that Naipaul talks of, which is all about Indians growing up in England, and Africans growing up in a Portuguese colony.

The great Tamil war they say now is at an end. The word "they" is apocryphal, and therefore the half a life that most Sri Lankans seem to have led since twenty something years of fighting is — they say — at an end. Therefore, it is time for truth and reconciliation.

Alex Boraine, the Deputy Chairman of the South African TRc said "the victims and the perpetrators came to the Truth and Reconciliation Commission, and for most of them, it was like coming to meet Mandela."

But, where is the Mandela in the great Sri Lankan war? Madala advocated the Truth and Reconciliation Commission as the compromise. Vast numbers of white South Africans did not want to be clapped in jail after they agreed to the dismantling of apartheid. Therefore,

*It is first and foremost not a matter of browbeating. As it was proved, even in South Africa, it is a way out. It is a way out of a difficult situation, in which one party, which cannot be legitimately held accountable for war crimes, is let off the hook.*

they agreed to be given the cover or the partial amnesty that was being provided by the TRc.

In Sri Lanka, the majority is being dragged kicking and screaming to do Truth and Reconciliation work. Of course Truth and Reconciliation is not a matter of majorities or minorities. But it is not a matter of amnesia either.

It is first and foremost not a matter of browbeating. As it was proved, even in South Africa, it is a way out. It is a way out of a difficult situation, in which one party, which cannot be legitimately held accountable for war crimes, is let off the hook.

But, the *raison d'être* in the advocacy of the TRc in Sri Lanka, is to hoist the Sri Lankan majority

community on the hook, or on its own petard as the case may be, and to inflict maximum pain on the majority community for past sins committed. Even Mandela would say that this is not about truth, and neither is it about reconciliation.

Already it is being said that the majority is afraid about the truth, and that the majority is afraid about 1983. Even if TRc is the model for Sri Lanka, it is being advocated as a model for driving a further wedge between the two communities, with 1983 being used as the knife.

Mandela is not dead to be turning in his grave, but the new South African administration was finding it hard to square with the

truth, and even Mandela was embarrassed. When more, people were dying of AIDS in South Africa, far more than in the uprising against apartheid, Mbeki the new President was telling his people that AIDS is not caused by the HIV virus. They need to have a separate TRc about that.

We do not need TRc in that grand order. Small truths need to be told one at a time. Like the truth that AIDS is caused by a virus, called it HIV or by any other name. War should be declared against the Virus, and all those who for some reason, are concealing the weapons to fight the virus.

That's as good a catharsis as you can get. Good analogy too. If the system needs to be cleansed, can it be done, by starting a process of TRc based on untruth and mala fide intent? 1983 happened, and people need to be held accountable. But a community does not have to be barbecued for eternity for one instance of barbarity. But they have already set up the grill and bought charcoal already for the great Sinhala barbecue. It is called the Truth and Reconciliation Commission.

It is going to leave a bad taste in the mouth of Tamils, Sinhalese and Muslims of this country.

## Negotiating peace...

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As relations between the US and USSR improved, other agreements such as one to Prevent Dangerous Military Activities were reached. But the INCSEA had set the process going.

### INCSEA: A confidence builder

The INCSEA has emerged as an effective instrument for tension reduction and confidence building. The reasons for its popularity can be explained by the rising graph of the countries adopting it. No navy has any interest in endangering its men and ships. In an era of resource crunch and general trends of downsizing of forces, no nation can afford to lose maritime assets by imprudent or irrational acts at sea. Besides, no navy has any interest in initiating a conflict or disrupting the peaceful settlement of a dispute.

The US-Soviet INCSEA has now been emulated by several navies. These are not carbon copies of the 1972 agreement. Reference has been made to the Law of the Sea and various other specific adjustments have been incorporated. Some of these are: USSR and UK (1986); USSR and Germany (1988); USSR and Spain (1990); USSR and Norway (1990); USSR and Netherlands (1991), and Russia and Republic of Korea (1993).

More recently, the US and the People's Republic of China (PRC) signed the INCSEA.

Regarding China, the US did not feel the necessity of such an agreement till the encounter between the USS Kitty Hawk and Chinese Han Class SSN. The PLA navy was considered a coastal force and it was believed that it rarely sailed into the high seas. It was almost two years after the Taiwan Strait crisis that the Military Maritime Consultative Agreement was discussed, and finally signed by US Secretary of Defence and his Chinese counterpart in January 1998. This is on the same lines as the INCSEA between the US and the erstwhile Soviet Union.

### INCSEA between India and Pakistan

It is difficult to point to any specific reason for the absence of a detailed mechanism for the implementation of agreements between India and Pakistan. An Indian navy official stated, "Every time our warships enter the northern Arabian Sea, it is shadowed by either an Orion or an Atlantique. We do the same to them using our Bears, IL-38s, Dornier-228s and Sea Kings." In the Cold War, the same game was played by US Navy P3C Orions and Soviet Tu-142 Bear long-range maritime patrol aircraft.

This is not to suggest that the two

*No navy has any interest in endangering its men and ships. In an era of resource crunch and general trends of downsizing of forces, no nation can afford to lose maritime assets by imprudent or irrational acts at sea. Besides, no navy has any interest in initiating a conflict or disrupting the peaceful settlement of a dispute.*

sides have shown tolerance, but most of these incidents have gone unreported, with few diplomatic protests. It would be folly not to address the issue and prevent both sides from getting bolder, finally leading to a skirmish. Both sides have shown little or no restraint to stop these activities.

### Pakistan navy Atlantique incident

In a reckless and avoidable sortie, a Pakistan navy Atlantique violated Indian airspace and intruded into the Kutch area in Gujarat. The appearance of this slow moving long-range maritime patrol and anti-submarine warfare aircraft over land was indeed intriguing. Two MiG 21 aircraft of the Indian Air Force intercepted the Pakistani Atlantique. There was no communication between the intruder and the interceptors. The hostile manoeuvre of the Atlantique resulted in the shooting down of the aircraft.

The 1991 agreement between India and Pakistan clearly spells out that aircraft will not fly within 10 km of each other's airspace. Failure to abide by the agreement has resulted in loss of life as also maritime assets. Indian navy Sea Harrier aircraft have often intercepted and formatted Atlantique and Orion aircraft acting as snoopers. They have been firmly informed to clear the area or face a nasty situation. The downing of the Pakistan Navy aircraft can well serve as an incentive for the two navies to build on the 1972 INCSEA.

### The question of intention

Pakistan and India have in the past made positive declaratory statements to serve a conciliatory purpose. Unfortunately, these statements have failed to generate faith, and have rarely been pursued to their logical end. The result is a recurring breakdown in the conciliatory process.

There is a total absence of trust; the mistrust is reinforced by the media. The Press often criticises positive declaratory statements as being impractical, weak, confused and idealistic.

Talking about the Indian blue water naval capability, Admiral Fasih Bokhari, former chief of naval staff of the Pakistan navy, was of the view that the Pakistan army had been outflanked in the south by the Indian Navy — India was using its navy in a classical sea power role.

The 1972 US-Soviet INCSEA played an important role in reducing the number of incidents at sea between the two navies. It succeeded partly due to the fact that it was unpublicised, crafted by naval officers and there was no political interference. The implementation mechanism was simple and there was a desire on the part of the two navies to observe order at sea.

In the India-Pakistan context too, the Cold War maritime conditions prevail. The two navies shadow, format and buzz each other's maritime forces on a regular basis. It is indeed fortunate that no fatal accidents have taken place at sea but the downing of the Pakistani Atlantique is a chilling reminder of the fallout of irresponsible actions. Navies would gain considerably by adhering to agreements, and avoid losing men and material. - Strategic Analysis Vol. XXV No. 3



## “Eelam is my bedroom, Sri Lanka is my cottage...”

**V**IS Jeyapalan is one of the best-known Tamil poets of Sri Lanka. He is domiciled in Norway but prefers to spend most of his time here. Jeyapalan has always been an irrepressible social/political activist, a contemporary of many fighters of the left movement in the seventies who have faded from Sri Lanka's collective political memory, a contemporary of leaders of the Federal Party's youth movement.

Jeyapalan's observations on caste and class in Jaffna were seminal. He was the pioneer of military geography as a practical discipline in the Tamil militant movement in the mid eighties. The poet himself was a member of a Tamil militant group from 1984-86.

His book on the Muslim question in the north and east, published in 1984, provided the first insight into the emerging reality of the Muslim consciousness and its political articulations in the northeast. His book, 'The Muslim People and the National Question' was the starting point for many debates and dialogue that have enriched the Tamil movement's un-

derstanding of the Muslim question.

He has worked extensively among the Muslims and has strived to build a better understanding between communities in the east. "Eelam is my bedroom Sri Lanka is my cottage South Asia is my lane, The World is my little village," says he, quoting from a stanza from one of his long poems.

Jeyapalan is currently media advisor to the Sri Lanka Muslim Congress.

He contributed the following observations to the 'Northeastern Herald' about the Muslim question in Sri Lanka.

Poets have been the conscience of the Tamil polity from the age of the Sangam classics. I see my mission as a poet in that tradition. I am working towards promoting Muslim political interests in the northeast. And for that purpose, I am currently functioning as the Sri Lanka Muslim Congress's media advisor.

We have to approach the problem from the premise that the Northeast is the traditional homeland of the Tamils and Muslims and the 'adopted homeland' of the Sinhalese who have migrated there. In this

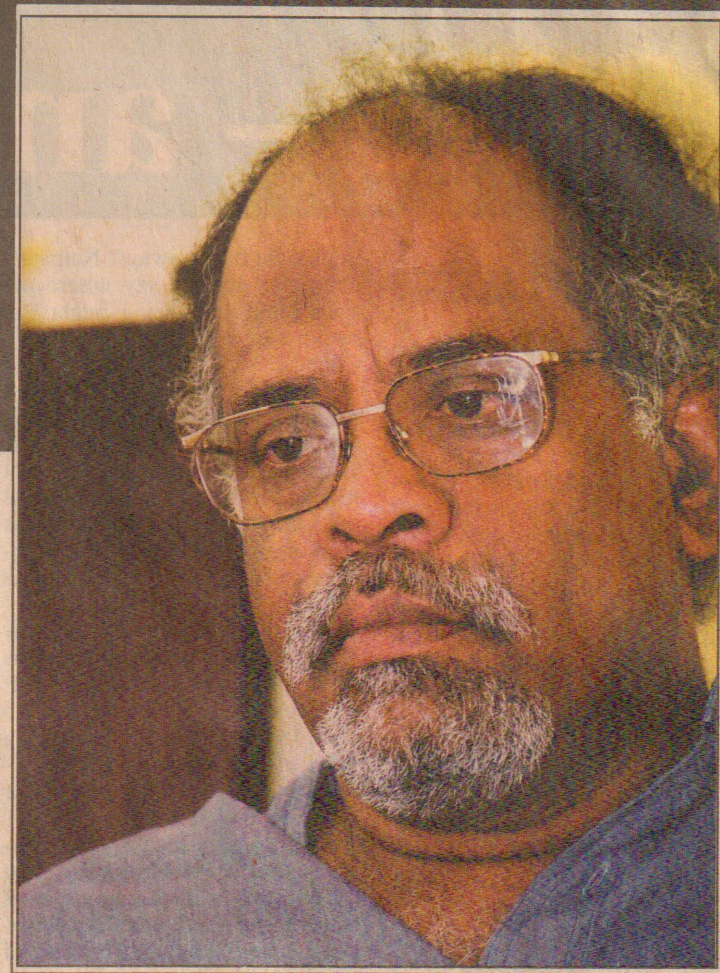
context, striving for the socio-economic and cultural development of my homeland would mean striving for the unity and prosperity of the Tamils, Muslims and Sinhalese living in my homeland.

The central problem of the Muslim question in Sri Lanka, as I see it, is that the majority of them (about 60 percent) live scattered among the Sinhalese in the south whereas it is only in the east that they have politically significant geographical concentrations of their population. This makes the Muslims of the east a politically different entity.

The Muslims and their leaders in the south considered themselves a minority despite their numerical power, because they are geographically scattered.

I argued in my book in 1984 that the Muslims of the Northeast should be accepted by the Tamils as a distinct and equal group with characteristics of a nation. This acceptance would have led to a strong unity of the Muslims and Tamils in the Northeast as a Tamil speaking people.

Ashraff grasped this reality. He recognised the distinct identity of



the Muslims of the east and united them under his leadership. Around this time, the Tamils gave up their faith in non-violent forms of struggle to achieve their rights and the Sri Lankan military entered the east. The strategy of the Sinhala establishment and the military was to deny the Tamil militants the advantages of east's geography by creating antagonism between the Tamil and Muslim communities in that

province.

Unfortunately and tragically, both the Muslims and the Tamils fell prey to this divide and rule tactic.

The question today is how can we go forward from here for the sake of our children despite the 'dirty past' for which our generation is also partly responsible.

Today the Tamils and Muslims of the east live in fear of each other. Therefore they tend to overreact to incidents and developments that may otherwise be solved amicably. This mutual fear is the main cause of instability in the east.

The Muslims in the east think that the Tamils will deny economic, political and cultural right with the help of the Tamil militants. The eastern Tamils, on the other hand, think that the Muslims, with the help of the Sri Lankan military would do the same to them. The Northern Muslims were the innocent victims of these fears.

The forces that want to destabilise the peace process and the setting up of an interim administration are exploiting the mutual fears among the Tamils and Muslims to their advantage.

In some places local Tamil militants and local Muslims leaders failed to understand this reality and overreacted to the actions of the provocateurs.

The dangerous possibility of disruptive forces inflaming the mutual mistrust between the two communities can be prevented only if the SLMC and the LTTE have a permanent dialogue.

The SLMC should go for 'broad-front' work strategy to promote a consensus among the Muslims, particularly the youth, on the peace process.



Muslims protesting after the violence in Mawanella in 2001 confronted by the RDF Pix by Buddhika Weerasinghe