

SRI LANKA: THE FAILURE OF THE PEACE PROCESS

Asia Report N°124 – 28 November 2006

International | **Crisis Group**
WORKING TO PREVENT
CONFLICT WORLDWIDE

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SRI LANKA: THE FAILURE OF THE PEACE PROCESS

EXECUTIVE SUMMARY

After four years of relative peace, Sri Lanka has again plunged into military conflict between the government and the separatist Tamil group, the Liberation Tigers of Tamil Eelam (LTTE). A 2002 ceasefire, negotiated with Norway's help, remains intact on paper but is flouted on the ground with increasing regularity and frequent brutality. More than 2,500 people, many of them civilians, have been killed since January. Human rights abuses and political killings are carried out with impunity by both sides. The humanitarian crisis in the north east is critical, with more than 200,000 fleeing their homes during the year. Until attitudes change on both sides, the immediate prospect is for worsening violence.

The 2002 ceasefire ended twenty years of conflict, in which as many as 70,000 died. But attempts to reach a political solution quickly ran into problems. Negotiations ground to a halt in mid-2003, when the LTTE suspended its participation. Talks in February and October 2006 failed to restart discussion of a political settlement, and on both sides military leaders now seem to be in the ascendancy. The initial peace deal was rushed through, with the government keen to capitalise on war-weariness among the population. Although it stopped full-scale military clashes, significant problems in the design of the process ultimately contributed to the renewal of conflict.

The peace process was exclusively focused on two parties: the government, then led by Ranil Wickremesinghe of the United National Party (UNP), and the LTTE. President Chandrika Kumaratunga and other key southern political elites were largely excluded from the process. Among Tamils, non-LTTE parties had no role; nor did the important Muslim community, which makes up some 7 per cent of the population. Much of the dynamic of the conflict is within ethnic communities, and the failure of the peace process to address this made a lasting peace more unlikely.

The process also relied too heavily on economic incentives and was undermined politically by opposition to the government's economic reform program. More significantly, neither side had a clear idea of what the endgame might look like. Although the government promised an interim administration in the north east, run by the LTTE, this did not take into account the nature of the rebel movement,

which continued to kill and silence opponents, recruit child soldiers and run the areas it controlled like a totalitarian regime. The LTTE was also unable to articulate a clear vision of its future. Its dream of a separate state – reiterated by its leader, Velupillai Prabhakaran, in his 27 November 2006 annual speech – is unacceptable to the Sinhalese, and to the major regional power, India, and its rejection of democratic methods makes its eventual transition to pluralistic politics deeply problematic.

The renewal of conflict under the administration of President Mahinda Rajapakse makes any political settlement more difficult. There is little evidence that either side can win militarily. Although the LTTE may have been weakened by internal splits and increased international pressure on its fundraising among the Tamil diaspora it remains a formidable military force, able to mount terrorist attacks throughout the island and confront government troops in conventional battles. The conflict has spawned serious human rights abuses that further undermine the goal of a peaceful settlement, and the humanitarian situation has declined markedly, with thousands of internally displaced persons (IDPs) fleeing to avoid being caught in the fighting.

The international community has a key role to play in restraining both sides and pushing for serious discussion of a political settlement. However, rather than engendering a new level of engagement, the resumed fighting has led to frustration, with some donors and key players more reluctant to become involved. Sri Lanka more than ever before needs international engagement that is critical and sustained, focusing above all on immediate human rights and humanitarian concerns but with a longer-term political view that seeks to renew a peace process taking into account the full complexity of the conflict.

This report, Crisis Group's first on Sri Lanka, describes the background to the conflict, its successive stages and the present state of play, identifying the major problems that have plagued the peace process so far. It will be followed by a series of more specifically focused reports containing recommendations.

Colombo/Brussels, 28 November 2006

SRI LANKA: THE FAILURE OF THE PEACE PROCESS

I. INTRODUCTION

The ceasefire agreed in 2002 between the government and the rebel Liberation Tigers of Tamil Eelam (LTTE) has collapsed. Since January 2006 more than 2,500 people have been killed, many of them civilians, and more than 200,000 have been displaced from their homes. As the fighting has intensified, human rights abuses have also escalated, including widespread abductions, assassinations, and massacres of civilians. The humanitarian situation in the north of the island has become acute.

Sri Lanka has been wracked by conflict for most of the past 25 years, suffering at least 100,000 violent deaths in conflicts in both the north and south.¹ Successive attempts to resolve the ethnic conflict between the Tamils, who have traditionally inhabited the northern and eastern regions, and the Sinhalese, concentrated in the central and southern regions, have been tried since the 1950s, when the new political structures of independence exacerbated tensions.² Since the mid-1980s, the state,

dominated by Sinhalese politicians unwilling to make significant concessions to minority Tamils, has faced a brutal but very effective militant movement, which seeks self-determination for the Sri Lankan Tamils. Even in its most conciliatory moments, the government has never offered more than very limited devolution. The gap between LTTE aspirations and the government remains very wide.

The two communities largely have distinct religious affiliations – the Sinhalese are predominantly Buddhist, the Tamils mainly Hindu (with a small Christian minority) – but the confrontation is based largely on ethno-political rather than religious differences, although Buddhist clergy have played a key role at times in mobilising support for Sinhalese nationalist positions. Each community is further divided along lines of caste, class and regional affiliations. Sometimes these internal divisions have proved more significant than the ethnic divide. Moves towards a political settlement have regularly been undermined by differences within each community, particularly among Sinhalese politicians.

The conflict overshadows significant problems of governance, economic inequality and criminality, and many pressing challenges to the state are overlooked because of the security situation. Poverty is widespread, although the economy has grown strongly in recent years, fuelled by a fairly vibrant private sector and workers' remittances from abroad. A strong garment manufacturing sector, shipping and services and improved agriculture have pushed growth up to 6-8 per cent a year. Nevertheless, Sri Lanka lags significantly behind countries such as Malaysia, which were roughly equivalent in development twenty years ago. Infrastructure is poor in many areas, there are pockets of very serious poverty outside the Western province (45 per cent of the population live on less than \$2 per day), and the north east has been devastated by two decades of fighting. Even if the ethnic conflict can be ended, many problems will remain: not least, post-war reconstruction will be hugely costly and take many years.

¹ Various figures are given for war-related deaths. At least 70,000 have died in the conflict in the north east; at least 30,000 died in Janatha Vimukthi Peramuna (People's Liberation Front, JVP) uprisings in the south in the 1970s and 1980s.

² The total estimated population in 2006 was 20.2 million. The ethnic composition is somewhat disputed, since there has not been a full census since 1981, at which time, out of a total population of 14.8 million, Sri Lankan Tamils were about 12.7 per cent, predominantly living in the north and east. The Sinhalese were 74 per cent. A further population of Tamils – usually referred to as Indian or Upcountry Tamils – are the descendants of workers brought by the British from India in the late nineteenth and early twentieth centuries to work on tea plantations. In 1981 they were 5.5 per cent of the population. Muslims, who are mostly Tamil speakers, but view themselves as a separate ethnic group, were 7.3 per cent. Almost the entire Burgher minority (people with mixed ancestry dating to Dutch colonial rule) emigrated in the 1950s, in response to rising Sinhalese nationalism. These figures have undoubtedly changed over a quarter century, with large-scale emigration reducing the Sri Lankan Tamil share of the population. There has also been some migration of Tamils from the north east to Colombo, Kandy and other areas. At the 2001 census around 620,000 Sri Lankan Tamils lived outside the north and east, perhaps as much as 30 per cent of the total Sri Lankan Tamil population.

There has been further migration to the more economically developed south since the 2002 ceasefire.

This first Crisis Group report on Sri Lanka outlines the background to the conflict and the present state of play. It will be followed by more narrowly focused policy reports analysing key aspects of the conflict and offering potential policy responses.³

II. WAR AND PEACE

The history of the conflict is inevitably disputed, with personal trauma and political expediency fuelling contrary historical narratives. In outline, however, it can be divided into two phases: the period of political and ethnic tensions before the 1983 anti-Tamil riots, and the full-scale conflict that has emerged since the mid-1980s.⁴

A. AFTER INDEPENDENCE

Sinhalese and Tamils have inhabited Sri Lanka since ancient times and lived largely in harmony, with ethnic differences probably less important than a strong caste system and colonial dynamics, first with the Portuguese, then the Dutch and finally the British.⁵ After independence in 1948, however, it did not take long for ethnic and social tensions to overwhelm the inadequate safeguards built into the British-designed Westminster system of parliamentary democracy. Democratic elections inevitably produced governments that tended to favour the Sinhalese majority, and the two main Sinhalese political parties – the Sri Lanka Freedom Party (SLFP) and the United National Party (UNP) – would often outbid each other in ethnic nationalist rhetoric. The arguments of Tamil parties, such as the Federal Party (which argued

⁴ Inevitably, much of Sri Lanka's modern history is highly contested, with both sides presenting their own versions. K. M. de Silva, *Reaping the Whirlwind* (New Delhi, 1998) is a good overview of the Sinhalese perspective. A. J. Wilson, *Sri Lankan Tamil Nationalism* (C. Hurst, 1988) is a useful account from a Tamil perspective. For a tendentious, but interesting account by an LTTE insider, see Adele Balasingham, *The Will to Freedom: An Inside View of Tamil Resistance* (Mitcham, 2001). There is a wide literature on the peace process. Kumar Rupesinghe, *Negotiating Peace in Sri Lanka: Efforts, Failures and Lessons*, 2 vols (Colombo, 2006) is an invaluable collection of articles. See also B. Raman, N. Sathya Moorthy, Kalpana Chittaranajan, *Sri Lanka: Peace without Process* (New Delhi, 2006). Over the last decade the reports of the Centre for Policy Alternatives (CPA) are invaluable, as are those from the University Teachers for Human Rights (Jaffna). See www.cpalanka.org and www.uthr.org. A recent multi-author work by the Asia Foundation, *Sri Lanka: Strategic Conflict Assessment 2005*, is a comprehensive overview of many aspects of the conflict. http://www.asiafoundation.org/Locations/srilanka_publication_s.html. A good journalistic account is by a correspondent for the *Hindu* newspaper, Nirupamam Subramanian, *Sri Lanka, Voices from a War Zone* (New Delhi, 2005).

⁵ It has been argued that British colonial system contributed to the ethnic tensions that emerged after independence. The British favoured Tamils in the colonial bureaucracy, and their predominant position became a source of discontent among Sinhalese.

³ Crisis Group plans to research a wide range of conflict-related issues. Initial reports will include studies of the impact of Sinhalese and Tamil politics on the conflict, the role of the Muslim community in Sri Lankan politics and the policies of the international community.

for language rights for Tamils and limited autonomy in their main areas of inhabitation), were ignored.

The first major discriminatory legislation came in 1956, when the SLFP replaced English as the official language with Sinhala, effectively excluding minorities, including many English-speaking Sinhalese and Burgher communities, as well as Tamils and Tamil-speaking Muslims. This disastrous policy triggered the first inter-ethnic riots since independence, with Tamil shops looted and burnt in Colombo after a peaceful Tamil protest was disrupted by Sinhalese nationalists.

The 1972 constitution further exacerbated the situation, changing the name of the country from Ceylon to Sri Lanka and assigning Buddhism the “foremost place” in the state. This was followed by attempts to roll back the dominant position of Tamils in state employment and education that produced a generation of educated Tamil youth with few job options. The situation was exacerbated by a move towards state socialism that sought to nationalise large parts of industry, thereby blocking any possibility for Tamils to fulfil their professional aspirations in the private sector. Government-sponsored Sinhalese colonisation of eastern areas and anti-Tamil violence in the late 1970s all contributed to further ethnic tensions.

The failure of successive governments to grant the concessions demanded by democratic Tamil parties and the frequent suppression of peaceful Tamil protests led to the emergence of small, militant ethnic nationalist groups in the Tamil cultural capital of Jaffna in the early 1970s. Both the Tamil political parties and the militants began to put forward radical demands for a separate Tamil state but more as a bargaining position than a serious proposition. Most Tamils were still ready to settle for a reasonable devolution package, giving some autonomy to the northern and eastern territories, in which Tamils were dominant. The state would not offer this because many Sinhalese nationalists believed any concessions would lead to a break up of the state. The refusal to take Tamil demands for autonomy seriously led to a deepening of the crisis and a move away from constitutional politics to violent militancy.

The militants in the north were matched by a leftist uprising in the south in 1971, led by the Janatha Vimukthi Peramuna (People’s Liberation Front, JVP), which left thousands dead in subsequent military repression. Ethnic issues aside, many of the causes of Tamil and Sinhala militancy were strikingly similar – the frustrations of unemployed youth with a failing economy and a class-ridden political system that offered no channel for their aspirations.

B. 1983 POGROM

Ethnic tensions reached a peak in the early 1980s, as sporadic clashes broke out between Tamil militant groups and the security forces. In the worst of these, in July 1983, Tamil militants murdered thirteen policemen in Jaffna. In response, Sinhalese mobs burned Tamil homes in Colombo and murdered many Tamils, while the security forces stood by. As many as 1,000 Tamils are believed to have died. This pogrom was a major shock to the country but Sinhalese-dominated governments did very little to resolve the growing crisis. Instead, the clashes of the early 1980s developed quickly into a major conflict.

Militant Tamil groups, which had been fairly marginal until 1983, quickly gained new recruits. They also benefited from training, weapons and money from India, whose involvement on the side of the Tamils was partly prompted by geopolitical concerns but also closely linked to domestic politics: its own 60-million strong Tamil population in Tamil Nadu had considerable sympathy for the Sri Lankan Tamil cause. Indian involvement and the closeness of the large Tamil community across the water has at times led to the paradox of the Sinhalese, the majority inside Sri Lanka, viewing themselves as an embattled minority in a broader region in which they are greatly outnumbered by Tamils.

Gradually one group, the LTTE, emerged from among the Tamil militants as the predominant force, led by a young militant, Vellupillai Prabhakaran, who came to prominence through a series of daring attacks on security forces and government officials.⁶ As the conflict spiralled out of control in 1987, with the armed forces pitted against the LTTE, India intervened by despatching a military force (Indian Peace Keeping Force, IPKF) to the north east of the island and forced the government to accept constitutional amendments that promised a degree of autonomy for the Tamils.⁷

⁶ The classic history of Tamil militancy is Rajan Hoole, Daya Somasundaram, K. Sriharan, Rajani Thiranagama, *The Broken Palmyra: The Tamil Crisis in Sri Lanka -- An Inside Account* (Claremont, CA, 1988). Rajani Thiranagama was murdered, probably by the LTTE, in 1990. On the LTTE, see M. R. Narayan Swamy, *Tigers of Lanka: From Boys to Guerrillas* (Colombo, 2002) and *Inside an Elusive Mind: Prabakaran* (Colombo, 2003), a profile of the LTTE leader.

⁷ This accord also made Tamil an official language alongside Sinhala and merged the northern and eastern provinces into one administrative unit. A referendum to be held in the eastern province to confirm or reject the merger has been postponed every year since 1988. In October 2006 the Supreme Court ruled the merger unconstitutional. The JVP and other

C. INDIAN INTERVENTION

The intervention was a disaster. India was soon at odds with the LTTE, a group which it had funded and trained but which turned out to be far more adept than the Indians at fighting a classic guerrilla war in the jungles of the Wanni region. If the IPKF had remained in place, it might eventually have prevailed but anti-Indian sentiment was widespread in the south and had fuelled another bloody uprising, by the leftist and Sinhalese nationalist JVP, which murdered thousands of supporters of the ruling UNP in a campaign against the accord.

President Ranasinghe Premadasa ordered the IPKF to depart; it did so in some disarray, leaving much of the territory it had controlled to the LTTE, which also captured armaments from the IPKF and its Tamil allies. Premadasa naively believed he was on the verge of a peace deal with the LTTE and in effect allied himself with the rebels to oust the Indians. However, the LTTE outsmarted the government; instead of continuing peace talks, it launched an orgy of violence against the security forces, massacring hundreds of policemen in the east, bombing political leaders in the south and killing rival Tamil leaders in both Sri Lanka and India. Soon it had taken control of most of the Jaffna peninsula as well as large tracts of territory in the north and east.

1989-1990 are still recalled as years of terror in Sri Lanka, with government troops attempting to suppress revolts on two fronts. In the south, the JVP was crushed only after a campaign that set aside almost all pretence of legality. UNP death squads killed thousands of JVP supporters. In the north and east a similarly heavy-handed approach to counter-insurgency produced a killing spree against Tamils. Not only did the government response to militancy involve mass human rights abuses, killings and “disappearances”; it also undermined much of the democratic nature of the state. Some of the criminalisation of politics that remains a serious factor in the conflict dates from this period, as well as the undermining of human rights that makes the war so dangerous for civilians.

It was during this period also that the LTTE gained its reputation as one of the world’s most ruthless terrorist groups. It began to use suicide bombers to great effect, a tactic only later adopted by radical Islamist groups. Its most notable victim, Rajiv Gandhi, the Indian prime minister who had ordered the IPKF intervention, was blown up by a suicide bomber in May 1991 at an election rally near Madras. But there were many more

killed among Sri Lanka’s military and political elite. President Premadasa himself was similarly murdered in April 1993 by a suicide bomber at an election meeting.

D. KUMARATUNGA AND THE “WAR FOR PEACE”

With the election of the charismatic Chandrika Kumaratunga as president in 1994, there was renewed hope for a settlement. Peace buses toured the country; a mass peace movement campaigned for an end to the conflict. For a short period there was a sense that she might break the mould of ethnic politics and achieve a lasting settlement. Talks began with the LTTE but soon broke down: the rebels were unwilling to discuss a political settlement until a series of untenable conditions were met. Diplomacy collapsed in acrimony when the LTTE sank two navy gunboats in April 1995.⁸

This led to a shift by Kumaratunga from a pro-peace agenda to the ineptly titled “war for peace” policy, in which military action was meant to dislodge the Tigers, while a political solution was offered to the Tamil people. Most civilians in the north east only experienced the military aspect of the policy, and Kumaratunga’s devolution proposals were overshadowed by the ongoing fighting. Although the military scored some quick victories, notably retaking Jaffna in December 1995, it soon got bogged down as the LTTE returned to its guerrilla tactics. The government reverted to media censorship to cover up military reversals and atrocities committed by the security forces against Tamils. Devolution proposals were stuck in parliament, with the Sinhalese opposition unable to rise above party politics to support them.

The LTTE also increased the frequency and intensity of its terrorist campaign in Colombo and the south. Hundreds died from a bomb explosion at the Central Bank in the capital in January 1996. In February 1998 the rebels bombed the centre of Sri Lankan Buddhism, the Temple of the Tooth in Kandy, and followed up in July 1999 by murdering Neelan Tiruchelvam, a Tamil member of parliament who supported a moderate devolution proposal. Finally the LTTE attacked President Kumaratunga herself: she escaped with serious wounds,

nationalist forces support a de-merger but it would be a major setback to a political settlement.

⁸ On the talks, see P. Rajanayagam, “Govt.-LTTE Negotiations 1994-1995: Another Lost Opportunity”, in Rupesinghe (ed.), *op cit.*, vol. 1, pp. 157-214. The LTTE view is laid out in considerable detail in Balasingham, *op. cit.*, pp. 195-339, which blames Kumaratunga’s failure to give proper respect to the “equal status” of the LTTE and the military’s intransigence and claims the peace talks were merely a cover for war preparations.

while 23 others died. The attack increased public support for her, just ahead of presidential elections in December 1999, and she scored a narrow victory marred by allegations of fraud.

In 1999 the LTTE also struck back in conventional combat, overrunning military bases in the north. In April 2000 it seized the most fortified army base in the country and regained control of the strategic Elephant Pass; as many as 1,000 government soldiers died in the fighting. The final indignity for the defence establishment came in July 2001, when, in its most audacious attack to date, an LTTE unit took over Katanayake airport near Colombo, the country's only international airport, and destroyed half the air fleet, as panic-stricken tourists looked on from the departure lounges. With the defeat of Kumaratunga's devolution proposals in parliament in 2000, in an unholy mix of political and personal passions, and the airport debacle the next year, the failure of the whole concept of a "war for peace" was complete.

III. THE PEACE PROCESS 2002-2005

It was not just the military defeats that spurred southern politicians to seek a way to end the war. The economy was in crisis, with a drop in GDP in 2001 of 1.5 per cent and the constant drain of military expenditure undermining financial stability. President Kumaratunga could no longer command a majority in parliament, and when she held fresh elections in December 2001, her SLFP party lost heavily to a newly resurgent UNP, which campaigned on a platform of a negotiated settlement. Norway had already been invited to facilitate peace talks in 2000, and Ranil Wickremesinghe, the new prime minister, began a bilateral process in which Oslo would play a key role.

There was widespread war weariness in the country, and both sides were ready for a new approach. The LTTE wanted time to regroup and try to gain some political recognition; the government wanted a breathing space in which to reinvigorate the economy. The result was a ceasefire agreement that led to the longest period of peace since the 1980s.

A. CEASEFIRE AGREEMENT

Wickremesinghe had been secretly talking to the LTTE ahead of the December 2001 parliamentary elections, and once he won, things moved quickly. By 21 December a temporary ceasefire was in place and a full ceasefire agreement (CFA) was signed on 22 February 2002. There were rapid moves towards some normalisation in the north and east; long-closed roads were reopened to civilians, goods started moving back and forth across the front lines; above all, the ceasefire ended most of the daily outbreaks of violence and the tit-for-tat killings.

The key provision was respect for existing frontlines. This left large tracts of territory in the north and east under LTTE control. The government retained control of key towns – Jaffna, Trincomalee and Batticaloa – but most of the interior in the north, known as the Wannu, and large rural areas in the east were now fixed as LTTE areas, or as the government termed them, "uncleared areas". Within these the LTTE further developed its own nascent institutions, including police, a judiciary and even a bank. But most services continued to be provided by the government, rather undermining the LTTE claim to be running a de facto state. However, government institutions in the regions under LTTE control (and in some areas ostensibly under government control) had little choice but to comply with the demands of LTTE political officers.

The ceasefire was greeted enthusiastically in Colombo. Outside the capital, however, and particularly in the east, people were far more cautious. In towns like Batticaloa the population was fearful of the provisions that allowed the LTTE to operate in government-controlled areas. Parents were worried that child recruitment would resume. Members of anti-LTTE political groups – forced to disarm under the CFA – were fearful for their lives.

Another source of opposition to the CFA was a more politically powerful group – Sinhalese nationalists, who viewed the agreement as tantamount to diplomatic recognition of the Tigers and feared it would eventually lead to a separate LTTE state. There were other Sinhalese political leaders who were critical of some aspects of the CFA but had a somewhat more nuanced view, but for the most part the Sinhalese polity waited to see what the result of peace talks would be. Among them was President Kumaratunga (she had not signed the CFA, and had been largely excluded from discussion of its provisions), who was quick to note her reservations but did not yet interfere with Wickremesinghe's policy.

The ceasefire was successful in ending most direct attacks by the LTTE or government forces on each other, at least until late 2005. A multinational monitoring force, the Sri Lanka Monitoring Mission (SLMM), was established, with some 70 personnel from Scandinavian countries based in offices around the north east. It was tasked with recording CFA violations. The agreement, which was phrased in a rather broad manner, included prohibitions on the recruitment of child soldiers (a regular LTTE practice) and on political assassinations. After a short breathing space in early 2002, however, these resumed, as the LTTE enrolled children as fighters and began a series of attacks on rivals within the Tamil community.

As had been feared by Batticaloa residents, this LTTE political offensive was particularly noticeable in the Eastern province. Under the CFA, the rebels were permitted to open political offices in government-controlled areas and travel freely there. These offices allowed free reign to the LTTE's intelligence wing to target underage recruits, as well as charge illegal taxes on business and eliminate members of other Tamil groups. A human rights group described what was happening, even before the formal ceasefire was signed:

The LTTE moved into towns to freeload from Muslim shops and to extort from Tamils and Muslim civilians alike. In areas along the main road from Valaichenai to Kallar where the LTTE's movements were hitherto inhibited, the LTTE came in and started demanding children and money to set up offices. Where the children were extremely young, the LTTE often demanded

a written declaration from the parents that they would give the first child that [came] of age – reportedly 12 years. ... Those with no children had to pay money.⁹

It was tempting for the peace negotiators to gloss over LTTE infringements. The CFA was successful in bringing some normalisation to the lives of many people in the north and east. Transport corridors, such as the main A9 road to Jaffna, were reopened for the first time in many years. Economic life began to revive in Jaffna and Trincomalee. Tourist guidebooks began to feature these “undiscovered” destinations. But there was no sign of a change in the LTTE's tactics on the ground, and on the hard, substantive political issues, there was little progress.

B. PEACE TALKS

The first peace talks were launched on 16 September 2002 in the idyllic surroundings of Sattahip in Thailand. Headed on the government side by G. L. Peiris, an erudite lawyer, and by Anton Balasingham, the sophisticated LTTE negotiator, they seem to have been fairly cordial. “It actually seemed like they had a pretty good time”, noted the Norwegian facilitator at the time. Personalities on both sides struck up unlikely friendships away from the table. However, nothing substantive was achieved, although talks began about the possibility of an interim administration in the north east, and there was some initial agreement on humanitarian cooperation.

A further round (31 October-3 November 2002) was also held in Thailand and resulted in a series of subcommittees, one of which was to examine a political solution. But this committee, clearly the key to any substantive progress, never really got going. Both sides were wary of discussing serious political issues. The government was well aware of its constraints: any settlement would require constitutional change, for which it lacked the necessary two-thirds majority in parliament. Nor did the LTTE want substantive discussion on core issues. It had maintained a consistent approach to peace negotiations, dating back to the 1994-1995 exercise, insisting that a political settlement could only be discussed after “normalisation” of the north east had been achieved. Although cloaked in rhetoric about the humanitarian needs of the people there, this meant in practice that the LTTE wanted to consolidate its political and economic control over the north east and over revenue flows before considering any political settlement.

⁹ “In the Name of ‘Peace’: Terror stalks the North-East”, University Teachers for Human Rights Jaffna (UTHR(J)), Information Bulletin no. 28, 1 February 2002.

Ideally, from the point of view of the LTTE, this approach would remove government military forces from the area or limit their effectiveness by challenging the existence of the “high-security zones” (HSZ)¹⁰ and opening up “fishing rights” – that is, free passage for LTTE vessels. Aid would be channelled to the north through LTTE-controlled structures, and business and trade would be subject to LTTE taxation. These issues became key obstacles at the talks. The government refused to shift on the HSZs, which the military claimed were essential for security purposes, and controversy over rights of passage at sea continued.

Some tentative developments on political issues finally emerged at talks in Oslo in December 2002. The LTTE and the government agreed to:

explore a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil speaking peoples, based on a federal structure within a united Sri Lanka.¹¹

This rather convoluted statement was designed to offer something to everybody, but it was seized on as evidence of a major breakthrough in LTTE thinking. In fact, there had been similar qualified statements from the LTTE before suggesting it would settle for something less than full secession.¹² LTTE negotiator Balasingham later commented that “the decision to ‘explore federal systems’ was taken out of its theoretical construction and blown up as a paradigm shift”.¹³

¹⁰ These were zones (around military bases for example) where the population had been summarily removed from their homes, ostensibly for security reasons. The LTTE demanded that the IDPs be allowed to return. The rebels rejected a compromise developed by international military experts, which would have allowed gradual return in exchange for their decommissioning some heavy weaponry.

¹¹ The website of the government peace secretariat, www.peaceinsrilanka.lk, contains the full texts of documents relating to the peace process.

¹² In his November 2002 Heroes’ Day speech, Prabhakaran stated: “We are prepared to consider favourably a political framework that offers substantial regional autonomy and self-government in our homeland on the basis of our right to internal self-determination...[but if] demand for regional self-rule is rejected we have no alternative other than to secede and form an independent state”. Cited in A. Balasingham, *War and Peace: Armed Struggle and Peace Efforts of Liberation Tigers* (Fairfax, 2004), pp. 403-404. For justification of the Oslo declaration see *ibid.*, pp. 403-408.

¹³ Balasingham, *War and Peace*, p. 464. Some analysts argue that Balasingham overstepped the mark and that the commitment to “exploring federal systems” had not been agreed with Prabhakaran. This seems unlikely, and those at the

Nevertheless, the Oslo declaration provided a potential start to more substantive negotiations, but there was little immediate follow-up, and the moment, if there was a moment, was quickly lost. Further talks in Thailand, and in Berlin (7-8 February 2003), got bogged down in the HSZ controversy. What seemed to be a notable move by the LTTE – an agreement with UNICEF to deal with the problem of child soldiers – proved unhappily shortlived.¹⁴ Talks in Hakone, Japan (18-21 March) reinforced a sense of drift. The Subcommittee on Immediate Humanitarian and Rehabilitation Needs in the North and East (SIHRN), set up to channel donor aid, was going nowhere – it had “regressed towards immobility” in Balasingham’s words.

The hope engendered by the Oslo talks was collapsing. The atmosphere around the negotiating table was breaking down as ceasefire violations (mostly by the LTTE) repeatedly fuelled arguments. Negotiations on a political settlement were not even broached. An attempt to introduce a human rights agenda at the Hakone talks was deftly deflected by both sides. Ian Martin, the former head of Amnesty International, presented a document on human rights issues and the peace process.¹⁵ Both parties postponed any action on its more substantive parts but did agree to discuss less contentious elements, such as human rights training for LTTE and government officials.

Neither side really wanted an intrusive human rights monitoring body since both had plenty to hide. The government was adept at initiating inquiries and commissions on human rights abuses that eventually withered or whose findings were ignored. The LTTE did not even bother with pretence. There was no mechanism for complaints within the areas it controlled. In the south, at least there were independent human rights groups and an occasionally critical media. The only group that consistently wrote about LTTE human rights abuses, however, did so behind a cover of secrecy, and many of its members were forced into exile by threats to their lives.¹⁶ The lack of any human rights mechanism in the process fuelled the perception that the government was pursuing a peace with few principles attached; more significantly, it ensured that when the peace process started to unravel, there were few institutional constraints on both sides’ abuses.

talks claim that the negotiators were in communication with the LTTE leadership in Sri Lanka.

¹⁴ The UNICEF-LTTE action plan has had no lasting impact on LTTE recruitment and has been criticised by some as not stringent enough on the LTTE. See “Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka”, Human Rights Watch, November 2004.

¹⁵ This document has never been published.

¹⁶ The University Teachers for Human Rights (Jaffna).

Hakone was the last round of these talks. The LTTE, rather unexpectedly, announced that it was pulling out in April 2003. Although the ostensible reason was exclusion from a Washington donors' conference, this seemed more excuse than explanation.¹⁷ More likely, there was a fear that the peace process was beginning to undermine the LTTE itself. The leadership had long feared a "peace trap": a prolonged process that seemed unlikely to reach the conclusions favoured by the LTTE was always going to sap support and begin unwanted discussion among LTTE supporters about the way forward. Now, instead of sticking to the agenda of the talks, the LTTE began making unilateral demands for a real interim administration, apparently to persuade its supporters that if the peace process were to continue, it would have to bring concrete dividends.

C. THE ISGA AND INTERIM ADMINISTRATIONS

Having failed to achieve their objectives through the initial talks, the LTTE began to demand such an interim administration as a short cut to political control of the north east and a way to break through the impasse over security issues and aid. The idea of an interim administration was at the heart of the UNP's initial peace process – it had promised such an entity in its 2001 election program but had never really thought through all the ramifications. In theory, this move towards more substantive issues could have been a major breakthrough. In the event, it ended this phase of the peace process: the government was not ready or not willing to come up with a strong proposal; the LTTE was unwilling to compromise on its goals; and the lack of face-to-face talks made it more difficult to reconcile the differences. Instead, proposals and counter-proposals were put out in the glare of Sri Lanka's media, and against an increasingly difficult political background in the south.

The government offered three possible models of an interim administration for the north east in mid-2003, largely in an attempt to bring the LTTE back to the negotiating table. These did not seem to have been the result of much intensive internal discussion and were designed more as a basis for negotiation than a final settlement. The LTTE responded in October with a more detailed proposal for an Interim Self-Governing Administration (ISGA), which would have transferred most government powers to an LTTE-dominated body

in the north east for five years, following which negotiations would decide the fate of the territory.

The ISGA was deeply problematic: it posited an LTTE-dominated government which would lay claim to all land and sea resources, included little in the way of democratic provisions and offered no space for the development of more pluralism. The five-year period would presumably end with either an independent state or at least an extreme form of confederation. Neither outcome was likely to receive support from the key regional player – India – let alone that of Sinhalese nationalists in the south.

The ISGA proposal was met with uproar by much of the Sinhalese media and political elite. At first the government seemed ready to use it as a basis for further negotiations but President Kumaratunga moved swiftly to take over three key ministries, including defence, thereby severely limiting Prime Minister Wickremesinghe's manoeuvre room. Kumaratunga claimed that the government was endangering national security by a lax approach to the LTTE, and that she was fulfilling her constitutional duty to guarantee security. Thereafter, politics was dominated by the uncomfortable relationship between a president and prime minister from different parties. Kumaratunga's exclusion from the peace process ensured that her support for the government's efforts was always limited. Finally, she dissolved parliament and called elections for April 2004.

The ISGA was never going to be accepted by Sinhalese politicians, and its introduction into the peace process effectively ended any hope that serious talks could begin on a devolution solution. There was no consensus among Sinhalese politicians around even limited autonomy for the Tamils, and the maximalist ISGA idea tended to fuel those Sinhalese political forces that argued devolution would inevitably lead to secession. It also seemed to be the LTTE's last gambit in the peace talks. Once it was rejected by the government, and President Kumaratunga had moved to reassert her constitutional powers, the LTTE adopted a more belligerent stance.

D. THE KARUNA DEFECTION

The LTTE's fear of the peace process was confirmed in dramatic fashion in March 2004, when its eastern commander, Vinayagamoorthy Muralitharan, more commonly known as Colonel Karuna, announced that he was forming a breakaway rebel faction. Karuna was a key player in the LTTE hierarchy: he had a reputation for brutality and military brilliance in equal measure and had taken part in the Thailand peace talks. There was no prior indication of disloyalty to Prabhakaran but clearly

¹⁷ The LTTE was not permitted to take part in the conference because of the ban on its activities in the U.S. It also boycotted a donor conference in Tokyo in June 2003.

tensions had been mounting for some time, against a backdrop of traditional antipathy between Northern and Eastern Tamils, and possibly differences over economic issues. However, some sources indicate the differences went deeper, to a direct rivalry with Pottu Amman, the head of the LTTE intelligence wing, for the number two spot in the hierarchy.

Whatever the real reasons for the split, Prabhakaran was in no mood to compromise. The LTTE attacked Karuna in early April; a bloody confrontation ended swiftly with Karuna withdrawing and disbanding his troops, sending hundreds of child soldiers home, and fleeing with a small group of supporters. Once Karuna was out of the way, there was some hesitation about how to deal with the situation. There was no provision in the CFA for coping with the defection of part of the LTTE. Government troops could possibly have entered Karuna-held areas, prior to the LTTE attacks, and re-established control. This might have broken the spirit of the CFA but would have been understandable in the context of Karuna's defection. Instead, with an almost audible sigh of relief, SLMM deputy head Hagrup Haukland announced: "It is clear the LTTE had regained control of the area".¹⁸

But Karuna was only temporarily defeated. His supporters gradually reasserted their influence in the east, and the continued existence of the Karuna faction became a major obstacle in the peace talks, with the LTTE insisting that the government disarm it, as demanded by the CFA.¹⁹ By 2006 Karuna's forces had become allies of the government and a key source of intelligence for its forces. His defection was an immense loss to the LTTE and boosted support among some Sinhalese leaders for a resumed military option. Paradoxically, it would probably never have happened had it not been for the peace process.

It was indeed a strange conclusion to Wickremesinghe's peace process. He lost the April 2004 elections, brought down less by the peace initiative than by the divisive nature of his economic reforms, which had favoured business and the elite much more than civil servants or the rural poor. The SLFP won back power, and a new

leader, Mahinda Rajapakse, a politician from the far south, was appointed prime minister by President Kumaratunga.

E. THE TSUNAMI INTERLUDE

In November 2004, in Prabhakaran's speech on Martyrs' day,²⁰ there were already hints of a return to war. Media articles suggested there was a new LTTE build-up of arms, and in the diaspora there were renewed fund collections for "the final war". Whether this was just rumour or not, it was sharply interrupted by the tsunami that hit Sri Lanka on 26 December 2004, killing at least 35,000 and massively damaging coastal communities.

In the immediate aftermath, there was some hope it could bring communities together and forge new alliances for reconstruction. There were heart-warming stories of the military saving Tamil lives in the north and cooperation among divided communities. But the hope was short-lived. Aid distribution, in both north and south, succumbed to the ever-corrupting influence of political patronage. The LTTE media disparaged all Sri Lankan military efforts, and in LTTE-controlled areas, its aid body, the Tamil Rehabilitation Organisation (TRO), ordered all agencies to channel assistance through it. This was politically effective: a sudden influx of international organisations, journalists and government agencies to areas the LTTE controlled and providing independent aid would have threatened its power monopoly.²¹ The government was accused of directing aid to favoured southern constituencies and away from the mostly Tamil north and east. An attempt to use the tsunami to establish a new institution for managing aid to the north east seemed promising, but the Post-Tsunami Operational Management Structure (P-TOMS), as it was called, was strongly opposed by Sinhalese nationalists, who claimed it would introduce an LTTE-controlled interim administration through the back door. The Supreme Court struck down key parts of the proposal as unconstitutional in July 2005, and it was never implemented.

¹⁸ Reuters, 13 April 2004.

¹⁹ The CFA required the government to disarm paramilitary forces in areas under its control. This applied primarily to Tamil groups such as the Eelam People's Democratic Party (EPDP) and the People's Liberation Organisation of Tamil Eelam (PLOTE), which were accused in 2006 of human rights abuses and extortion against businessmen, suggesting that they have resumed their militant activities. This clause was not designed to deal with a split in the LTTE, and Karuna argued it did not apply to his forces, which were part of the original peace agreement.

²⁰ Prabhakaran's annual speech is usually his only public pronouncement and therefore much analysed by LTTE-watchers.

²¹ The role of the TRO and the LTTE in blocking alternative aid channels and refusing assistance from the government and military is examined in some detail in UTHR(J) Bulletin no. 37, 10 January 2005. The TRO collects funds from Tamils worldwide and its rehabilitation projects are reportedly efficient but its funds are non-transparent, and some are presumed to benefit its LTTE controllers. It has been disbanded as a charity in the UK, and its activities are restricted in several other countries.

IV. UNRAVELLING OF THE PEACE PROCESS

A. THE PEACE PROCESS UNDER THE NEW REGIME

Not for the first time, the presidential election of November 2005 saw a strange alliance of interests between extremists in both ethnic camps. While the Sinhala nationalists in the JVP mounted a strong campaign to elect SLFP candidate Mahinda Rajapakse,²² the LTTE enforced a boycott of the election, depriving Rajapakse's opponent, former Prime Minister Wickremesinghe, of the Tamil vote in the north east.²³ Between the two of them, they ensured that Rajapakse won a narrow victory, effectively ending the Wickremesinghe version of the peace process.

The new government did not withdraw from the peace process, however, nor did it end Norway's role as facilitator, despite rhetoric against the CFA and Norway's role during the campaign. Instead, a new twin-track process emerged, in which a more hardline military strategy mixed uncomfortably with a political strategy attempting to build a southern alliance, develop a consensus around a political settlement and renew peace talks. But the political strategy seemed for the most part to be subordinate to the new military strategists, who were apparently convinced that a harsh counter-terrorist campaign, combined with aerial supremacy and conventional ground forces, could seriously weaken the LTTE. Thus, although the CFA was preserved and the Norwegians continued their thankless task, the Rajapakse approach to the LTTE was significantly different from his predecessor's.

The first signs of that new approach came in personnel changes in the Ministry of Defence. Former Jaffna commander Sarath Fonseka was promoted to army commander, and the president's brother, Gotabaya Rajapakse, was appointed defence secretary.²⁴ Both

were considered supporters of a more hardline military approach and to be critics of many aspects of the peace process. Alongside them, an ideologue from the nationalist JHU, former Deputy Inspector General of Police H.M.G.B. Kotakadeniya, was appointed a defence adviser. At the same time, the ministry was strengthened by incorporation of the police.

Violence broke out. First, two Tamils, who had been involved in organising LTTE events, were killed on 1 December. Then, in two LTTE attacks, on 4 and 6 December, fourteen soldiers were killed by Claymore mines in the Jaffna area. Several more attacks on security personnel were reported, with a total of 45 security personnel killed during November and December. Separate LTTE attacks on 22 and 23 December killed sixteen sailors.

The LTTE seemed intent on provoking the military into resuming the war. The army, which had been forced to show restraint in the face of LTTE provocations over the past three years, began to respond, often brutally. On 25 December 2005 unknown assassins – presumed to be linked to the state – killed Joseph Parajasingham, a parliamentarian from the pro-LTTE Tamil National Alliance (see below) in a church in Batticaloa. This was followed in January 2006 by the killings of five Tamil students on the beach in Trincomalee. A new round of extra-judicial killings had begun.²⁵ This low-intensity conflict, in which paramilitary forces, soldiers in civilian clothing and sometimes simply criminals are involved, has continued throughout the year. Its characteristics are the brutality of mutual killings, the frequency with which civilians with little apparent connection to the conflict are targeted and the routine failure of any investigations.

Despite the spate of killings and bombings, both parties agreed to talk in Geneva in February 2006, the first such meeting for almost three years. It was designed to discuss implementation of the CFA rather than core issues, and produced no new initiatives. In the run-up to the talks, the level of violence dropped markedly, presumably demonstrating that both sides had the ability to control proxies and allied forces when they wished to do so.

²² The SLFP had a formal alliance with the JVP and the Jathika Hela Urumaya (JHU), another nationalist party with strong support from some Buddhist clergy, ahead of the elections.

²³ Opinion polls suggested that Wickremesinghe would have won almost all the votes in Tamil areas. The LTTE decision to boycott the election has been interpreted variously: either it wanted Rajapakse to win, to avoid the problems of the peace process; or, more likely, it thought Wickremesinghe would win anyway but did not want to give him overt support, preferring to have nothing to do with the election, which they saw as a Sinhalese competition.

²⁴ President Rajapakse is the minister of defence.

²⁵ See "Terrorism, Counterterrorism and Challenges to Human Rights Advocacy", UTHR (J), Special Report no. 20, 1, April 2006.

B. THE RETURN TO WAR

1. Trincomalee

Events took a sharp downturn in April 2006, when ethnic violence broke out in Trincomalee, where tension had been high for many months. Trincomalee is the major port on the east coast and the main centre of the disputed Eastern Province. The town itself is fairly evenly divided among Tamils, Sinhalese and Muslims, partly as a result of earlier government encouragement of Sinhalese migration to the east.

On 12 April an LTTE bomb exploded in a crowded market killing five people, including a child. In response gangs of Sinhalese thugs rampaged through the centre of town, burning down Tamil businesses and injuring and killing Tamils in the streets. At least nineteen died. According to subsequent human rights reports, the security forces did nothing to stop the mobs for several hours.²⁶

The Trincomalee riots triggered fears of a repeat of the anti-Tamil riots of 1983 but the situation quieted rapidly, although tension has remained high among the communities. However, on 25 April an LTTE suicide bomber blew herself up at the entrance to the army headquarters in central Colombo, seriously injuring Army Commander Sarath Fonseca, and killing eleven. The attack seems to have been a cynical attempt to force the military's hand, and the air force responded with the first bombing since 2001 on the disputed region of Sampoor in the east.

2. Mavil Aru

Covert killings continued on both sides during May and June, while military activity remained relatively restrained.²⁷ However, a decision by the LTTE in late July to turn off water from a sluice gate at Mavil Aru in the Eastern province started a new phase of the conflict

²⁶ It is not clear how much organisation there was behind the riots. International officials claimed they fitted a pattern of ethnic tension: "They are organised in gangs. When a Tamil is killed, it's just seen as part of everyday life. When a Sinhalese is killed, that's when you get trouble. You can expect gangs on the streets, houses being burned", Crisis Group interview, September 2006. The human rights group UTHR(J) concludes that "it was with the active involvement and encouragement of the security forces that the violence became a major communal outburst". "When Indignation is Past and the Dust Settles - Reckoning Incompatible Agendas", Special Report no. 21, 15 May 2006.

²⁷ In June 2006 both sides agreed to meet for procedural talks in Oslo but once the delegations had arrived the LTTE refused to talk with the government representatives.

and led to all-out clashes. It is not clear why the LTTE decided to turn off the water: it claimed this was a popular protest against the lack of water for Tamil farmers in the region. It may have been a local decision that backfired. It seems unlikely that the rebels expected the all-out military offensive that ensued, as the government sought to take control of the sluice gate. When the SLMM intervened and seemed close to a deal to reopen the gates, government forces bombed the area on 5 August, apparently nearly hitting Ulf Henricsson, the head of the monitoring mission. The LTTE responded with a counter-attack on government-controlled, mostly Muslim, Mutur. It took control of that nearby town for several days but was eventually forced out in fighting during which almost the entire population fled.

This was now full-scale war, with both sides using artillery and the government making full use of its air monopoly. There seemed to be little effort to avoid civilian casualties but what caught wider attention was an atrocity in Mutur, where seventeen local employees of the French aid organisation, Action contre le faim (ACF), were shot, apparently at point-blank range. The government blamed the LTTE but the SLMM blamed government forces. At the same time, there were rumours that the LTTE had murdered 100 Muslims; this seems to have been an exaggeration, although there is evidence of some killings and signs that the LTTE was intending to abduct or kill other Muslim residents.²⁸

3. Sampoor/Jaffna

The reopening of the Mavil Aru sluice gates and the recapture of Mutur did not end the military clashes. On 11 August 2006, the LTTE counter-attacked on the Jaffna peninsula, breaking through government lines from land and sea. Bitter fighting caused closure of the main A9 road between Jaffna and Colombo, in effect leaving the Jaffna population stranded. LTTE artillery attacked Palaly airbase in Jaffna, leading to the suspension of flights from Colombo. After two weeks of fighting, government forces turned back the offensive, but with hundreds killed on both sides. After all the fighting, the front line had only changed by a few hundred metres.

The LTTE's Jaffna offensive brought a serious worsening of the humanitarian situation. Jaffna was cut off by land and air and became reliant on ships from Trincomalee for food. The LTTE refused to guarantee security for shipping or aircraft and tried to force the government to reopen the A9 highway. The government refused, citing security concerns and the illegal taxation

²⁸ See "Hubris and Humanitarian Catastrophe", UTJR (J), Special Report no. 22, 15 August 2006.

on vehicles collected by the LTTE. The closure of the A9 made access to LTTE-controlled areas difficult for NGOs and international aid organisations. Government demands for more stringent registration of expatriate workers, new restrictions on humanitarian access to zones of conflict and frequent press attacks on NGOs created a difficult environment for many humanitarian organisations. The killings of the ACF workers and other attacks on local staff employed by NGOs raised serious concerns about security, and some withdrew many staff to Colombo.

A government offensive in late August aimed to take control of the Sampoor region in the east that had suffered aerial bombardment as far back as April. The area was strategically important because the LTTE was able to target Trincomalee harbour from it and thus threaten one of Jaffna's key supply routes (troops were deployed mainly by ship on the Trincomalee-Jaffna route). Government forces seized control of Sampoor town in early September in the first real change of territorial control since the ceasefire. Its capture was greeted jubilantly in the Sinhalese media but the ease of the operation suggested the LTTE was merely holding back.

4. The failure of the military option

An uneasy stalemate developed in late September that few expected to last. The military command seemed ready to continue fighting, and there was no indication the LTTE was prepared to make any concessions, on either humanitarian issues or a political settlement. The military still seemed intent on retaking LTTE-controlled areas in the Jaffna peninsula and clearing much of the east.

The futility of this policy was clearly demonstrated in October. Norway had persuaded both sides to attend peace talks in late October in Switzerland. Some sources suggest hardliners in the military only agreed on condition they could continue offensive action in the run-up.²⁹ Commentators claimed that the government would like to have entered the talks with a significant military victory, probably the recapture of Elephant Pass.

On 11 October the military began an offensive in the east of the Jaffna peninsula, which ended swiftly and disastrously, with at least 133 troops killed and over 200 wounded during a day of intense fighting.³⁰ Media reports suggested the army may have attacked despite

misgivings from senior officers and possibly without the knowledge of senior politicians.³¹ This setback was followed by two LTTE attacks. On 16 October a suicide bomber struck a bus full of naval personnel in Habarana, in the north central province. At least 100 were killed, and many more – including civilians – were injured. The second attack, against naval vessels in the south, came on 18 October, when LTTE boats entered Galle harbour. Although the navy successfully repulsed it and inflicted heavy casualties in a short fire-fight, it clearly demonstrated LTTE intentions to mount operations throughout the island. The Dutch fort at Galle is a major tourist attraction in the south, and the attack may further undermine the fragile tourist industry.

These setbacks seriously challenged some of the wishful thinking in government about a new military superiority. The LTTE had proved convincingly that it could still defend territory against conventional attack, and do significant damage in the south.

²⁹ Crisis Group interviews, Colombo, October 2006.

³⁰ See D. B. S. Jeyaraj, "October 11th - Actually What Happened in Northern Battle Field?", available at www.lankaenews.com 15 October 2006.

³¹ Iqbal Athas, "Muhamalai debacle: The Shocking Story", *Sunday Times* (Colombo), 15 October 2006, p. 11.

V. PROBLEMS OF THE PEACE PROCESS

The renewal of war in 2006 suggested to some that the peace process was always destined to fail, or that its flaws had precipitated the subsequent outbreak of fighting. There were fundamental problems with the design of the process but the politics of both sides made any other deal difficult in 2001. The problems that the process encountered would probably have dogged any attempt to end the violence. However, it is worth assessing those problems, since any renewed attempt to achieve a settlement will have to take them into account.

Some were specific to the UNP government in 2002-04. Its economic reform program and the accompanying donor activities around the peace process were supposed to lead to a peace dividend that would engender widespread support for a settlement. In reality, the stress on economic development may have done more harm than good. Certainly, the promise of funds for the north east had no impact on the LTTE's willingness to compromise on political issues, and the government's controversial package hit key constituencies hard, cutting subsidies to rural voters and civil servants and thus undermining support at a key moment in the peace process and probably costing the UNP the 2004 election.

Prime Minister Wickremesinghe had to contend with an unprecedented problem of cohabitation: difficult personal relations with a president from the opposing party. Wickremesinghe seems to have done little to bring President Kumaratunga into the peace process; her exclusion was a major reason for the breakdown in the process in late 2004. This political dispute seriously limited government flexibility at key points and raised questions about its ability to deliver any promised solution.

Other criticisms relate to core problems of the conflict and remain relevant although the political context has changed significantly.

A. INCOMPLETE PARTICIPATION

For the most part, the 2002 peace process consisted of discussions in hotels abroad between small groups of men from only two of the parties to the conflict. There was little transparency and no place for other affected communities – Muslims, non-LTTE Tamils, other Sinhalese parties. A closed process was designed to allow both parties space to develop compromises away from the constant scrutiny of the media. A bilateral process was demanded by the LTTE (which viewed

itself as sole representative of the Tamils) and also avoided some complexity.

However, the conflict is as much about tensions within the different ethnic communities as between them.³² While it was inevitable that the CFA would have to be signed between the two parties who could control the fighting, the much broader peace process was unlikely to be successful if it was conducted only as a narrow bilateral arrangement.

Neither side was interested in broadening the process in this way. The government saw an attempt at consensus-building in the south as a distraction that would scupper the peace process. "All this talk of consensus", said a leading member of Wickremesinghe's team, "it leads nowhere. You have to decide what you want to do, and just do it".³³ The LTTE refused to negotiate unless it was accepted as the sole voice for the Tamil people. However, whatever the politics, it was also clear that no peace process could be successful in the long run unless the intra-Tamil conflict and the tensions and fractures within the Sinhalese polity were also addressed.

1. Divisions within the Tamil community

For Tamil minority parties and individuals opposed to the LTTE, the CFA was in some ways a major blow. Not only had the LTTE achieved considerable diplomatic recognition (including in some aspects, its long-sought parity with the government), but more significantly in the short term, it was free to travel and do political work in government-controlled areas, what it viewed as its de facto state was to some extent formalised and non-LTTE Tamil groups were even more marginalised and at personal risk than before.

LTTE attempts to co-opt or physically liquidate its opponents within the Tamil community date back to the 1980s. The rapprochement with President Premadasa allowed it to round up hundreds of opponents and assert its supremacy in the Tamil liberation movement. It continued with high profile murders of rival Tamils throughout the 1990s. The movement failed to develop a serious political wing, and the mentality of the leadership remained focused on military realities.

Ahead of the December 2001 parliamentary elections, the LTTE attempted to present a broader front by creating the Tamil National Alliance (TNA), which consisted of traditional Tamil parliamentary parties,

³² On this, see inter alia, Kenneth Bush, *The Intra-Group Dimensions of Ethnic Conflict in Sri Lanka* (Palgrave Macmillan, 2003).

³³ Crisis Group interview, September 2006.

such as the Tamil United Liberation Front (TULF), and former militant organisations that had in effect merged with the LTTE, such as the Eelam People's Revolutionary Front (EPRLF-Suresh) and the Tamil Eelam Liberation Organisation (TELO). Far from a move towards more democratic accountability, the creation of the TNA seemed to represent a further closing of Tamil political space. The TNA campaigned on the basis of the LTTE being the sole representative of Tamils and has maintained a slavishly pro-LTTE line. Many in the TULF were believed to be unhappy but few were brave enough to oppose the LTTE. Only TULF President Veerasingham Anandasangaree remained outside the TNA. He continues to be highly critical of the LTTE.

Other Tamil groups, such as the Eelam People's Democratic Party (EPDP), are fiercely anti-LTTE and work largely in concert with the government. To their number has since been added the Tamileela Makkal Viduthalai Puligal (TMVP), the political party created by former LTTE commander Karuna. This abundance of acronyms demonstrates the multiple divisions within Tamil society but hardly covers the opinions of ordinary Tamils, many of whom have little sympathy for any of the militant groups, whether pro- or anti-government.

During the peace process, scores of Tamil opponents of the LTTE were murdered. High-profile cases included former Foreign Minister Lakshman Kadirgamar, in August 2005, and Kethesh Loganathan, deputy head of the government peace secretariat and a veteran Tamil nationalist and peace activist, in August 2006. Both were trenchant critics of the LTTE and the kind of leaders Tamil society will need if it ever emerges from the present conflict.

The political killings and other violence were accompanied by an increase in other illegal LTTE activities, ranging from extortion through subverting government funds to child conscription. Widespread fear ensured that complaints were seldom made. LTTE rituals, such as its Pongu Tamil festivals in which people are roused to mass hysteria in support of the Tamil cause, have been an emotive way of attracting young people in particular.

Critics of the peace process have suggested that many of the LTTE political killings and suppression of alternative Tamil political groups were deliberately overlooked by the then government and the Norwegians. This may be somewhat unfair – certainly SLMM offices were frequently able to intervene when complaints were made against the LTTE. But many people were afraid to complain, knowing that the SLMM would not be able to defend them. And overall there does seem to have been something of a blind eye to LTTE excesses. “Don't rock

the peace boat”, was the slogan of the day. The SLMM claimed that civilian killings were not part of its mandate, and the government hardly commented on the growing impunity with which the LTTE suppressed all opposition within the Tamil community.

The bilateral nature of the process was the only way to get the LTTE to take part in talks but some element of pluralism in the Tamil polity needs to be recognised and encouraged. LTTE violence during the peace process made it difficult for non-LTTE Tamil groups to move away from paramilitary activity and engage exclusively in democratic politics. Tamil democrats have also had little opportunity to speak in favour of both peace and a democratic solution. Eventually, such groups must be part of a process of reconciliation within the Tamil polity. Otherwise, the only outcome of a political settlement with the LTTE might be violent reprisals among rival Tamil parties or the development of a semi-totalitarian regime in the north east.

2. Divisions in the Sinhalese community

The LTTE has attempted to overcome the divisions in the Tamil community through repression. Among Sinhalese politicians, on the other hand, the divisions are formalised and accentuated by a highly pluralist, but often dysfunctional democratic system. Attempts to produce a consensus for a political settlement have always been undermined by political differences among the southern parties.

Southern politics has been dominated since 1948 by the two main parties, the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP). They have rotated fairly regularly in power, and at several key points in Sri Lanka's political history, their political differences have ended attempts by government to produce a workable solution to the crisis. Mistrust and personal divisions remain deep-seated and account for political dynamics more than any significant policy differences.

These political dynamics were accentuated during 2002-04 because the president and prime minister were from different parties and had a strained personal relationship. According to government negotiator G. L. Peiris, “... the power play in Colombo, which was the product of the acrimony between the two political parties, debilitated the peace process to such an extent that any realistic progress was virtually impossible”.³⁴

The inability of the two main parties to work together ensures a role for smaller parties. Some, such as the

³⁴ Interview with *the Hindu*, reprinted in *Daily Mirror* (Colombo), 10 October 2006, p.A9.

Ceylon Workers' Congress (CWC) – representing Upcountry Tamils – and the Sri Lankan Muslim Congress (SLMC), have played a moderate part in government; others, notably the JVP and the JHU, have taken up extreme stances, characterised by xenophobia and a militaristic approach to the ethnic conflict.

These Sinhalese nationalist parties gain only about 10-12 per cent of votes at elections, and opinion polls suggest a large majority of the population (among all ethnic groups) favours a negotiated end to the conflict. Nevertheless, the views of the extremists are important because of the failure of the main parties to agree on even a limited peace agenda, particularly devolution of power in a highly centralised, multi-ethnic, multi-regional state.

It is not just its role in close parliamentary elections that makes the JVP a force to be reckoned with. It is reputed to have expanded its influence within the armed forces; columnists and editors who share many of its views on the conflict seem to dominate much of the media. The party is also far more adept at whipping up public opinion than any other, using poster campaigns, political meetings and the media. Its apparent influence on the ideology of the present administration – through close personal ties and an occasionally difficult alliance – has created the impression among the Tamil and Muslim minorities that the government agenda is influenced far too heavily by Sinhalese nationalist forces.

Some hope of an elusive consensus was raised in 2006, first through an All-Party Conference (APC), which was designed to bring forward a political settlement package, and secondly by an unprecedented agreement between the ruling SLFP and the opposition UNP. Signed in October 2006, it provided for cooperation on a range of key political and economic issues, which began to sideline the JVP and offered a chance to break through the fractious politics that had undermined previous peace initiatives. However, history and party politics suggest that any such agreement will always be vulnerable to changing political fortunes.

The APC has so far not produced any proposals. Although some close to it suggest a consensus is beginning to emerge, the danger is that it would be around a lowest common denominator and not address the really substantive political issues. The process has seemed slow and faltering, and any failure to produce a serious proposal will encourage those who suggest the government is not capable of delivering a real political solution. "They say we can't be trusted, that we've failed to

deliver too many times", says a former government negotiator. "And I have to admit, they are right".³⁵

3. Exclusion of the Muslim community

Muslims have a bitter joke about their role in the conflict: "It's like a football match. One side is the LTTE, the other is the government. We Muslims are the football". The Muslim factor was missing from much of the peace process, and only lately have their concerns been recognised as central to a political solution.³⁶ Although Muslims form only 7 per cent of the national population, they are more than one third of the inhabitants of the disputed Eastern Province and thus will be a key constituency in any final settlement.

Muslims have plenty to complain about. In August 1990 LTTE fighters entered two mosques in Kattankudy, near Batticaloa, and killed more than 100 men at prayer. On 30 October 1990, some 28,000 Muslims in Jaffna were given two hours to leave their homes and expelled from the north, allowed to take only 150 rupees [\$1.50] and one set of clothes with them. As many as 85,000 Muslims were expelled from northern areas controlled by the LTTE in October 1990; most remain refugees.³⁷ The LTTE has never apologised or paid compensation for this ethnic cleansing.³⁸

³⁵ Crisis Group interview, Colombo, September 2006.

³⁶ There has been insufficient research on the role of Muslim communities in Sri Lankan politics. Vellaithamby Ameerdeen, *Ethnic Politics of Muslims in Sri Lanka* (Kandy, 2006) provides a much needed overview of the rise of Muslim nationalism; another useful contribution is M. I. M. Mohideen, "Sri Lanka Peace Process and the Muslim Question", in Rupesinghe (ed.), Vol. 2, op. cit., pp.313-337.

³⁷ D. B. S. Jeyaraj, "Fifteenth Anniversary of Expulsion of Muslims from Jaffna", *Uthayam*, 30 October 2005, available at http://www.uthayam.net/articles/oct30_2005html_2.htm, suggests up to 2,000 Muslims returned to Jaffna after 2002. But most have not gone back, either because their prospects are better in their new areas or they remain concerned about their security.

³⁸ Anton Balasingham reportedly called the expulsions a "political blunder", but this has been the extent of LTTE apologies. A number of pro-LTTE websites contain the rather chilling comment that "Islam... is not being practised presently, as the Muslims have been asked to leave the Tamil Eelam territory until the independence of Tamil Eelam". See <http://www.eelamweb.com>. This incident has been largely ignored internationally, and to some extent domestically. A Muslim academic writes: "Muslim activists have constantly argued for stronger language through which to address both the LTTE atrocities committed against Muslims and the one event of ethnic cleansing that occurred during the conflict – the expulsion of northern Muslims from 5 districts in the Northern Province in 1990. To date, this event does not have the recognition and status

There have been regular clashes in the east between Tamils and Muslims, particularly over LTTE attempts since the 2002 ceasefire to establish control over Muslim communities in the east and tax their business activities. In 2003 these tensions escalated again despite an agreement signed the previous year between Prabhakaran and the Sri Lankan Muslim Congress (SLMC) leader, Rauf Hakeem, which was supposed to end this taxation and return Muslim lands.³⁹ The difficult position of the Muslim communities, particularly in the east, has led some activists to argue for them to arm to defend themselves. Some suggest that armed units exist and operate alongside the government against the LTTE, but there is no clear evidence. There have also been reports of radical youth groups adopting jihadi ideas in some areas in the east, but again there is little reliable research. Certainly there have been disputes over religious practice: in the town of Kattankudy there have been regular reports of clashes between followers of Saudi-inspired Wahhabi teachings and of Sufi-leaning local clergy.

Most Muslims in the east fear they would be oppressed by an LTTE-controlled government or administration. Hence their concern at the progress of the CFA and the peace process, which appeared to ignore many of their concerns, despite Hakeem's inclusion in the government negotiating team. The SLMC has often been divided, and the broader Muslim community has failed to unite behind workable political proposals. A Muslim Peace Secretariat has been established, to provide more formal participation in the peace process. It too has been riven by factionalism, but in 2006 it did set out proposals for Muslim autonomous areas in the east.

Integrating a divided Muslim community into a narrow, bilateral peace process was always going to be difficult. Launching a process that included all parties, in both the south and north, was even more problematic. Attempting to deal with conflicts among Tamil political groups would have ensured LTTE refusal to negotiate; similar attempts to negotiate among Sinhalese parties and players would have probably derailed the process completely. Thus the bilateral process staggered forward, handicapped by its limitations but at least supported by international goodwill and rewarded by a rapid improvement in many aspects of life for ordinary people in the north and east.

of truth that say, July 1983, the burning of the Jaffna public library, the LTTE suicide bombings in Colombo or the plight of the border villages has had on both the Sinhala and Tamil psyches". Farzana Haniffa, "In the Pursuit of Democracy in Post-Colonial Sri Lanka: Local Human Rights Approaches to Transitional Justice", International Centre for Transitional Justice (ICTJ), 2006, pp.70, fn.52.

³⁹ Text published in Ameerdeen, op. cit., pp.251-252.

But the concerns of all these groups somehow need to be taken into account if a lasting peace is to be found.

B. LACK OF STRUCTURAL REFORM

A major failing of the peace process was the inability of the government to begin to address some of the root causes of the conflict. This would have involved a broad range of measures, from language politics to reforming the security forces, that would have set the stage for a real deepening of the peace process as well as a reform of the Sri Lankan state that would have benefited all citizens. The focus on issues of autonomy for the north and east, while necessary, leaves the problems of the more than 600,000 Sri Lankan Tamils who do not live in those regions, let alone the issues of up-country Tamils or of the Muslim community, unaddressed.

Issues such as language rights remain deeply problematic for many minorities.⁴⁰ The most critical problems come in the north east, where security forces are almost all Sinhalese-speakers, and the vast majority of the population is monolingual in Tamil. Among the middle classes, English is an intermediary language, but since 1956 nationalist education policy has undermined its teaching in many areas, and knowledge is not widespread enough to enable it to act as a medium of communication between the Tamils and Sinhalese. While little was done in 2002-2005 to rectify the problem, there is some hope that the new government will begin to make headway.⁴¹

The other area left largely untouched has been the security forces. There was little consultation with the

⁴⁰ Although there is legal parity between the Sinhala and Tamil languages, in practice it is hard to find a Tamil-speaker in most public services. This is most telling in the security forces, which has few Tamil-speakers but considerable interaction with local populations. For examples of the problems faced by Tamil-speakers in many state institutions, see "Language Discrimination to Language Equality", Foundation for Coexistence, June 2006. According to the report, in Badulla, where some 25 per cent of the population are Tamil-speakers, there is only one Tamil-speaker on a municipal council staff of 450. The municipal council in Colombo, whose population is 31 per cent Tamils, has only 100 staff out of 12,000 who can converse in rudimentary Tamil, all in non-managerial positions. Many Tamils in Colombo also speak Sinhalese.

⁴¹ The minister of constitutional affairs, D.E.W Gunasekera, is committed to a fundamental change in language policy and seeks to make many public servants bilingual through new recruitment standards, broader teaching opportunities and economic incentives. Speech to the Sri Lanka India Society, Colombo, 2 October 2006.

military during the drafting of the CFA, and some have suggested this was a mistake.⁴² The security forces – particularly intelligence officers – were the victims of many LTTE killings in 2003-2005 and had little opportunity to strike back. Any serious reform of the security structures was always going to be difficult given the political context. Nevertheless, the lack of reform has emerged as a serious problem, with security forces and their allies acting with impunity and little civilian oversight.

Power has been concentrated increasingly in the hands of the military, with the police now subordinate to the defence ministry rather than the interior ministry and military spokesmen dominating government public relations. The defence ministry has also begun to exercise control over registration of foreign staff in international NGOs and organisations. This militarisation of government functions also extends to humanitarian issues, with agendas for humanitarian aid and resettlement of displaced peoples also apparently subservient to military strategy.

The police tend to be more effective at building rapport with the local population than the military or the police paramilitary wing, the Special Task Force (STF). A broader program of community policing could have been very effective in winning support for the government from minority communities. Instead, there is little trust in the security forces among ethnic minorities. As the likelihood of further LTTE terrorist attacks increases, and the inevitable police and military counter-terrorist actions become more frequent⁴³, this distrust will probably only deepen.

C. LITTLE FOCUS ON THE ENDGAME

The peace talks in 2002-2003 focused as much as possible on normalisation measures – trying to build trust and discuss pressing humanitarian issues. Neither side wanted to rush into substantive political issues: the government did not want the talks to meet an early impasse; the LTTE wanted to use humanitarian aid and reconstruction to consolidate its political hold over the population and establish a nascent state structure.

The subcommittee on political affairs, which was to discuss more substantive issues, soon collapsed, and there was little debate on either side about what an endgame in the peace process might look like.

The LTTE's endgame seemed deceptively simple. Prabhakaran's rhetoric has always favoured what is termed "Tamil Eelam", which is broadly understood as a separate state in the north and east. In reality, LTTE aspirations were never quite so clear cut. Tamil Eelam always had the aura of a rather mystical utopia rather than a defined end-goal. There was no blueprint for it, only some hazy 1970s Marxism as the basis for its economy and the evidence of the structures developed in the LTTE's controlled areas, which suggested an extreme, if often efficient, authoritarian state, which would retain power through repression rather than the ballot box.

The Oslo declaration seemed to be a breakthrough in LTTE thinking, with its talk of "exploring federal solutions". In reality, this was exaggerated by a media desperate to report some progress. LTTE thinking revolved around rather convoluted discussion about internal self-determination. This seemed to be an attempt to square an inconvenient circle, to develop a state without all attributes of statehood, perhaps an extreme form of confederation but one still far beyond what most Sinhalese politicians could conceive, and probably much more than most ordinary Tamils would settle for as well.

The LTTE was hampered in discussing final political solutions by two main factors. One was its intolerance of debate and discussion outside the parameters set by its leaders. The other was the difficulty of maintaining mass mobilisation if the final goal of the war was something less than an independent Tamil state. It was hard enough to maintain high recruitment and fundraising during the peace process; if the final result was likely to be a fudged devolution, the movement would probably lose much of its legitimacy among Tamil hardliners. Few people are prepared to die for a moderate, federal solution.

Gradually the LTTE has retreated from its more flexible position in Oslo. In his annual speech on 27 November 2006, Prabhakaran appeared to shift away from any federal solution, stating:

The uncompromising stance of Sinhala chauvinism has left us with no other option but an independent state for the people of Tamil Eelam. We therefore ask the international community and the countries of

⁴² Bernard A. B. Goonetilleke, "Sri Lanka Peace Process: What Lies Ahead in Sri Lanka?", in. Rupesinghe (ed.), op. cit., pp.303-311.

⁴³ Police and military cordon and search operations are now commonplace, and Tamils without proper identification are liable to be arrested. These measures are obviously a response to the real threat of attack but are open to abuse.

the world that respect justice to recognise our freedom struggle.⁴⁴

With no likelihood of any international support emerging for Tamil independence, his statement appeared to suggest a more rigid attitude towards any negotiations and a return to full-scale military confrontation.

If the LTTE was constrained in its ability to project forward to a possible final settlement that might be acceptable to the Sinhalese majority, the situation in the south, where debate was open and lively, was not much better. Although there were many statements of principles, and considerable discussion on the roadmap to peace, there was surprisingly little concrete discussion of what a final devolution package would look like in detail. Partly this was due to an understandable focus on the here and now, an attempt to address the realities of the peace process, rather than a distant goal. Partly it was a conscious decision by some that the process would be protracted, and a final settlement was too far away to discuss in detail. Finally, there was reluctance among politicians to be associated with any proposals that might subsequently prove to be political liabilities.

In neither the proposal for an interim administration by the government nor by the LTTE was there any obvious commitment to democratic elections or pluralism. The ISGA offered elections after five years under the auspices of an LTTE-controlled election commission, with international observers. Only the most optimistic could think that such elections could be democratic after five years of LTTE rule. The government proposal, focusing on purely administrative arrangements, had no democratic elements.

This was a fundamental contradiction in the process. Any bilateral resolution acceptable to the LTTE would produce a small territory with considerable autonomy, in which the rebels had absolute control. The optimists argued that once such an administration was in place, the LTTE would gradually come under pressure to democratise and pay more attention to human rights. The pessimists claimed that any LTTE-dominated political structure would retain the totalitarian aspects of the movement's ideology and fail to improve the lot of the population it controlled.

The problem for the government and the Norwegian facilitators was that the LTTE seemed unlikely to negotiate under any other conditions, and the war would continue. This was the presumption at least, and it was never tested by pushing the LTTE harder on the key

issues of human rights and pluralism. Some Sinhalese politicians supporting the process argued privately that any peace was better than no peace, and as long as the fighting stopped, it did not matter what happened in the Tamil areas. Other negotiators simply did not look that far ahead, preoccupied as they were with the everyday pressures of the CFA and the peace process.

This paradox continues to plague attempts to broker peace. There has been little sign that the LTTE began to transform itself during the earlier process,⁴⁵ although the absence of fighting certainly began to undermine internal cohesiveness. A negotiated peace could have led to a further weakening of the movement, as other forces – business, the diaspora, and Jaffna elites – became more prominent. However, the LTTE's own history suggests that it would have relinquished control only reluctantly. Unless the LTTE begins to address its democratic critics and show signs of internal transformation, any new peace process will be unable to achieve an acceptable outcome.

D. LIMITED INTERNATIONAL INVOLVEMENT

Apart from India's intervention in the late 1980s, the Sri Lanka conflict has had little outside involvement. India's sensitivities about Western intrusion in its sphere of influence has been partly responsible, as is a general sense among the Sinhalese in particular that the problem should be solved by Sri Lankans themselves. Nevertheless, the conflict was already an international issue in the 1990s, because large diasporas from both communities were making their presence felt in Europe, North America and Australia.

Norway has borne the brunt of Sinhalese nationalistic criticism of the peace process. Its officials have put up with a constant stream of personal abuse in the local media, its embassy has been picketed by protestors carrying coffins, and its overall integrity has been consistently maligned. Its commitment to the process and refusal to walk away when developments slipped out of control can only be commended.

Nevertheless, the failure of the process requires soul-searching, and that further attempts to broker peace take into account some of the factors that caused the breakdown of the 2002-2006 process. One structural mistake was to have the SLMM and the Norwegian facilitation so closely linked. In theory, they are separate entities, and Norway has no control over the adjudication

⁴⁴ Full text of the speech available at www.tamilnet.com, 27 November 2006.

⁴⁵ There is perhaps some evidence of more wide-ranging discussion of policy issues within the LTTE, including among the diaspora. See, for example, "Envisioning New Trajectories for Peace in Sri Lanka", Centre for Just Peace and Democracy, 2006.

of CFA violations. Nevertheless, several observers have pointed to a potential conflict of interest.⁴⁶ The SLMM was always hampered by a mandate that could be variously interpreted. A maximalist interpretation suggested it should investigate all human rights abuses in addition to straightforward CFA violations. The more minimalist approach it mostly adopted left it open to accusations of ignoring violations by the LTTE against other Tamil groups.⁴⁷

The SLMM seems often to have been effective on the ground, intervening in informal negotiation among the parties in difficult situations. It has been less successful overall in developing an aura of neutrality. This may be inevitable in such an environment but it has not always helped itself with a short-sighted media strategy.

The donor co-chair mechanism has been relatively successful, partly because it has a broader base than the facilitation. The U.S., Japan and the EU joined Norway to make a quartet, and the presence of Washington, seen as more anti-LTTE than the Europeans,⁴⁸ has helped make the co-chair mechanism more acceptable to some in the Sinhalese community. Some European diplomats, however, are uncomfortable with the more hard-line U.S. stance, suggesting that the global “War on Terror” rhetoric is unhelpful in the Sri Lankan context.⁴⁹

The co-chairs were only institutionalised after the Tokyo donor conference in 2003. In retrospect, it might have been useful to have had a co-chair mechanism from the beginning of the peace process, with a political mandate complementing aid coordination.

India has played an important role on the sidelines of the process. Its initial scepticism about the involvement of outside actors in the peace process seems to have been

overcome. Calls for it to be more directly involved – as one of the co-chairs for example – have been deflected by Delhi, which is wary of being sucked in too deeply. Its deep involvement in the 1980s, the assassination of Rajiv Gandhi and the politics of Tamil Nadu all make it difficult for India to take a leading role in facilitating or heading any negotiating process. India is very active behind the scenes, but if the crisis deepens and begins to have a major impact on Tamil Nadu, it may have to take a more overt stance.

Pakistani-Indian relations have also played a role in recent events. The Pakistan High Commissioner blamed an August 2006 bomb attack on him in Colombo on the Indian intelligence service. It is much more likely to have been the LTTE’s work, either because it was unhappy at Pakistani arms sales and military assistance to the government, or, more probable yet, because it mistook the diplomat for a government official.

Despite this complication, the Sri Lankan conflict has had only limited geopolitical impact, even for its close neighbours. While fighting raged in August 2006, the situation did not even reach the agenda of EU foreign ministers meeting in Brussels. The conflict has a similarly low profile in Washington.

The LTTE has used the extensive Tamil diaspora as a political and financial resource. Fundraising in the EU, Australia, Canada and the U.S., mixing some voluntary contribution with a good deal of straightforward extortion and racketeering, has produced a constant flow of revenue.⁵⁰ For obvious reasons, most states view the LTTE as much lower priority than other terrorist – especially Islamist – groups, but there are renewed efforts in some countries to clamp down on financial flows. Bans on LTTE activities under anti-terrorist legislation enacted in the U.S. (1997), UK (2001), Canada (2006) and the EU (2006) have begun to put pressure on the movement and are likely to be applicable to many of its front organisations also.⁵¹ Other countries with large Tamil communities, such as Australia, are also considering proscription of the LTTE.⁵²

⁴⁶ See, for example, Philip Alston, “Mission to Sri Lanka (28 November to 6 December 2005)”, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Commission on Human Rights, 27 March 2006.

⁴⁷ For example, according to Kumar Rupesinghe, Chairman of the Foundation for Coexistence, there were 820 political killings in Sri Lanka in 2002-March 2006 but the SLMM recorded only 22 as CFA violations out of a total of 182 complaints. Other killings were viewed as cases for the police, whose investigations were ineffective. According to Rupesinghe, not one perpetrator has been arrested. See Dr Kumar Rupesinghe, “Analysis of the Implementation of the Ceasefire Agreement”, Centre for Just Peace and Democracy, op. cit., pp.41-50.

⁴⁸ The U.S. lists the LTTE as a terrorist organisation. This not only bans LTTE activities in the U.S., but also makes it difficult for U.S. officials to talk to the LTTE, limiting their ability to play a useful role in negotiations.

⁴⁹ Crisis Group interviews, Colombo, September-October 2006.

⁵⁰ For more detail, see “Funding the Final War, LTTE Intimidation and Extortion Among the Tamil Diaspora”, Human Rights Watch, May 2006.

⁵¹ In 2006, law enforcement agencies have twice intercepted apparent attempts by LTTE agents to buy arms, including anti-aircraft weapons, in the U.S.

⁵² Australia has included the LTTE in a list of terrorist organisations which it is illegal to fund in Australia and has taken action against groups it believes provide material support to the LTTE. Switzerland and Norway, which are both home to active LTTE support groups, have not banned the organisation.

The return to war in 2006 has produced a certain level of international frustration. Rather than engendering a new engagement, it looks likely to drive donors and others away. This would be unfortunate: Sri Lanka needs help more than ever. Such engagement needs to be critical and sustained, focusing above all on human rights and humanitarian concerns, but with a broader approach to the conflict than hitherto.

VI. THE NEW CONFLICT: PROBLEMS AND CHALLENGES

At first glance, the new government strategy is somewhat reminiscent of President Kumaratunga's "war for peace": a military offensive to weaken the LTTE and a political settlement offered to the broader Tamil community.

But there may be some key differences from the 1990s. The military seems in better shape, and there is no doubt that the LTTE has been weakened by Karuna's defection and some increased pressure on international funding and arms dealing. There is also the possibility an alliance of Sinhalese parties may emerge around a common approach to the conflict, which would give the government an unprecedented opportunity to offer a serious political settlement.

However, the strategy's problems are also serious. First, there is a significant human rights problem. Secondly, there is a major humanitarian crisis. Thirdly, the military advantages may be overstated. Fourthly, there again seems little serious thinking about the endgame.

A. HUMAN RIGHTS ABUSES

The human rights problem is extremely worrying and has the potential to cause long-term problems for society and the state. Abuses are causing widespread fear in minority communities and lessening trust in law enforcement agencies.

The authorities have not addressed the human rights abuses that have accompanied the military campaign. There is a serious threat of terrorist attacks in Colombo and elsewhere, and the government is entitled to take significant protective measures but the way it has done so has often been counterproductive, leaving many Tamils fearful of their security.

Extrajudicial killings by both sides have been a key part of the ongoing conflict but there has been a noticeable increase in killings ascribed to government agents since December 2005. Some may be the result of indiscipline among soldiers on the ground but a greater part seem to be an element in a larger strategy of attacking LTTE sympathisers and supporters. Other abuses – including abductions and kidnappings for ransom in Colombo and elsewhere – merge political motives with pure criminality. Many killings have targeted ordinary people in the north and east who have only loose connections to the conflict. Others were assassinations, such as the murders of Kethesh Loganathan, an anti-LTTE political activist,

and Nadarajah Raviraj, a member of parliament from the pro-LTTE TNA, in November 2006.

The renewed military campaign has shown little regard for civilian casualties. The LTTE deliberately tries to surround itself with civilians and uses large-scale civilian deaths among Tamils in its propaganda, knowing that they feed outrage among its supporters and increase pressure on the government. The military has obliged with a series of blunders and deliberate attacks, which have resulted in the deaths of civilians. In one of the most egregious instances, artillery hit a camp for internally displaced people (IDPs) in Kathiraweli in the eastern district of Batticaloa on 8 November. At least 47 were killed and 136 injured.

Most concerning is the failure of domestic institutions to address the human rights crisis. The Human Rights Commission, set up in 2001, has been plagued by a constitutional crisis about appointments to it and is starved of funds. A new ministry of human rights has yet to make an impact. The security forces have routinely ignored or covered up abuses. Inquiries into serious massacres and killings have produced no prosecutions. President Rajapakse's proposal for a new presidential commission to investigate abuses has been met with some scepticism, given this history.⁵³ Unless the new presidential commission confounds its critics and produces some real results, the increasing pressure for a credible, UN-led human rights monitoring presence will become much harder to resist.

B. THE HUMANITARIAN CRISIS

In the media euphoria that surrounded some of the armed forces' recent relative successes, the plight of many civilians caught up in the conflict has often been overlooked. Civilians in the east complain that the government has done little to help them escape the fighting, while making it harder for international organisations to assist. A journalist tells of those who fled Sampoor to escape the aerial bombardment:

⁵³ The presidential commission is to include a number of respected Sri Lankans and work with a group of international observers. It will have a huge workload and require considerable time to reach any substantive conclusions. It is mandated to report within one year. Amnesty International has raised fears that it will not be able to protect witnesses sufficiently. "Sri Lanka: Amnesty International's observations on a proposed Commission of Inquiry and International Independent Group of Eminent Persons", Amnesty International, November 2006. The commission may also be used by the government to deflect criticism in the future and counter demands for more immediate action against abuses.

Most people had walked or used cycles. Some had used bullock carts. A fortunate few with fuel used tractors. The main roads were not safe. The bombers attacked any sign of human movement on the roads. Bridges, causeways, culverts and even ferry ways were deliberately attacked without any concern for the fleeing people. Many of these victims recognised a new cruelty in the air attacks. The feeling was that some foreigners and not Sri Lankans were flying the planes.⁵⁴

The situation for many IDPs is desperate. Apart from those from conflict zones in the east, many thousands have left LTTE-controlled territory. The government has been criticised by international organisations for forcibly returning IDPs to zones of potential conflict, notably from camps in Kantale to Muttur in early September 2006. While some families were ready to return, others were concerned about the security situation and refused. They were persuaded to leave by the government closing down the camp and turning off water supplies.⁵⁵

The closure of the A9 road and the refusal of the LTTE to ensure security for shipping and flights into Jaffna have made life extremely difficult for the 600,000 residents of the peninsula. Government shipments of food and fuel remain vulnerable to attack and the vagaries of the monsoon season. Supplies to LTTE-controlled areas have been limited, as the government has restricted access along key routes. Both sides are cynically exploiting the situation. The LTTE uses civilians as a fundamental part of its guerrilla strategy; the government seems to be using humanitarian aid to limit supplies to the LTTE and persuade people to move from LTTE positions.

In addition to the humanitarian imperatives for better treatment, a politico-military aspect of present policies is hindering progress towards a political settlement. Embittered civilians make poor partners for the government's attempt to win over the Tamil minority from the LTTE. The rebels have long been unpopular with many Tamils in the east. Their mindless brutality over many years, recruitment of child soldiers and taxation and extortion of businessmen have left few with much sympathy. But in the battle for hearts and minds in the east, the government is failing to take advantage and risks promoting a new set of deeply felt grievances.

⁵⁴ D.B.S. Jeyaraj, "Are Sampoor Tamils children of a lesser god?", 3 October 2006, available at <http://www.transcurrents.com>.

⁵⁵ "Improving Civilian Protection in Sri Lanka", Human Rights Watch, September 2006, pp.19-20.

C. THE MILITARY BALANCE

Military strategy is largely based on the notion that the LTTE has been significantly weakened by:

- government aerial bombing and offensives since July 2006;
- Karuna's 2004 defection and subsequent alliance with government forces; and
- increased international pressure on the LTTE, including its funding and arms purchases.

The LTTE has certainly suffered heavy losses since mid-2006. One source suggests more than 1,000 may have been killed or badly wounded,⁵⁶ a significant proportion of an estimated 10,000-strong armed force, but given the nature of its tactics, far from fatal.

The aerial bombardment has apparently been relatively successful in targeting some heavy weaponry and LTTE infrastructure. These attacks could continue for some time and may eventually limit LTTE use of major military systems. But aerial attacks are of only limited utility in a guerrilla war and are also extremely expensive.

The much increased international pressure on the LTTE is probably having some impact on its fundraising. Nevertheless, the new prohibitions are implemented to varying degrees in each jurisdiction, and the LTTE is likely to continue to get some money from this source unless there is a considerably more serious crackdown in Western countries. It also has other sources of funds, possibly including drug-trafficking, and certainly involving some legitimate and semi-legitimate business interests. A much more coordinated and concerted effort to limit fundraising and arms-smuggling is needed, by both the international community and the Tamil diaspora.⁵⁷

The LTTE faces considerable tactical problems. Although it can always maintain a costly guerrilla war, a sustained army offensive may make it difficult for it to hold territory. Its usual response has been to carry out bomb attacks in Colombo or against significant infrastructure targets in the south. In the present political context, any such attacks are likely to reinforce international support for the government and lead to improved implementation of bans on the movement's activities abroad. The LTTE understands the need for international legitimization of any political entity it may achieve – indeed, this may be one reason it joined the peace process in the first place. So there remains significant scope for international

engagement and pressure on the movement and its diaspora supporters.

The government also has problems. It faces the challenge of funding the war. Although economic growth was around 8 per cent in the first half of 2006, the budget is under strain, partly because of ballooning defence costs. The government increased defence spending by 28 per cent in the November 2006 budget, with expenditure for 2007 to reach 139.6 billion rupees (\$1.29 billion). The economy remains vulnerable to guerrilla disruptions, and a protracted war would have very negative consequences on foreign investment.

Although the government may be able to win some military victories, it is still significantly limited in its ability to control majority-Tamil areas. The lack of trust between the army and civilians, growing daily because of human rights abuses and the humanitarian situation, makes it difficult for the government to impose its will even on state structures in areas it ostensibly controls. The LTTE's ability to kill opponents with impunity ensures that few officials in the north and east are willing to oppose their instructions overtly.

The government needs to begin a serious hearts and minds campaign among Tamils, but this requires promoting a serious political solution and a new approach to counter-terrorism by the military. An embittered, impoverished population in the north east has little power over its destiny in this conflict. Until the government makes a meaningful devolution proposal, the LTTE can argue it is not committed to a political solution.

⁵⁶ Crisis Group interview, Colombo, October 2006.

⁵⁷ On LTTE fundraising methods, see "Funding the Final War", *op. cit.*

VII. CONCLUSION

The peace process was a brave attempt to break through an apparently intractable conflict. The 2002-2006 interlude brought a measure of normalisation to people's lives in the north and east for the first time in over a decade. But the conflict is enormously complex, and the peace process ignored many of the hard questions. It was always going to be difficult to bring together a factionalised Sinhalese polity with a semi-totalitarian armed movement in the north and produce a political settlement respectful of democracy and human rights.

It was clear that a ceasefire agreement would include the two parties which controlled the means of violence; in that sense the bilateral approach was inevitable. As soon as talk of a political settlement began, however, all the excluded political actors began to make their presence felt and undermine progress on a political settlement. And as soon as the glimmer of a political settlement appeared, the problems of allowing any territory to be ruled by the LTTE – which showed no sign of embracing democratic values – became rapidly apparent.

At the same time, the shift after December 2005, the increasing influence of chauvinist and militarist elements on government policy and the appalling human rights abuses that have become apparent in 2006, severely undermined any trust in the state to protect minority rights. As usual, it has been civilians – Tamil, Sinhalese and Muslims – caught between LTTE oppression and security force brutality, who bear the brunt of the violence.

There were moments during the process when more progress might have been achieved with greater government initiative. There were certainly points where some LTTE flexibility could have kept the process on track. But by 2004 the rebels' interest seemed to be waning. They no longer trusted the process to produce an acceptable political result, and the military inactivity was undermining their cohesion and limiting diaspora funding. Karuna's defection was a double blow, weakening their military capability and strengthening those who saw the talks as a "peace trap", as well as encouraging Sinhalese politicians who believed peace was only possible by military victory.

Many ideologues who came to power with President Rajapakse believe military power will fatally weaken the LTTE. The result has been a resumption of conflict and a disastrous year for Sri Lanka's long-suffering civilians. But much of the responsibility for the failure of the process must also lie with the LTTE, which was

seemingly incapable of compromising its goals and preferred renewed fighting to any negotiated solution. The hardliners are in the ascendancy on both sides. Until a way is found of altering political attitudes on both sides, the conflict is likely only to worsen. This and other key issues will be addressed in subsequent Crisis Group reporting.

Colombo/Brussels, 28 November 2006

APPENDIX B**CHRONOLOGY OF THE PEACE PROCESS****2001**

5 December: The United National Front (UNP and allies) led by Ranil Wickremesinghe wins parliamentary elections on a pledge to open talks with the LTTE.

21 December: LTTE announces unilateral ceasefire; government responds.

27 December: Government officially requests Norway to resume its facilitator role.

2002

19 February: Government reopens Jaffna-Kandy A-9 highway for the first time in twelve years.

20 February: Prabhakaran signs ceasefire agreement; Prime Minister Wickremesinghe signs on 22 February.

27 March: President Kumaratunga welcomes announcement of direct peace talks.

10 April: Prabhakaran holds international press conference in the Wannu region for the first time in twelve years; he agrees to accept regional autonomy but says the LTTE will not decommission until a final solution is reached.

25 June: Tamil-Muslim clashes in the East (Muslims protest against alleged extortion by the LTTE and attacks on them by LTTE supporters).

16-18 September: First round of peace talks between government and LTTE, held in Rose Garden, Sattahip, Thailand. Parties agree on top priority for humanitarian challenges, but little discussion of political issues.

11-16 October: Further Tamil-Muslim clashes reported in the East.

31 October-3 November: Second round of peace talks, Rose Garden, Thailand; parties decide to set up subcommittees.

2-5 December: Third round of peace talks, Oslo; both parties agree to explore federal models for a solution within united Sri Lanka; LTTE retains right to self-determination and will resort to secession as "last resort".

2003

6-9 January: Fourth round of peace talks, Nakorn Pathom, Thailand; both parties agree to appoint the World Bank as custodian of foreign aid.

7-8 February: Fifth round of peace talks, Berlin.

18-21 March: Sixth round of peace talks, Hakone, Japan; both sides postpone discussion of a human rights mechanism.

21 April: LTTE unilaterally suspends peace talks, ostensibly in response to donors conference in U.S. which it was not permitted to attend, but says it remains committed to peace process and ceasefire.

5-10 June 2003: Tokyo donors conference boycotted by LTTE; \$4.5 billion in aid pledged by international community, linked to progress on peace.

21-27 August: LTTE holds meeting in Paris to discuss government's interim administration proposals.

12 September: Follow-up meeting on Tokyo donors conference held at Hilton Hotel, Colombo. LTTE boycotts the meeting.

31 October: LTTE announces proposals for an Interim Self-Governing Authority (ISGA).

4 November: President Kumaratunga takes direct control of three ministries: defence, interior, and mass communications.

14 November: Norway suspends role as facilitator, citing dispute between president and prime minister.

2004

March: Eastern LTTE commander, Colonel Karuna, announces defection from LTTE.

April: UNP loses general election; SLFP forms minority government led by Mahinda Rajapakse.

26 December: Massive tsunami kills more than 35,000 people in coastal regions.

2005

24 June: Government, LTTE sign P-TOMS agreement, designed to channel aid to north east.

12 August: Former Foreign Minister Lakshman Kadirgamar assassinated by LTTE.

17 November: Mahinda Rajapakse wins presidential elections, defeating UNP's Ranil Wickremesinghe, with 50.3 per cent of votes.

25 December: TNA parliamentarian Joseph Parajasingham shot dead in church in Batticaloa.

2006

5 January: five students killed, allegedly by security forces, in Trincomalee.

22-23 February: Government, LTTE meet for talks in Geneva, but with little success.

6 April: Suicide bomber narrowly fails to kill Army Commander Sarath Fonseca; aerial bombings in response on LTTE-controlled areas.

April: Bomb attack on market and subsequent anti-Tamil rioting in Trincomalee leaves at least sixteen dead.

8 June: LTTE refuses to take part in talks in Oslo convened by Norwegian facilitators.

15 June: At least 64 civilians dead in LTTE mine attack on bus near Anuradhapura.

20 July: LTTE cuts off water supply from Mavil Aru sluice gates; government responds with military offensive.

4-5 August: Fighting in Mutur; civilians flee and seventeen aid workers massacres.

12 August: Deputy head of government peace secretariat, Kethesh Loganathan, killed by LTTE gunmen in Colombo.

14 August: Bomb attack on Pakistani high commissioner's convoy in Colombo, believed to be by LTTE.

4 September 2006: Government troops take control of Sampoor, a strategic area near Trincomalee.

11 October: More than 130 soldiers killed in failed military offensive in Jaffna peninsula.

16 October: 99 killed in LTTE suicide attack on navy convoy in Habarana.

18 October: LTTE attacks Dakshina naval base in southern tourist town of Galle.

28-29 October: Government, LTTE talk in Geneva but fail to agree an end to hostilities.

8 November: Government artillery hits an IDP camp in Kathiraweli in the Eastern district of Batticaloa, killing at least 47 and wounding 136.

10 November: Nadarajah Raviraj, pro-LTTE parliamentarian, murdered in Colombo.

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

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