

Challenges to Peace Negotiations: The Sri Lankan Experience

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Abstract

The ethnic conflict in Sri Lanka is a good example of how peace negotiations in civil war situations can be elusive. Although several factors impinge on the outcome of negotiations, from the experience of negotiating peace in Sri Lanka three prominent and recurrent variables come to the fore. These are: first, the competing nationalisms in the state-building project of Sri Lanka; second, the political outbidding practiced by the two major Sinhalese parties; and third, the authoritarian character of the Liberation Tigers of Tamil Eelam (LTTE), which thrives on a rationale of war and terror. These variables have informed spoiler behavior and foiled attempts at a decisive settlement of the ethnic conflict. As a result the ceasefire of 2002 at present lies in a shambles. While the failure of current negotiations does not rule out the likelihood of a future negotiated settlement, a significant reorientation in the country's political culture and mainstreaming of neglected voices and stakeholders alone would make negotiations successful.

“Ethno-political conflicts are fought not just about resources or power, but about protecting group status, culture and identity. Identity and belief are non-negotiable, (yet) the means by which they are protected can be and have been the subject of creative compromises.”

- Ted Gurr, 1994.¹

Introduction

In the field of conflict resolution the idea of negotiation has gained currency given a number of successful instances where conflicts have been settled or terminated through talks or discussions among parties involved². In common parlance, negotiations often imply a set of communicative processes through which individuals or groups try to resolve mutual

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disagreements. In the context of conflict termination, however, negotiations primarily aim at changing the behaviour of conflicting parties so as to engender a conflict settlement, which in turn can pave the way for conflict resolution.³ One of the leading theorists in the field, William Zartman, defines negotiation as 'a process of combining conflicting positions into a common position', under 'a decision rule of unanimity', a phenomenon in which the outcome is determined by the process.⁴

Ethnic conflicts exhibit a measure of intractability that makes the exercise of negotiating a peace settlement quite challenging⁵. Establishing the conditions for effective inter-group peacemaking is a formidable task in severe ethnic conflicts.⁶ In this context the Sri Lankan case is both instructive and interesting for grasping the complexities involved in conflict negotiations.

The conflict in Sri Lanka is one of the most studied cases of protracted ethnic conflict⁷. It brings together a concoction of competing ethnic identity and nationalisms interspersed with efforts at conflict management and resolution through both indigenous political accommodation, engagement and external efforts at facilitation and mediation. Binding the experience of negotiating peace in Sri Lanka are certain recurrent variables, which have informed spoiler behavior,⁸ and foiled attempts at a decisive settlement of the ethnic conflict. Although several factors impinge on the outcome of negotiations, there are three principal variables that have had the most influence on the process. First, the unresolved or competing nationalisms in the state-building project of Sri Lanka; second, the ruinous practice of ethnic outbidding practiced by the two major Sinhalese parties; and third, the authoritarian character of the Liberation Tigers of Tamil Eelam (LTTE), which thrives on a rationale of war and terror. The three variables under study are first explained through an analysis of negotiations that have taken place in Sri Lanka, and the internal political dynamics.

In the attempts at internal political accommodation and external mediation, the primary operative variables appear to be the contested nationalism thesis and the ruinous practice of ethnic outbidding. In terms of the more recent phase of negotiations in 2002-2003 and later the Geneva talks in 2006, while all three variables work in tandem, internal political rivalry between the two main Sinhalese parties proved most critical in undermining substantive negotiations. The current return to hostilities, of course, can be largely attributed to the 2004 split within LTTE ranks. Its

authoritarian and recidivist approach to consolidating legitimacy and hold over the North and East has unleashed another bloody military engagement which will, as in the past, prove indecisive. Against this backdrop, one of the burning questions is the prospect of a negotiated settlement in Sri Lanka, and in this context, a study of past negotiation failures is likely to provide valuable lessons. They indicate the presence of certain unreconciled tensions, which are embedded in Sri Lanka's body politic. Since they stem from within, they need to be resolved therein.

I

Explicating the Three Variables

A. Competing Nationalisms

Sri Lanka provides a classic illustration of Rupert Emerson's 'we' versus 'they' antagonism⁹. From the very beginning of the formation of the modern Sri Lankan state, the ethnic divide between the Sinhalese and Tamils was exploited by the colonial administration to its advantage. The British had brought the entire island under a singular administration and the Tamils, by dint of their favourable disposition to the colonial system, had a significant presence in the administration, proportionally higher than their numerical presence in Sri Lanka.

Soon after independence, the Sinhalese leaders, aware of their numerical majority, initiated a process of systematic discrimination and advocated the idea of a monolithic, unitary and indivisible sovereignty. The nation building process started by the Sinhalese elite was exclusivist in nature. This process went on without a corresponding development of equal citizenship over the exclusive rights of the 'majority community'¹⁰. Informed by a redefinition of Sinhala Buddhist heritage the post-colonial state building project reversed the colonial privileges and economic status of the Tamils, and sought an exalted status for Sinhalese language under the 'Sinhala only Act' in 1956.¹¹ Then came the institutionalised preferential access to education for the Sinhalese people.

Cumulative provocation of Sinhalese supremacist and discriminatory legislation in the fields of language, education, state employment and religion, reinforced by recurrent anti-Tamil pogroms and renegeing by the state of successive compacts promising the Tamils regional autonomy, have

helped create the moorings for Tamil separatism.¹² Thus while the Tamils became reluctant secessionists the disjunction between nation formation and state building processes fuelled the ethnic conflict¹³, embedding in the life of the body politic two unreconciled and competing nationalisms.

B. Ethnic Outbidding

Racial or ethnic outbidding, Neil Devotta explains, refers to the “auction-like process wherein politicians create platforms and programmes to ‘outbid’ their opponents on their ‘anti-minority’ stance. As Giovanni Sartori has observed once this process of outbidding ‘becomes the rule of the game’, ‘somebody is always prepared to offer more for less, and the bluff cannot be seen’. What thereafter ensues is no longer a situation that allows the survival of a political system based on competitive principles. Beyond certain limits, the politics of over-promising and outbidding is the very negation of competitive politics.¹⁴

In Sri Lanka the ruinous practice of ethnic outbidding found its roots in the Sinhala nationalist project. Having benefited from the ethnocentric practices that successive governments have pursued, the majority Sinhalese community now protests against any proposal that promotes devolution of power or dispassionate governance.¹⁵ The party in opposition has projected any compromise or shift on the question of governance as an attempt to appease the LTTE. These attempts to outbid the ruling party’s peace moves have proved ruinous and vitiated the nature of competitive politics in Sri Lanka.

C. Authoritarian Character of the LTTE

Another abiding problematic has been the militarised , authoritarian nature of the LTTE. Literature on militancy and insurgency suggests that even if substantive peace packages aimed at redressing legitimate grievances are offered, insurgencies are unlikely to renounce violence¹⁶. The Tigers have sustained themselves through a policy of systematic elimination of opponents and alternate voices among the Tamils. This has prompted recidivism, i.e., a return to the path of war and overt terrorism by them whenever negotiations were viewed as imposing constraints on their freedom of action. Hence, the LTTE’s structure and organisation has had an important bearing on how peace negotiations have taken place in Sri Lanka.

II

Peace Negotiations in Sri Lanka: Tracing the Variables

From a historical perspective, *internal political accommodation* to settle the ethnic problem was initiated immediately after the Sinhala Only Act was tabled by the Sri Lanka Freedom Party (SLFP) government led by Solomon West Ridgeway Dias Bandaranaike (1899-1959) in 1956. Several agreements or elite compacts were signed beginning with the pact between SWRD Bandarnaike and Samuel James Velupillai Chelvanayagam (1898-1977), leader of the Thamil Arasu Katchi (Federal Party) in 1957. The pact, known as the Bandaranaike-Chelvanayagam pact, had a threefold agenda, i.e., devolution of state power through regional councils, recognition of Tamil as a national minority language and slowing down Sinhalese resettlement in the north and east. This invited a Sinhala nationalist backlash, and mob attacks on Tamils throughout the southern provinces were incited. In view of an anti-pact protest march by Buddhist monks and prominent members of the political opposition from the Sinhala Buddhist stronghold of Kandy, Bandaranaike repudiated the pact.¹⁷

The next pact was signed in 1965, between the then Prime Minister and leader of the United National Party (UNP), Dudley Senanayake (1911-1973) and the leader of the Federal Party, S.J.V Chelvanayagam. Senanyake was keen to secure the support of the latter in a new national government. The Senanayake-Chelvanayagam Pact agreed to implement a Tamil Language (Special Provisions) Regulation, envisaged the establishment of district councils, and decided on according preference to the Tamils in resettlement schemes in the north and east. Most provisions in the pact were not implemented, and four years later, on 9 April 1969, the Tamil leadership withdrew their support for the government.¹⁸ Failures of implementation by the Sinhalese elite of these negotiated agreements contributed to a significant hardening of the Tamil position on the ethnic issue. The adoption of an extremist ideological position, on part of a relatively moderate TULF was first explicitly articulated in the famous Vaddukoddai Resolution (1976). It enunciated the demand for a separate homeland or Tamil Eelam, based on an inalienable right of self-determination for the Tamils.¹⁹

The 1970s and the early 1980s saw the gulf between the two communities widening further. The Tamil leadership began adopting an

increasingly militant posture and targeting people opposed to their point of view. The widespread anti-Tamil riots in 1977, the burning of the library in Jaffna in 1981, and the riots in July 1983 in response to the landmine attack on an army convoy by the Tamil militants, which killed 17 soldiers, in a way, signaled the intransigent attitude of the two communities. The possibility of any internal accommodation was also remote once the All Party Conferences (APC) of 1984 failed to arrive at any solution to the crisis. The UNP-led Sri Lankan government could only agree to the formation of district councils in a devolved political structure. The opposition SLFP did not agree to the proposals. The TULF also rejected them.

External involvement became imperative in these conditions. It is a fact that India had started facilitating the process of internal accommodation in the shape of encouraging the Tamils to participate in the APC. But once the APC failed, India made the first attempt to mediate a negotiated settlement in August 1985 at Thimpu, Bhutan. Several factors prompted this proactive role. Sri Lanka's strategic location, dictates of foreign policy priorities together with the sensitivities generated by the Sri Lankan ethnic riots in the southern state of Tamilnadu, defined the context for India's mediation.

At Thimpu, the Sri Lankan Government delegation put forward a draft legislation for devolution of powers. These proposals were only marginally different from the one rejected by the APC of 1984, and the TULF. The Tamil delegation, understandably, was unwilling to negotiate on proposals already rejected by the TULF. As a consequence, Thimpu talks marked the first explicit articulation of the Tamil extremist position. Consecrated in the joint statements issued by the Tamil delegation, including the LTTE as well as the TULF, were three cardinal principles:

- Reorganisation of the Sri Lankan state;
- Recognition of the existence of a Tamil homeland comprising the Northern and Eastern Provinces of Sri Lanka;
- Recognition of the right of self-determination of the Tamils in Sri Lanka.

Since any solution based on the Thimpu principles would have led to a vivisection of Sri Lanka, the talks were predestined to fail. Besides, there was no conjunction of views; rather the government's proposals and the

Thimpu principles operated at two totally different ideological and conceptual planes.²⁰

Following the collapse of the Thimpu Peace talks, a Draft Framework of Terms and Understanding was worked out by India. This was accepted by Colombo as the basis for future negotiations. Following the Draft Accord, the '*proximity talks*' commenced. The two sides to the conflict were in contact with India as mediator but did not engage in direct face-to-face talks. This set the stage for the signing of the Indo-Sri Lanka Accord in the summer of 1987. It brought the deployment of Indian Peace Keeping Force (IPKF) in the north and east of Sri Lanka to keep peace between the armed Tamil groups and the Sri Lankan armed forces and oversee the implementation of the Indo-Lanka accord. Under the accord, the Sri Lankan government made a commitment to reform the state by creating institutions of regional autonomy in exchange for the end of the secessionist insurgency.²¹

Political resistance in the South slowly forced the government to resile from its position. President Junius Jayawardene (1906-1996) who had signed the accord was not too committed to it. In 1989, following the rising cost in fighting the Tigers and facing opposition from Jayawardene's successor, President Ranasinghe Premadasa (1924-1993), India decided to call off its forces from Sri Lanka. The IPKF withdrew in March 1990. This marked the failure of the third serious *attempt at negotiating peace*. Focused entirely on the issue of withdrawal of the IPKF, and the dissolution of the Eelam Peoples Revolutionary Liberation Front (EPRLF) led North Eastern Provincial Council (NEPC)²², the Premadasa-LTTE Talks of 1989-90 had a political mandate and quite expectedly produced no settlement outcome. The parties returned to war in 1990 after the IPKF pull out, reproducing a cycle of failed peace attempts leading to war with greater intensity.

In analyzing the IPKF's failure, it becomes apparent that despite India's efforts to broker peace, the 1987 Accord had certain loopholes, which undermined its salience as a basis for a definitive settlement of the ethnic conflict. The LTTE and other Tamil organisations were not co-signatories to the peace accord. The process itself relied heavily on "*proximity talks*" and not direct negotiations between the parties to the conflict. Besides, the principle of neutrality, often emphasised as essential in the context of external mediation, ironically did not appear to both the parties in conflict to exist in India's case. India came to be viewed with suspicion by both the

LTTE and the Sinhala parties, and inevitably became embroiled as the third party to the conflict.

A *fourth attempt* at peace was made in 1994-95 in the context of a regime change in Colombo. Chandrika Bandaranaike Kumaratunga represented the liberal face of the Sri Lanka Freedom Party (SLFP), and she had won the elections on a peace platform. Kumaratunga, immediately began negotiations with the LTTE. She put forward a set of proposals for devolution of powers to the regions, which represented the boldest attempt to redress the imbalance in the relationship between the different ethnic groups.²³ Unfortunately, history repeated itself and both the proposals and constitutional reform initiatives submitted by her to the parliament were bitterly opposed by the opposition United National Party (UNP). After four rounds of talks, this peace initiative too collapsed in April 1995, resulting in a new phase of war. President Kumaratunga and the Sri Lankan armed forces felt that if they could defeat the LTTE militarily, a durable peace with the Tamil polity, excluding the LTTE, could be negotiated and put in place. The military campaign, however, proved equally protracted, and deadly terrorist tactics forced the Sri Lankan forces and the government to reconsider their offensive policy. The climax came with the fall of the Elephant Pass, the gateway to the Jaffna peninsula, in December 1999. This was followed by the collapse of "Operation Agnikhela"²⁴ launched by the Sri Lankan forces in April 2001.²⁵ It was at this juncture that the UNP led by Ranil Wickramasinghe defeated the SLFP in the parliamentary elections. Wickramasinghe was chosen the Prime Minister and Chandrika Kumaratunga of SLFP stayed on as the President. Thus there were two contending centres of power. However, Wickramasinghe made an attempt at making a peace deal with the LTTE as soon as he came to power.

The Peace Process (2002-2006?): The Best Opportunity Missed?

It took seven years of acute and concentrated war for the Sri Lankan state and the LTTE to sign another ceasefire agreement and begin a peace process. This third ceasefire, facilitated by Norwegian intermediaries, proved to be the longest period of 'no war' or 'negative peace' that the island has witnessed so far. The Norwegian facilitation initiated by Chandrika Kumaratunga and the People's Alliance government in 1998, paved the way for a negotiated Memorandum of Understanding (MoU) signed formally on 22 February 2002. The MoU formalised a bilateral cease-

fire between the Government of Sri Lanka (GoSL) and the LTTE and attempted essentially at fostering an atmosphere of trust and confidence on both sides conducive to productive negotiations. It marked the commencement of the Track One phase of negotiations pertaining to process issues and was regarded as the prelude to the next phase (Track Two), which would address 'core issues' of substance in resolving the conflict. The GoSL formally de-proscribed the LTTE, which was a precondition for participation in peace talks.²⁶ Six rounds of talks were held between September 2002 and April 2003 when the LTTE unilaterally pulled out of the talks while reaffirming its commitment to uphold the Cease-Fire Agreement.

Out of these six rounds, the third round at Oslo in December 2002 marked a high point, and there a hint of an apparent convergence of negotiating positions. At Oslo, the LTTE made a substantive departure from the Thimpu principles and expressed its willingness to explore a solution founded on the principle of internal self-determination, and based on a federal structure within an united Sri Lanka.²⁷

Table-1: Peace Talks from September 2002 - March 2003²⁸

Dates	Venue	Theme
16-18 September, 2002	Sattahip Naval Base, Thailand	Set up Joint Task Force for humanitarian reconstruction in the North and the East.
31 October-3 November, 2002	Bangkok Rose Garden, Thailand	Formed sub-committees, focused on humanitarian, de-escalation and political issues.
2-5 December, 2002	Oslo, Norway	LTTE decided to explore "a political solution within a united Sri Lanka."
6-9 January, 2003	Rose Garden, in Bangkok	To ensure the implementation of urgent humanitarian priorities.
7-8 February, 2003	Berlin, Germany	Issues in relation to human rights.
18-21 March, 2003	Hakone, Japan	In view of the confrontation at sea between the Sri Lankan Navy and the <i>Sea Tigers</i> both parties acknowledged the need for parallel progress in negotiations on security, economic and political issues.

In April 2003, the preparatory donors' seminar took place in Washington. The LTTE, which was listed as a terrorist organisation by the US, could not be invited to the seminar. The Tigers argued that they could have participated in the meet had it taken place in another country. The LTTE felt that the Washington meet was a tactical snub and that the Sri Lankan government was seeking to gain political high ground and not acting as a partner²⁹, as it initially agreed to. In fact, it felt cloistered by an 'international security trap' and on 21 April, 2003, the LTTE, while insisting that it would continue to honour the ceasefire, abruptly withdrew from peace talks scheduled to take place in Thailand.³⁰ It also decided to pull out from a key reconstruction fund-raising conference in Tokyo on 9th June, where subsequently donors pledged \$4.5 billion for rehabilitation and reconstruction in Sri Lanka.³¹

In retrospect, it seems that the 2002-03 peace talks, witnessed a certain alteration of the power political balance due to the involvement of the international community. However, the process of negotiations was high on rhetoric, but lacked sufficient impetus for a shared understanding of the nature of the conflict, and avoided a road map for peace. Both sides tried to perpetuate their interests. The UNF sought to secure political mileage out of a successful peace agreement and upstage the rival SLFP. The LTTE on its part did not compromise on its core beliefs.

Skeptics had warned that the LTTE was a hardcore insurgent outfit and would use the ceasefire agreement to regroup, rearm and renew hostilities. In this context, the Sri Lankan Tamil journalist and political analyst, D.B.S. Jeyaraj wrote in 2003:

Perplexing as it seems, indicators suggest that the LTTE has not revised its fundamental objectives but only engaged in a tactical shift as a political ploy... If so, the LTTE game plan is clear. The proclaimed intention of seeking a federal solution is only for international consumption. It seems the Tigers want the negotiating process to fail at some stage without any blame attaching to them. The peace process should not arrive at a logical conclusion; instead, it should collapse without a satisfactory solution being structured. If and when that happens, the LTTE could opt out and exercise its 'right of external self-determination' and pursue a 'secessionist war' again. Pinpointing the failure of Colombo to arrive at a federal solution, the Tigers would assert that the Sinhala people were incapable of redressing and accommodating Tamil grievances and aspirations within a united Sri Lanka.³²

Striving for parity with the Sri Lankan government, the LTTE soon realised the handicaps of international engagement. The Washington meet proved a major eye-opener and the LTTE refused to succumb to the donors. Attempts to discipline the Tigers through greater focus on human rights issues also proved problematic to its rationale of terror and prompted the pull out.³³

There was also a lack of substance in the peace talks. Original plans for establishing an Interim Administration were put aside in light of the constitutional difficulties, and substituted by provisional mechanisms without substantive implementation power and personnel resources.³⁴ Another primary criticism of the 2002-2003 negotiations was its exclusionist character. Poised as a bipolar model of conflict, the CFA focused on the two main armed protagonists, excluding key stakeholders such as the President, the Muslims, the Janatha Vimukthi Peramuna (JVP) and other Tamil parties.³⁵ In the absence of any symmetry, the fragility that has characterised peace negotiations in Sri Lanka persisted.

III

Political Co-Habitation, Ethnic Outbidding and the LTTE Split

The break in talks following the LTTE pullout in April 2003 witnessed major upheavals particularly in the context of domestic politics. In terms of internal political dynamics, the Sri Lankan experience in cohabitation³⁶ brought forth in bold relief the realities of populist democracy in Sri Lanka. On the LTTE front, the Tigers suffered a split in their ranks following its eastern commander Col. Karuna's decision to break from the Wannu or Northern leadership in the middle of 2003. This infighting proved to be an important destabiliser undermining the LTTE's claim of being the sole representative of Tamil aspirations.³⁷

The Co-Habitation Dilemma

Sri Lankan political system, based on the constitution of 1978, combines features of presidential and parliamentary forms of governments and thus there is always a possibility of the two top executive positions (the President and Prime Minister) being held by two different political parties or alliances. In view of the highly competitive political matrix in Sri Lanka — effectively divided between the two mainstream parties, i.e., the UNP and SLFP—

there is always the risk of the two executive positions jockeying for power and influence. This makes the possibility of peaceful cohabitation utterly difficult.

Thus, when the ceasefire agreement suffered a setback in mid-2003, the leader of the SLFP-led Peoples' Alliance (PA), President Chandrika Kumaratunga, who had been lukewarm in her approach to the peace moves initiated by UNP-led United National Front(UNF) took over the defence, interior and media portfolios while the Prime Minister Ranil Wickremesinghe was away in the USA. High political tension marked the beginning of 2004 against the backdrop of increasing criticism over ceasefire violations and the perceived pro-LTTE bias of the Norwegian-led Sri Lankan Monitoring Mission (SLMM). Political equation in Sri Lanka also changed subsequently when the PA formed a coalition with the hardline Marxist Janatha Vimukthi Peramuna (JVP), giving birth to the United People's Freedom Alliance (UPFA) on 20 January 2004.³⁸ On 7th February 2004, President Kumaratunga dissolved the 12th Parliament and called for elections in April 2004. The UPFA won the April elections and brought the co-habitation dilemma to its final demise.³⁹

On the other side of the conflict, after rejecting the Tokyo Donors' Meet, the LTTE took a more aggressive stand making their continued participation conditional on discussions about an interim administration (IA). In an effort to bring the LTTE back to negotiations, the government took the initiative and submitted a set of proposals in July-August 2003 for setting up an interim administration. The LTTE did not find them catering to its demands and responded with its own proposal for an interim administrative structure for the North and East in the form of an *Interim Self Governing Authority* (ISGA).⁴⁰

However, before negotiations could begin on the issue of Interim Administration, the President took control of the Ministry of Defence and Interior, making it difficult for Ranil Wickremesinghe to go ahead with the peace process. However, experts believed that even if the negotiations were allowed to take place, the positions of the two parties would have been still irreconcilable. At the crux of the debate was the maximalist and minimalist versions of the interim administration envisaged by the two parties. This reiterated, in Jayadev Uyangoda's view, the primary contest between the thick and thin versions of federalism espoused by the LTTE and the Sinhala elite respectively.⁴¹

The LTTE's ISGA proposals articulated a political framework that offered extensive self-rule to the Tamil people. It outlined, at once, powers and functions of an interim administrative structure along with elements of a political settlement to the ethnic conflict. In design, it resembled a highly autonomous entity akin to a confederate unit and hence evoked strong reactions from the Sinhala south. At the political level, the UNF government, anxious to recommence direct talks, interpreted the ISGA proposals as a basis for discussion, with the implicit intention of toning them down through negotiation. However, President Kumaratunga, in a detailed statement on 6th November 2003 wholly rejected the ISGA proposals identifying it as an attempt to explicate the legal foundations of a future, separate, sovereign Tamil state. She found an echo of her point of view in the hardline Janatha Vimukthi Peramuna (JVP). The two parties came together and formed an alliance soon afterwards.⁴²

Post-Tsunami Operational Mechanism (P-TOMS) Fiasco

The tsunami disaster of December 26, 2004 provided an opportunity as well as challenge to the creative capabilities of the contending parties to cooperate amidst adversity. However, internal political wrangling muddled the issue of a joint mechanism for disbursement of Tsunami relief. The events, as they unfolded, hardened positions on both sides and bore a testament to the country's prolonged political crisis. Soon after the Tsunami, the LTTE was invited to participate in a high level coordinating committee set up by the President to ensure prompt and effective delivery of services to the North and East. Subsequently, the GOSL and the LTTE engaged in discussions regarding the establishment of Post-Tsunami Operational Mechanism (P-TOMS) to effectively and equitably allocate and implement post- tsunami aid.⁴³ President Kumaratunga's decision to share over U.S. \$ 3 billion of promised Tsunami aid with the Tigers, however, evoked anger on part of the government's main ally, the Marxist JVP, and prompted its pullout from the UPFA coalition (July 2004) leaving the government in a lurch.⁴⁴ Thus the P-TOMS agreement signed six months after the first direct negotiations between the government and LTTE, under which peace secretariats were to be set up (later involving Norwegian mediation), could not be operationalised. While it attempted to find a creative solution to the issue of sovereignty and sharing of fiscal powers by instituting a regional fund for the North East, a lack of clarity on the regulation and accountability of the fund laid the P-TOMS open to be legally challenged. The Sri Lankan

Supreme Court, in a ruling on 15 July 2005⁴⁵, declared some of the provisions of the P-TOMS unconstitutional, which made the agreement inoperative.

The return of the two parties to talks at Geneva in February 2006, raised hopes of a possible perseverance of 'no war' but in the wake of LTTE intransigence and infighting, the country has returned to a middle-intensity conflict.

IV

Geneva Talks and the Return to War: Sinhala Chauvinism versus LTTE Recidivism

A prolonged stalemate followed the P-TOMS fiasco, accompanied by incremental episodes of violence and political assassinations,⁴⁶ thereby subjecting the CFA to further strain. The peace agenda came to be relegated to the backburner as the country braced itself for another election. With the victory of the hardliner Mahinda Rajapakse of the Sri Lankan Freedom Party (SLFP) to Presidency the peace process exhibited signs of falling apart. Rajapakse's razor-thin margin of victory in the November 2005 elections, according to some analysts, was in a sense facilitated by the LTTE.⁴⁷ Tigers boycotted the elections in the North and East denying Ranil Wickremesinghe crucial Tamil votes. The underlying strategy on part of the Tigers was two-fold, avoiding another prospect of a difficult political co-habitation, and dodging a more robust peace initiative that Ranil Wickremesinghe would have unleashed had he come to power. In his Hero's Day Speech on 27 November, 2005 LTTE supremo Vellupilai Prabhakaran clearly sounded the threat of renewed hostilities, stating that unless President Rajapakse came up with a satisfactory peace initiative, the Tigers were likely to revive struggle for Eelam within a year's time.⁴⁸ Amidst immense international pressure, a fresh bid to kick start the peace process took place. The Norwegian mediated talks were held at the mutually acceptable venue of Geneva from 22-23 February 2006. On both sides the talks addressed a limited mandate. The government's primary emphasis was on reviewing the Ceasefire Agreement (CFA) and making it less prone to violations; the LTTE, on the other hand, sought a more complete implementation of the CFA and not its revision. Other issues involved the LTTE's demand for de-escalating the Sri Lankan military presence in northern Jaffna peninsula, and disarming the "paramilitaries" or the Karuna

faction in the eastern district.⁴⁹ Given these entrenched and asymmetric positions, there was little scope for optimism. In fact, Geneva proved to be the lull before the storm.

While both sides agreed to uphold the CFA, the Geneva-I talks in perspective resulted in contradicting the government's initial position. Rajapakse's SLFP and his hardline allies the JVP and the Jathika Hela Urumaya (JHU) have been persistent critics of the CFA. They doubt its very constitutionality since the CFA was signed between the then PM and the LTTE. In affirming to abide by, and uphold the CFA, the government's negotiating team came under trenchant criticism back home. The JVP in particular declared it did not support the peace process, the government tried to save face by stating that the Geneva statement amounted to an amendment of the CFA, which was categorically denied by the LTTE.⁵⁰ Hence the talks appeared to be essentially a public relations exercise for the consumption of the international community. Subsequently, high political rhetoric and a calibrated rise in violence saw the LTTE pull out from the second round of Geneva talks slated for the 19th of April, 2006 on the ground of lack of provision of free sea-transport for its eastern commanders, who needed to come to the north for discussions ahead of the talks⁵¹. The issue at stake was the government's unwillingness to disarm the LTTE's renegade eastern commander Col. Karuna. Karuna poses as the proponent of Tamil grievances in the East and has recently opened offices in government-controlled Batticaloa. His 'shadow war' against the Tigers, is allegedly supported by the government and enjoys India's complicity. The LTTE has so far failed to eliminate the Karuna challenge on its own, and hence its demand that the Government disarm 'paramilitaries' as pre-condition for return to talks. Following, an assassination attempt on the Sri Lankan Army Chief General Sarath Fonseka at Army Headquarters Colombo, the government launched retaliatory strikes as the country spiraled towards escalating ethnic tensions and riots in the north and east.⁵² Largely because of the international community's involvement and diplomatic pressure to exercise restraint, both parties have officially announced their compliance to the CFA.⁵³ However, the situation on the ground suggests that the negative peace, which lasted for four years, lies in a shambles today.

An attempt at renewed talks, under intense international pressure, failed in Oslo in July 2006, following the LTTE delegation's refusal to meet the government delegation on the grounds that the government should have

sent an appropriate delegation to negotiate with the LTTE. The government chose not to go ahead with the talks and asked its delegation to come back home. In retrospect, analysts are of the opinion that the LTTE undertook the decision to terminate the peace process that began in 2002⁵⁴. The E.U. ban on the LTTE just preceding the Oslo meet on 29th May appears to have provided the context for this *volte face*.⁵⁵ Following the ban, the LTTE also retaliated by insisting on the removal of EU nationals from the Sri Lanka Monitoring Mission (SLMM). It imposed an ultimatum, and removed security guarantees for EU nationals of the SLMM. Subsequently, Finland, Denmark and Sweden withdrew their members, further weakening the monitoring mechanism for the CFA.⁵⁶

On part of the international community, a serious deterioration of the human rights situation has been a source of major concern. This current military engagement has witnessed a selective and deliberate targeting of civilians, with each side denying responsibility and engaging in a mutual blame game. Some instances of blatant terror include the execution of 17 national aid workers of a French NGO at Muttur in the first week of August, the killing of 68 bus passengers in a claymore attack in June, and the assassination of the Deputy Chief of Staff of the Sri Lankan army, Parami Kalatunga, by a suicide bomber.⁵⁷

The conflict meanwhile is spreading. The Muslim-dominated Muttur has emerged as the theatre of the water-war following the LTTE blockade of the Mavilaru reservoir. The government's military response under the guise of humanitarian intervention, called 'Operation Watershed', only exacerbated the civilian trauma⁵⁸. The Rajapakse government's call for a commitment on part of the rebels to substantive talks suggests that for it the goal has not changed much from that in the past — how to prevent a major war while weakening the LTTE militarily and politically.

The LTTE's recent official statements clearly suggest, that at present, it seeks to militarily consolidate its position. After the E.U. ban, it seems to be exploring possibilities of redefining the role of the international community in Sri Lanka. The LTTE has also realised the limited nature of the role of Norway as the peace facilitator. It has significantly attempted to normalise relations with India by regretting the assassination of former Prime Minister Rajiv Gandhi, without owning responsibility for the incident.⁵⁹ Pressure is mounting on the Indian government from within and outside Sri Lanka to play a more proactive role in order to resolve the

ethnic conflict.

Having once burnt its fingers in 1987 and lost Rajiv Gandhi in an assassination in 1991, which saw a ban on the LTTE, India believes that the core issues involved in perpetuating the Sri Lankan ethnic conflict stem from deep contradictions in the Sri Lankan body politic and need to be resolved from within. The Indian Foreign Secretary Shyam Saran during his visit to Colombo on 3-4 July 2006 conveyed the message to the Rajapakse government that India has a role and responsibility and would not shy away from its obligations⁶⁰. However, the Indian role can only be complementary, aimed at facilitation of the peace process. At the level of policy pronouncements, India has reiterated that a durable peace in Sri Lanka hinges on the conclusion of a negotiated political settlement that addresses the grievances of the Tamil population as well as other communities and involves sufficient devolution of powers in an innovative federal design.⁶¹

V

Reconciling the Positions

It is evident from the above analysis that while several attempts at negotiating a political settlement to the Sri Lankan conflict have been made, either the Sinhalese parties or the LTTE have played spoilsport at one point in time or other. Yet, despite the LTTE's commitment to a prolonged military campaign against the State, and the State's inclination to defeat LTTE by force, there have been four major peace processes between them so far. In each of these cases, however, the two parties demonstrated an unwillingness to climb down from their fundamental positions.

The LTTE, after agreeing to a united Sri Lanka in 2002, has reverted to its strategy of achieving its goal of a Tamil Eelam through armed struggle.⁶² Similarly, the government has sought to weaken the capacity of the LTTE by orchestrating divisions within its ranks and to debilitate the LTTE militarily through heavy counter-attacks. The incipient rivalry between the two major political parties in Sri Lanka— engendered by nature of competitive democratic politics, and worsened by the tactic of ethnic outbidding employed by both of them— has been a primary hurdle for achieving a consensus on a substantive peace proposal from the Sinhala South.

The common denominator between these disparate strands of course is the competing nationalism thesis. Instrumentalist and institutionalist understandings of the genesis of ethnic conflicts emphasise the role of discriminatory, racial policies and systematic abdication of negotiated compacts as the primary ingredient fuelling militancy and armed struggle by the Tamils. These variables have persisted as unreconciled tensions in the state building project and need to be resolved first if Sri Lanka is to see successful negotiations between its contending groups.

The failure of current negotiations does not rule out the likelihood of a future negotiated settlement. Besides every failed peace attempt only redefines the conflict in new terms. A protracted civil war requires a protracted peace process for its termination. A negotiated political settlement to the island's ethnic conflict is feasible only if new political conditions for addressing the democratic-emancipatory impulses of the pluralistic Sri Lankan state are created.

A majoritarian system, especially in poly-ethnic settings, should ideally seek to encourage consensus politics and thereby allay minority fears.⁶³ Today, moderate sections of the Sinhala polity and intelligentsia espouse revisionist versions of *unitarism* in terms of devolution of power. This has encouraged an articulation of the democratic pluralism argument⁶⁴. The Sinhalese nationalist project so far has exhibited an exclusionist quality, which has been the root cause of conflict. However, since pluralism is a reality in the demographic makeup of Sri Lanka, the best design for accommodating pluralism will lie in a federalist rehauling of the current state apparatus. Opposition from the Sinhala chauvinists that subscribe to the unitarist end of the unitarian-federalist continuum, however, makes this task immensely difficult. Their insistence on a unitary Westphalian State structure, with non-negotiable sovereign powers, linked to exclusive territorial jurisdiction contends with the reality of a *de facto* Tamil state in the North and East with institutions of taxation, judiciary and police.⁶⁵ This needs to be acknowledged in the prevailing debate on nationalism and sovereignty.

Of concern is Mahinda Rajapakse's inability to persuade the various parties to get on board his all-parties conference (APC) initiative to seek consensus on the devolution of powers. The move cannot go far, as long as the main Opposition party, the UNP, is not enthused by it. The incipient rivalry between the two Sinhalese parties has been an abiding spoiler in

efforts at achieving any substantive agreement and needs to be overcome if a resolution is to come about.

In this context it may be pertinent to ask whether Eelam can be realised? The tenacity and determination of the Tigers and their recurrent recidivism makes this an important question with ramifications for the future. Given the global realities, realising Eelam will be difficult, and may even be impossible. No global power will succumb to the separatist project of a terrorist movement in a post-9/11 world, where the orientation of international relations is anti-terror. Besides any future Tamil autonomous area under LTTE control will invariably suffer from a democratic deficit. Hence, the road to peace in Sri Lanka is likely to remain both tortuous and mired in contradictions for the foreseeable future. It will require a significant reorientation in the country's political culture and mainstreaming of neglected voices and stakeholders to create an environment conducive to peace.

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