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SRI LANKA: NEGOTIATING AN INTERIM AGREEMENT

Briefing Packet for the Norwegian/Japanese Delegation

Negotiation Simulation

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Introduction

Since the Sri Lanka conflict began in the early 1980s, over 64,000 people have been killed. In an effort to end the conflict, the Norwegian government assisted in the brokering of a ceasefire agreement in February 2001 between the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE). Since the ceasefire came into effect the Norwegian government, assisted recently by the Japanese government, has mediated several rounds of negotiations. Although the ceasefire continues to hold, the negotiations have periodically broken down.

In 2003 the LTTE briefly withdrew from the process citing a failure to make progress on key issues such as reconstruction, rehabilitation and the return of refugees. More recently the GOSL has in effect suspended its active participation while the President and Prime Minister attempt to reach agreement on which office holds the primary responsibility for negotiating with the LTTE. The LTTE has indicated that it will be unable to resume negotiations until the President and Prime Minister select a single interlocutor. The Norwegians have also suspended their mediation efforts until the delegations are reconstituted and its role is more clearly defined. During this recent impasse the ceasefire has come under increasing strain.

Most commentators agree that the negotiations will eventually resume and that Norway will likely be invited to return and facilitate the dialogue. When negotiations do resume, the two primary issues to be addressed will be agreement on an interim arrangement which establishes an interim authority to manage the reconstruction and rehabilitation of the Northern and Eastern provinces, and the resolution of certain disputes concerning the interpretation of the ceasefire.

The purpose of this negotiation simulation is to surface key issues and potential solutions to the points of impasse which likely arise in the new round of negotiations. A subsequent negotiation simulation will be run in the spring which will address issues relating to final status and the devolution of authority.

It is important to note that the objective of the simulation is not to reach consensus on the precise nature of the interim authority or to agree upon specific amendments to the ceasefire. Rather, this negotiation simulation is designed to stimulate debate, surface points of impasse, and identify potential solutions. The negotiation simulation has been developed using the methodology employed by the US Department of State's National Foreign Affairs Training Institute which runs similar negotiations to train US diplomats prior to negotiations.

This simulation exercise is not intended to be a comprehensive review of all the issues involved, nor is it intended to endorse one view over the other. The participants in the simulation naturally will have varying levels of substantive or area expertise, as well as professional commitment to the issue. Participants are therefore encouraged to draw upon their individual experiences as they deem appropriate.

To provide the necessary information to conduct this simulation, this briefing packet contains a brief review of the history of the conflict, the principal interests of the parties and other relevant actors, a discussion of the primary issues which are likely to be discussed during

the next round of negotiations, and negotiating instructions for the delegations. Each delegation is provided only their instructions. Two annexes are also provided. The first includes links to the ceasefire and to the primary texts submitted by the parties. The second provides links for further sources of information.

The negotiation simulation has been prepared by the Public International Law & Policy Group in cooperation with American University and is made possible by a grant from the Carnegie Corporation of New York. The Public International Law & Policy Group (PILPG) is a 501(c)3 non-profit organization, which operates as a global *pro bono* law firm providing free legal assistance to developing states and states in transition involved in conflicts. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution. To date, PILPG has advised over a dozen countries on the legal aspects of peace negotiations and constitution drafting, and over fifteen countries in Europe, Asia and Africa concerning the protection of human rights, self-determination, and the prosecution of war crimes.

The History of the Conflict

In 1815 the British established a colonial hold over Sri Lanka. Shortly thereafter Tamil laborers were brought from southern India to work the tea, coffee and coconut plantations. In 1948 Sri Lanka gained independence. In the following year Sinhala nationalism began to take root and Indian Tamil plantation workers were increasingly disenfranchised. By 1956 Sinhalese nationalism had developed into a political ideology, which led to the election of Solomon Bandaranaike, the adoption of Sinhala as the sole official language, and the adoption of numerous other measures designed to enhance the interests of Sinhalese and the preeminence of Buddhism.

In 1965 the opposition United National Party won the elections and attempted to reverse many of the nationalist measures. These efforts were only minimally successful, and in 1970 Srimavo Bandaranaike returned to power and extended the earlier program. Within a year, ethnic tensions increased substantially and in 1971 there was a Sinhalese Marxist uprising led by students and activists.

In 1972 Buddhism was recognized as the country's primary religion. This action further antagonized the Tamil minority. As tensions increased in Tamil-dominated areas in the north and the east, the Liberation Tigers of Tamil Eelam were formed in 1976. In these Tamil areas, the Separatist Tamil United Liberation Front (TULF) party won all seats in 1977.

Then in 1983, thirteen soldiers were killed in a LTTE ambush and this sparked anti-Tamil riots leading to the deaths of an estimated several hundred Tamils. In the north of the island conflict developed between the army and the LTTE. In 1985, as the civil war intensified, the government and LTTE held a series of peace talks. They ultimately failed.

In 1987 government forces pushed the LTTE back into the northern city of Jaffna. At the same time, the government signed accords which created new councils for Tamil areas in the north and east. An agreement was also reached with India on the deployment of an Indian peace-

keeping force. This Indo-Sri Lankan agreement sparked a left-wing and nationalist Sinhalese JVP campaign against it in 1988. By 1990, India became bogged down fighting in the north and Indian troops withdrew from Sri Lanka.

In 1991, the LTTE was implicated in the assassination of Indian premier Rajiv Gandhi in southern India. Then in 1993 President Premadasa was killed in a LTTE bomb attack. President Kumaratunga assumed power in 1994 and pledged to end the war and open peace talks with the LTTE.

However, in 1995 the peace talks collapsed again and the LTTE resumed a bombing campaign. In response, the government launched a major offensive attempting to drive the LTTE from Jaffna. In the following year, the state of emergency was extended across the country in response to the LTTE terrorist attacks in the capital, Colombo. The government then launched another major offensive against the LTTE.

The civil war raged on and in 1998 the LTTE bombed Sri Lanka's holiest Buddhist site and captured a key northern town after intensive fighting. The following year President Kumaratunga was wounded in a bomb attack at an election rally, but was also re-elected president.

In February 2000 Norway announced it was willing to serve as an intermediary between the government and the LTTE. In February 2001 Britain labeled the LTTE as a terrorist organization under a newly adopted anti-terrorism law designed to halt funding and support for UK-based militant groups. Later that year the LTTE attacked the Colombo international airport destroying much of Sri Lanka's commercial air fleet and killing fourteen people.

Soon thereafter, in October 2001, President Kumaratunga dissolved parliament just hours before a no-confidence vote which her Marxist-backed minority government seemed likely to lose. The elections were then set for December. In December a new cabinet, led by Ranil Wickramasinghe, was sworn in after the opposition United National Party narrowly won the parliamentary election.

Under a new cabinet, movement toward peace began and in February 2002 the Government and the LTTE with the assistance of Norway signed a ceasefire agreement. This agreement paved the way for talks to end the long-running conflict. Norway then undertook to sponsor a series of peace agreements, beginning with a March 2002 initiative on de-commissioning of weapons, the opening of the road to Jaffna, and re-establishment of passenger flights to Jaffna.

In September 2002, the Government responded to a rebel demand and lifted the ban on the LTTE. The first round of peace talks began in Thailand and for the first time both sides exchanged prisoners of war. The LTTE also dropped its demand for a separate state. In December 2002 during talks in Norway the parties agreed in principle to power sharing in the Northern and Eastern provinces.

The peace talks resumed in February 2003 in Berlin. But in April 2003 the LTTE suspended its participation in the negotiations, alleging that the north-east region was not benefiting economically from the ceasefire, and that they were not obtaining adequate access to the nearly \$4 billion pledged in international assistance. The LTTE further alleged that the lack of economic development and assistance limited its ability to promote reconstruction, rehabilitation and refugee return in the north-east.

In November 2003 President Kumaratunga dismissed three ministers and suspended parliament. Although parliament reopened after two weeks, negotiations with the LTTE were put on hold while the President and Prime Minister sought to establish a new balance of power and a consensus on the approach to the peace process.

The Interests of the Parties

The parties to the conflict are the Sri Lanka Government, and Liberation Tigers for Tamil Eelam. The Norwegians and the Japanese serve as mediators. For the purposes of this negotiation simulation the two parties will be represented by separate delegations, and a third delegation (combined Norwegian/Japanese) will serve as mediators.

The path to peace in Sri Lanka will be substantially influenced by the interests of the Sri Lanka Muslim Congress (SLMC), the Sinhalese Buddhist community, and by India. These three interested parties are not represented in the formal talks, nor in this negotiation simulation. The SLMC, however, is actively seeking formal representation in the talks and will likely eventually become a party. As the parties seek to reach an agreement it will be necessary for them to consider the views of these influential interests.

The Parties

Government of Sri Lanka: Sinhalese political representation is not monolithic. The Sinhalese are represented by three major parties, the Sri Lanka Freedom Party (SLFP) – headed by President Kumaratunga, the United National Party (UNP) headed by Prime Minister Wickramasinghe, and the Marxist People's Liberation Front (JVP). Despite their common interests vis-a-vie the Tamils the three parties and their coalition allies are frequently locked in political battle.

The GOSL delegation to the peace talks has until recently been comprised of individuals selected by and reporting to the Prime Minister. In November 2003 the President, in an attempt to reassert authority over the peace process, suspended parliament, declared a state of emergency and assumed the positions of Defense, Interior, and Information. In response, the Prime Minister refused to continue the negotiations. The President and Prime Minister have subsequently made numerous attempts to reach a compromise which would ensure representation of both their interests in the GOSL delegation, while also allowing the delegation to function in an effective manner. Recently the President entered a coalition with the JVP. This may make the formation of a joint GOSL delegation more difficult to achieve as the move is seen as a prelude to the calling of snap parliamentary elections.

Regardless of the outcome of the political contest between the three parties, the objectives of the GOSL are readily identifiable. The make-up of the delegation will of course influence the degree to which the GOSL is willing to compromise with the LTTE on various issues.

The overall objective of the GOSL is to find a peaceful solution to the conflict which: 1) preserves the sovereignty and territorial integrity of Sri Lanka; 2) maintains the unitary form of government – as opposed to federalism; 3) retains its ability to administer government functions; and 4) ensures its ability to provide for the security of its citizens, in particular through bringing about an end to terrorist attacks by the LTTE.

Liberation Tigers of Tamil Eelam: The LTTE is the sole representative of the Tamils in the current negotiation process. The LTTE is a monolithic structure led by Mr. Prabhakaran. The head of the delegation, Anton Balasingham lives in London, but regularly consults with Mr. Prabhakaran.

Until recently the primary objective of the LTTE was a independent Tamil state. At the initiation of the talks the LTTE announced that it would no longer pursue an independent state as its ultimate objective, but would rather agree to heightened autonomy for the Northern and Eastern provinces. The primary objective of the LTTE is to protect the Tamil population through the creation of an autonomous province, which 1) is created by merging the Northern and Eastern provinces into one north-east region; 2) assumes substantial political authority for nearly all matters of state interest; 3) directs the economic development of the region; and 4) maintains an independent security force.

Although the LTTE is listed by the United States as a Specially Designated Global Terrorist, it's delegation has been hosted by Thailand, Norway, Germany, and Japan, and has participated in training and other programs arranged by the Irish and British governments, and facilitated by the French government. With the increasing degree of legitimacy the LTTE has acted cautiously and has sought to maintain the ceasefire, while pursuing its interests at the negotiating table. The LTTE has, however, as recently as January 2004, warned that the political standoff between the President and Prime Minister places the ceasefire in a delicate position.

The Mediators

Norway: In January 2000, the Norwegian government announced that it had agreed with the GOSL and the LTTE that it would facilitate negotiations between the two parties to reach a ceasefire and a long term political agreement. Since then Norway has facilitated six meetings between the parties and has meet with the parties separately on a number of occasions. In November 2003, as a result of the crisis between the Prime Minister and President, Norway withdrew from its role as facilitator. Since then, however, Norway has continued to play a low profile role in working the keep the LTTE onboard the ceasefire and to prepare for the eventual resumption of negotiations.

Japan: Since early 2003 Japan has undertaken an increasing involvement in the efforts to resolve the Sri Lankan conflict. While Japan's Overseas Development Assistance programs

have long been active in Sri Lanka, (constituting nearly forty-five percent of Sri Lanka's external aid) it has recently expanded this involvement by hosting the sixth session of the peace negotiations. Japan's involvement has been welcomed by both the LTTE and the Sri Lankan government. The appointment of Yasushi Akashi as a representative of the Government of Japan for peace building, rehabilitation, and reconstruction in Sri Lanka has paved the way for increased Japanese involvement. To date Japan has acted cautiously and has sought to tread delicately among the conflicting interests of the Prime Minister, the President, and the LTTE. As such, Japan is careful to avoid giving the impression that Sri Lanka's sovereignty may be infringed by their participation.

Influential Interests

While not formal parties to the negotiations, the Sri Lanka Muslim Congress, the Sinhalese Buddhists community, and India hold substantial interests in the outcome of the negotiations and will undoubtedly seek to influence their course. These interests and positions will be a consideration in the minds of each delegation as they formulate their negotiating positions.

Sri Lanka Muslim Congress: In discussing the north-east region, an important factor in the success of an interim agreement is the social, political, and economic tensions between the Muslim community and the Tamil majority in the north-east. The Muslims constitute roughly seven percent of the population and speak Tamil; however, they live as a separate community. The Muslims are in a delicate position as they align with the GOSL on some issues and with the Tamils on others. This is due in part to the geographic composition of the Eastern province. In this region, the Tamils form a plurality. However, when the two minority groups are combined in the north-east, the Sinhalese and the Muslims constitute the majority.

In response to the growing conflict, the Muslim community formed a separate political party, the Sri Lanka Muslim Congress. To date, the LTTE and the SLMC have not been able to agree upon a means for SLMC participation in the negotiations. In 1990, over 16,000 Muslim families were evicted from Tamil controlled areas by the LTTE who considered them collaborators. Although, the Muslims were recently invited back to their homelands, thousands still remain in refugee camps. The SLMC will insist that any future agreement between the LTTE and GOSL should address both the Tamil and Muslim requests.

Sinhalese Buddhists: Sri Lanka is the oldest continually Buddhist country. As such the Sinhalese Buddhists seek to ensure that any agreement reached will not diminish the authority of Buddhism, which is enshrined in Article 9 of the constitution which provides that the state should give "foremost place" to Buddhism and that it is a duty to "protect and foster" Buddhism. The Sinhalese Buddhists are also quite intent on ensuring the continuation of a unitary state. The parties to the negotiations are therefore concerned that if an agreement is reached which modifies the state structure, the Sinhalese Buddhist may devise a means for successfully challenging the agreement before the Sri Lankan Supreme Court.

India: India's role in the conflict is opaque, extensive, and complex. India's southern region of Tamil-Nadu has a Tamil population of over 62 million and in the past served as a

training ground for Tamil separatists. India first became involved in the conflict by supporting the Tamil separatist groups as a way to pressure the Sri Lanka government to modify its relationship with India. In 1987, the Indian government undertook to mediate the conflict, and deployed peacekeepers. The Sinhalese and Tamils then undertook a combined assault against the Indian peacekeepers, driving them from Sri Lanka. Subsequently, the LTTE was implicated in the 1991, assassination of a former Indian Prime Minister. Although India's interests have been varied, ultimately India has a vested interest in a stable Sri Lanka. While India does not play a formal role in the peace process, it does exercise substantial influence on the process through informal means.

Identification of Issues Central to the Negotiation of an Interim Agreement

In April 2003 the LTTE suspended its participation in the negotiations, alleging that the north-east region was not benefiting from the upswing in the Sri Lankan economy brought about by the ceasefire, nor were they receiving any significant share of the nearly \$4 billion pledged in international assistance and as a result there was little to no progress being made in reconstruction, rehabilitation or refugee return in the north-east.

In an effort to meet the concerns of the LTTE, the parties agreed to begin discussions on an interim agreement. The interim agreement would provide for the creation of an interim authority which would be empowered to promote reconstruction, rehabilitation and refugee return in the Northern and Eastern provinces.

In July 2003, the GOSL tabled a Discussion Document concerning the establishment of a provisional administrative structure for the Northern and Eastern provinces. http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/Sri_Lanka%20Role%20Play.pdf. The GOSL proposal provides for the creation of a Council with substantial LTTE and SLMC participation in decision making and delivery related to the administration and the rehabilitation and reconstruction of the Northern and Eastern provinces.

In November 2003 the LTTE tabled a proposal for an Interim Self-Governing Authority for the North-east. <http://www.eelam.com/isga/proposal.pdf>. The LTTE proposes the devolution of power from the current authority in the Northern and Eastern provinces to a newly created Interim Self-Governing Authority (ISGA). The ISGA would be led by a majority Tamil and would possess all necessary authority to provide for the rehabilitation, resettlement and reconstruction in a combined north-east region. The ISGA would be highly autonomous in nature and have jurisdiction over taxes, law and order, land, and distribution of aid.

To reach an interim agreement it will be necessary to establish some degree of consensus on the following issues:

- The structure of the Interim Authority
- The powers and responsibilities of the Interim Authority
- The conjoining or continued separation of the Northern and Eastern Provinces
- The nature and extent of High Security Zones
- The creation of mechanisms to promote refugee return

- The provision of direct access by the LTTE to international assistance
- Muslim participation in the negotiations for an Interim Agreement

While the parties negotiate the interim agreement it will be necessary to simultaneously resolve two points of conflict relating to the ceasefire:

- Clarification of the ceasefire concerning the importation of weapons
- Clarification of the ceasefire concerning the right of the GOSL Navy to interdict LTTE maritime vessels.

Structuring the Interim Authority

To create a system of power sharing in the Northern and Eastern provinces the GOSL has proposed the creation of a provisional administrative arrangement. The administrative structure would include substantial Tamil and Muslim participation and would interface with GOSL administrative agencies to ensure the necessary expenditure of funds and allocation of resources to promote rehabilitation, reconstruction and refugee return. The proposal for an interim administrative structure is consistent with the desire of the GOSL to maintain the unitary nature of Sri Lankan government while providing for Tamil participation in the decision-making process.

The LTTE have proposed the creation of an interim self-governing authority which would be comprised of a majority of Tamil representatives with substantial Muslim and Sinhalese participation. The proposal for an interim self-governing authority is consistent with the LTTE's desire to create a *de facto* asymmetric federation in which they are able to exercise substantial political and economic autonomy in the north-east region. The LTTE also sees an interim self-governing authority as a useful means to develop a nascent government which may accrue increasing structure and authority during subsequent rounds of negotiation.

Empowering the Interim Authority

Once an interim authority is created it will be necessary to determine which powers that entity may exercise. The GOSL perceives a need only for the interim authority to exercise administrative authority and to facilitate Tamil participation in the process of administering the rehabilitation, reconstruction and return of refugees. The LTTE seeks to empower the interim authority with plenary as well as executive authority. Moreover, the LTTE deems it necessary for the interim authority to exercise a wide range of powers in order to adequately promote rehabilitation, reconstruction and the return of refugees.

Combining the Northern and Eastern Provinces

To maintain as much as possible the current Sri Lankan state structure, the GOSL proposes that the status of the Northern and Eastern provinces remain the same. The LTTE, however, proposes that the Northern and Eastern provinces be combined into a single north-east region subject to the jurisdiction of the interim self-governing authority. Whether the Northern and Eastern provinces are merged is particularly significant for the SLMC because a large

Muslim community resides in these areas. While the Muslims, combined with the Sinhalese constitute a majority in the Eastern province, there is no possibility for combined representation to constitute a majority in a north-east region.

Redefining the High Security Zones

In an attempt to secure the Northern and Eastern provinces, the GOSL has designated large swaths of land as High Security Zones. Special measures are employed in these zones with respect to freedom of movement and other fundamental rights in order to ensure security. The GOSL intends to maintain these High Security Zones during the interim administration of the Northern and Eastern provinces. The LTTE, claiming that the Zones are destabilizing and have led to the displacement of large numbers of Tamils insists that the GOSL substantially reduce the territory designated within these Zones. The LTTE points to the ceasefire as the appropriate means for maintaining security as opposed to the continuation of High Security Zones.

Promoting Refugee Return

Since the ceasefire, a number of internally displaced persons and refugees have returned to their homes. A substantial number, however, continue to live in temporary accommodation and refugee camps. IDP's and refugees are in particular reluctant to return to areas designated as High Security Zones. A second obstacle to the return of IDP's and refugees is the lack of assistance for reconstruction and rehabilitation necessary to entice the refugees to return.

Direct Access to International Assistance

The international community, led by Japan, has pledged billions of dollars in reconstruction assistance. The LTTE believes that in order to promote effective rehabilitation and reconstruction in the north-east, it must have direct or near-direct control over the distribution of this assistance. The LTTE would also like to be able to directly solicit international assistance and to engage in international trade to raise revenue. The GOSL argues that the requirements of sovereignty dictate that the government must exercise control over the distribution of assistance, but that it is willing to create mechanisms for substantial LTTE participation in the process.

Muslim Community Participation in the Negotiation of an Interim Authority

As noted above, the Muslim community constitutes approximately seven percent of Sri Lanka's population. Although the Muslim community shares similar qualities with the Tamils, such as language, their preference is to be recognized by their religious and cultural identity. The SLMC will seek formal participation in the negotiation of the interim agreement and will be supported by the GOSL. The SLMC will also seek to maintain the separation of the Northern and Eastern provinces, and will argue for the devolution of certain powers to the community level. The GOSL will likely support the former and reject the latter, while the LTTE will likely reject the former and support the latter.

Clarifying the Ceasefire: Importing Weapons

As noted above, in February 2002, the parties entered into a ceasefire. <http://www.peaceinsrilanka.com/insidepages/Agreement/agceasefire.asp>. The ceasefire provides in section 1.2 that:

Neither Party shall engage in any offensive military operation. This requires the total cessation of all military action and includes, but is not limited to, such acts as:

a) The firing of direct and indirect weapons, armed raids, ambushes, assassinations, abductions, destruction of civilian or military property, sabotage, suicide missions and activities by deep penetration units;

The ceasefire also provides in section 1.7 that:

The Parties shall not move munitions, explosives or military equipment into the area controlled by the other Party.

The GOSL contends these provisions prohibits the importation of weapons by the LTTE. The LTTE contends that the provisions do not prohibit the importation of weapons. Moreover, the LTTE argues that if the ceasefire constitutes a ban on the importation of weapons then this ban should equally apply the GOSL, which continues to purchase arms from abroad.

Clarifying the Ceasefire: Interdiction at Sea

The LTTE and the GOSL disagree as to whether the ceasefire permits the Sri Lankan navy to interdict LTTE merchant and other vessels at sea.

Article 1.2 provides:

Neither Party shall engage in any offensive military operation. This requires the total cessation of all military action and includes, but is not limited to, such acts as: offensive naval operations (1.2c)

Article 1.3 of the ceasefire provides that:

The Sri Lankan armed forces shall continue to perform their legitimate task of safeguarding the sovereignty and territorial integrity of Sri Lanka without engaging in offensive operation against the LTTE.

The GOSL maintains that these provisions permits it to interdict LTTE vessels in order to safeguard the sovereignty and territorial integrity of Sri Lanka. The LTTE asserts that the ceasefire prohibits offensive naval operations and provides no basis for interdiction.

On June 14th, 2003 the dispute came to a head when the interdiction of an LTTE merchant vessel resulted in the destruction of the vessel and the death of twelve seamen. The GOSL claimed the unflagged vessel attempted to ram the navy ship carrying out the interdiction.

The LTTE claimed there was an unprovoked attack by the navy vessel, which had no authority to interdict the oil tanker. The SLMM was unable to resolve the factual dispute between the parties. In a previous incident an LTTE transport vessel carrying weapons was destroyed by its crew - killing three - when it was interdicted by a GOSL navy ship, carrying an SLMM observer.

Annex 1: Necessary Texts

Agreement on a Ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam

Ceasefire from the Homepage of the Sri Lankan Government's Secretariat for Coordinating the Peace Process:

<http://www.peaceinsrilanka.com/insidepages/Agreement/agceasefire.asp>

Status of Mission Agreement (SOMA) on the Establishment and Management of the Sri Lanka Monitoring Mission from the Homepage of the Sri Lankan Government's Secretariat for Coordinating the Peace Process:

<http://www.peaceinsrilanka.com/insidepages/Agreement/SOMA.asp>

Sri Lanka Government Proposal for the Establishment of a Provisional Administrative Structure for the Northern and Eastern Provinces

http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/Sri_Lanka%20Role%20Play.pdf.

Proposal by the Liberation Tigers of Tamil Eelam on Behalf of the Tamil People for an Agreement to Establish an Interim Self-Governing Authority for the North-east of the Island of Sri Lanka

<http://www.eelam.com/isga/proposal.pdf>

Annex 2: Sources for Further Inquiry

Transcripts of Previous Rounds of Negotiation

From the Homepage of the Sri Lankan Government's Secretariat for Coordinating the Peace Process:

<http://www.peaceinsrilanka.com/insidepages/PeaceTalks/PeacetalksMain.asp>

Substantive Background on the Conflict

From the Homepage of the Sri Lankan Government's Secretariat for Coordinating the Peace Process:

<http://www.peaceinsrilanka.com/insidepages/Pressrelease/pressrelease.asp>

Conciliation Resources: The Accord Series on Sri Lanka, *Demanding Sacrifice: War & Negotiation in Sri Lanka*

<http://www.c-r.org/accord/sri/accord4/index.shtml>

Summary Article of the tentative peace by Anuradha Herath (*World Press Review* Sri Lanka correspondent) (October 24, 2002):

<http://www.worldpress.org/Asia/773.cfm>

For more information on High Security Zones see:

<http://www.saag.org/notes2/note174.html>

EC Conflict Assessment Mission of Sri Lanka, (August 2002):

http://europa.eu.int/comm/external_relations/cpcm/mission/srilan.pdf

Spotlight on Sri Lanka: The Infoscope news clipping service from international newspapers: <http://www.is.lk/spot/>

From the BBC:

http://news.bbc.co.uk/1/hi/world/south_asia/country_profiles/1168427.stm#media

Current Commentary on the Peace Process

Restoring Peace to Sri Lanka's Fractured Polity:

<http://www.peaceinsrilanka.org/insidepages/background/background.asp>

South Asia Analysis Group: Index to papers on Sri Lanka:

<http://www.saag.org/indexes/Srilanka.html>

Specific Topics from South Asia Analysis Group:

Political Feud: <http://www.saag.org/notes3/note208.html>

“Re-Evaluating the Concept of Sovereignty”:

<http://www.saag.org/papers9/paper879.html>

Homepages for the Primary Actors

Government of Sri Lanka

Homepage for the Government of Sri Lanka: <http://www.priu.gov.lk/>

Homepage for President Kumaratunga: <http://www.presidentsl.org/data/>

Homepage for Prime Minister Wickramasinghe:

<http://www.gov.lk/pm/index.htm>

Liberation Tigers for Tamil Eelam

Homepage for Tamilnet:

<http://www.tamilnet.com/>

Homepage for Tamil Eelam:

<http://www.eelam.com/>

Tamil commentary on the 1995 Peace Process:

<http://www.eelam.com/talks95/>

Sri Lanka Muslim Congress

Homepage for SLMC:

<http://www.slmc.lk/>

Papers concerning issues central to the interests of the SLMC:

<http://www.saag.org/papers9/paper865.html>

“Muslim Angle in Sri Lankan Peace Process,” author: Syed Ali Mujtaba, affiliated with INDOLink:

<http://www.indolink.com/Analysis/a010204-222430.php>

“Sri Lanka: The Peace within- Protecting Muslims and human rights in east,” author Jehan Perera, HIMAL, August 2, 2002:

http://www.himalmag.com/sri_lanka/dm080202.htm

Norway

The Norwegian Peace Alliance Working Group on The Peace Process in Sri Lanka

<http://www.nowar.no/srilanka/>

Maps of Sri Lanka



Credits: <http://www.cia.gov/cia/publications/factbook/geos/ce.html>

For Additional Maps:

Political Map:

http://www.lib.utexas.edu/maps/middle_east_and_asia/sri_lanka_pol01.pdf

Shaded Relief Map:

http://www.lib.utexas.edu/maps/middle_east_and_asia/sri_lanka_rel00.pdf

Ethnic Communities, Population Density, Land Use and Economic Activity Maps:

http://www.lib.utexas.edu/maps/islands_oceans_poles/sri_lanka_charts_76.jpg

Physical and Political Maps:

<http://www.maps.com/reference/geoshelf/factbook/srilanka.html>

AGENDA

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|----------------------|--|
| 9:00am | Coffee and doughnuts available for participants |
| 9:30-9:45am | Introduction and review of simulation schedule and procedures |
| 9:45-10:15am | Individual delegation meetings to review positions |
| 10:15-10:45am | Norwegian delegation meets with Sri Lankan and LTTE delegations |
| 10:45-11:15am | Small Trilateral Group Meetings with Norwegian mediation <ul style="list-style-type: none">• Interim Arrangement/Merging of North/East Provinces• Refugees/High Security Zones/International Assistance |
| 11:15-11:30pm | Norwegian delegation meets with Sri Lankan and LTTE delegations |
| 11:30-12:00 | Small Trilateral Group Meetings with Norwegian mediation <ul style="list-style-type: none">• International Assistance• Ceasefire |
| 12:00-12:30pm | Individual delegation meetings to focus on substantive negotiating issues

(Lunch will be provided during this meeting) |
| 12:30-1:00pm | Plenary Session |
| 1:00-1:20pm | Resume Small Group Meetings as determined by parties and mediators |
| 1:20-1:40pm | Final Plenary Session |
| 1:40-2:15pm | Review and Lessons Learned |

Confidential

NEGOTIATING INSTRUCTIONS NORWEGIAN/JAPANESE DELEGATION

(Only for Norwegian/Japanese Delegation)

Your role is to assist in the movement of peace talks from one issue to the next. You are also to provide suggested compromises to the problems which will arise.

Both the GOSL and the LTTE have presented proposals for the structure, function, authority of the interim arrangement. Whether this interim agreement evolves into a final status is for the parties to decide. Below is a summary of both proposals followed by the Muslims interests in this conflict and proposal for a successful peace agreement.

Structuring the Interim Authority

The GOSL proposes the creation of a Provisional Administrative Council. The Council would consist of members from the GOSL, LTTE, and SLMC, with a LTTE majority and with weighted representation for the Muslim and Sinhalese communities.

The GOSL proposal suggests two options for selecting the Chairperson of the Council. The first option is to have two chairpersons, one representing the LTTE and the other representing the GOSL and elected from the Council members. Each chairperson would have the right to veto any proposal brought before the Council. The second option is to have one Chairperson elected by members of the Council. However, under this option, any decision that affects the Muslim community or Sinhalese community would need the support of a majority of the Council members and a majority of the representatives of the Muslim or Sinhalese communities, depending on which group is affected by the decision. Under either proposal the GOSL will be able to protect its interests, either through a veto or through the requirement of minority approval.

The GOSL proposal also provides for the creation of District Committees in each of the eight districts in the Northern and Eastern provinces. Council members would constitute the membership of the District Committee. Each District Committee would function as a delegate of the Council and ensure effective implementation of Council decisions and coordination of all development activities within the region. As many District sub-committees as necessary would be established to further assist in the implementation of Council decisions on a local level.

Most importantly, the GOSL proposal provides for the appointment of a “Special Commissioner” by the GOSL with Council approval. The Special Commissioner would then be responsible for making use of state machinery to implement Council decisions.

The LTTE will likely reject the GOSL proposal, in particular the provisions concerning the veto and the appointment of a special commissioner. The LTTE does not wish to create an “administrative” entity, but rather a “self-governing authority.”

The LTTE proposal calls for the creation of an interim self-governing authority which would be comprised of a majority of LTTE representatives, with Muslim and Sinhalese participation. The interim authority would continue to operate for five years and if no agreement is reached, the LTTE would conduct elections in accordance with international democratic principles and standards under international observation for new membership on the interim authority.

The LTTE proposal is not palatable to the GOSL as it lacks any provision for active and decisive GOSL involvement in the Northern and Eastern provinces. To eliminate or minimize GOSL presence runs counter to their goal of a unified Sri Lanka under a common administration.

Empowering the Interim Authority

The GOSL seeks to maintain Sri Lanka as a unitary state. Although the GOSL is willing to devolve administrative authority, its primary objective is to ensure the maintenance of a cohesive nation. Devolution is a key point of contention because it is linked to the fundamental fears and prejudices that divide the country. If the GOSL delegation consents to the devolution of substantial authority, it may do so only if it ensures that the interim authority is administrative in nature and that the GOSL is responsible for the implementation of the decisions of the Council. The GOSL is further instructed to resist attempts to devolve authority for matters relating to police, security, land and revenue.

The LTTE proposal calls for a transfer of all powers presently carried out by the GOSL to the interim self-governing authority. This includes jurisdiction over rehabilitation, resettlement and reconstruction, the power to directly receive aid, regulate internal and external trade, determine land use, solicit direct investments from abroad, taxes, courts. Moreover, the LTTE clearly seeks an executive role rather than an administrative role.

The LTTE proposal also provides that existing agreements with the GOSL by contractors and international agencies may be modified by the ISGA. Such an arrangement would substantially diminish the LTTE jurisdictional authority, particularly affecting agreements on distribution of financial aid and investments by any organization both internal and external.

Combining the Northern and Eastern Provinces

The LTTE seeks to merge the Northern and Eastern provinces into a single region, the north-east. The LTTE will argue for the merger of the two provinces based on fairness and efficiency. The GOSL is generally opposed to the merger of the Northern and Eastern provinces as this would alter the fundamental structure of Sri Lanka and encourage other provinces to consider merger or possibly separation. The SLMC will insist that the Northern and Eastern provinces remain separate. The SLMC is worried that in a merged Northern and Eastern region dominated by Tamils they will become second-class citizens. Recent Muslim-Tamil clashes further support their fears.

Redefining the High Security Zones

The GOSL are keen on maintaining the High Security Zones for security reasons. Some officials in the GOSL are skeptical that the ceasefire has successfully disarmed the LTTE and that decreasing the size of these Zones will actually facilitate refugee return.

The LTTE propose and insist on reducing the size of the territory designated as High Security Zones and reducing the amount of government occupied land in the northeast region. They argue that the restriction on civilian access to these areas is a violation of international law norms. In particular these Zones are preventing the return of thousands of refugees.

Promoting Refugee Return

The return of refugees raises pressing humanitarian needs, in particular on the issues concerning resettlement, rehabilitation and reconstruction.

While both the GOSL and LTTE support the return of refugees to the northeast provinces, the GOSL insist that High Security Zones remain where they were designated by the ceasefire agreement. In contrast, the LTTE insist the territory designated for Zones be reduced to allow refugees to return to their homelands.

For the Muslim community, the relocation of refugees is also important. The thousands of refugees in camps are not only Tamils, but are also Muslims who were forced out by both the LTTE and GOSL.

Direct Access to International Assistance

Although all provisions in the ISGA are important to the LTTE, a key provision is the creation of an administration to handle the distribution of finances. This will allow the reconstruction, redevelopment, and rebuilding process in the north-east region to begin at once. The LTTE assert that it is critical to the reconstruction and rebuilding efforts of the north-east to have a separate structure created for these efforts. The internal differences in the GOSL have played a role in stalling the rebuilding efforts and the LTTE are growing impatient with waiting for the GOSL to settle their differences before the Tokyo financial aid can be distributed to the north-east region.

The GOSL suggests in their proposal that the Council be vested with the right to distribute financial assistance and funding for the Interim Arrangement. However, the GOSL may allow the LTTE and other agencies to assist the Interim Arrangement with the distribution.

Muslim Community Participation in the Negotiation of an Interim Authority

The SLMC has recently prepared a counter-proposal to the GOSL and the LTTE proposals. The proposal is said to include special protections in the northeast if this region is going to be LTTE-controlled. The SLMC proposes an arrangement that will grant Muslims similar rights requested by the LTTE from the government of Sri Lanka such as substantial control over the Muslim community's affairs.

The SLMC's primary concern relates to the potential merger of the Northern and Eastern provinces under the near exclusive control of the LTTE. The SLMC worries they may become second class citizens. Recent Muslim-Tamil clashes further support their fears with several Muslims falling victim to Tamil violence. In addition, the relocation of refugees also impacts the Muslim community who are also refugees forced out by both the LTTE and the government from its High Security Zones. The SLMC further worries that the LTTE will attempt to destroy the Muslim community's economy through LTTE actions such as organizing riots that destroy Muslim businesses or taxing Muslim-owned businesses because they are allegedly on Tamil claimed land.

To avoid discrimination against the Muslim community, the SLMC argues for the delegation of similar rights to what the Tamils seek from the GOSL in the north-east. The SLMC also argues that an Interim Arrangement should be created in the two separate Northern and Eastern provinces rather than merging the two regions into one.

Clarifying the Ceasefire: Importing Weapons

Without further reaffirmation or clarification of the ceasefire there will likely be continued instances of armed clashes between the Sri Lankan Navy and Tamil merchant vessels. Any further clashes will almost certainly undermine the progress being made toward a negotiated settlement of the conflict. The MOU should not be amended as this may provide an opportunity to unravel the foundations of the MOU.

The primary question which must be addressed by the parties and the Norwegian government is whether the Sri Lankan navy and air force may forcibly interdict Tamil vessels suspected of importing arms.

There are two sub-issues to this question. First, whether under the terms of the MOU the Tamils may continue to import weapons, and second, if the importation of arms by the Tamils is prohibited, whether the Sri Lankan navy and air force may use force against Tamil vessels to enforce the MOU.

The GOSL maintains that the LTTE is violating the ceasefire by importing weapons under the terms of the ceasefire. They assert that the LTTE is restricted from importing weapons and can cite to Article 1, Modalities of a Ceasefire and Article 2, Measures to Restore Normalcy to support the argument.

Article 1, Section 7 provides:

The Parties shall not move munitions, explosives or military equipment into the area controlled by the other Party.

Article 2, Section 2.6 provides:

The parties agree to ensure the unimpeded flow of non-military goods to and from the LTTE-dominated areas with the exception of certain items as shown in Annex A.

In Annex A, “the Parties agree to ensure the flow of non-military goods to and from LTTE dominated areas of Northern and Eastern Province, as well as unimpeded flow of such goods to the civilian population in these areas. Non-military goods not covered by Article 2.6 in the Agreement are listed as “non-military arms/ ammunition, Explosives, Remote control devices, Barbed wire, Binoculars/ Telescopes, Compasses, and Penlight batteries.”

The GOSL argues that under Article 1.7, the LTTE is restricted from moving weapons into the Northern and Eastern provinces which contain High Security Zones. In addition, they stress the importance of the specific language in Article 2.6 as it demonstrates that movement of non-military goods is specifically permitted and following this logic, the movement military goods is not permitted, including the importation of weapons.

The LTTE will argue that the ceasefire language is clear on its face that no munitions or military equipment may be moved into an area which is not under the control of the Party moving those munitions. Importantly, by expressly stating that a party may not move munitions into an area controlled by the other party, it presumes that a party may move munitions into an area which it controls. Otherwise the paragraph would have said that no party shall move munitions or military equipment.

The fact that a prohibition on rearmament is not included in the MOU is not inconsistent with general state practice. A review of ceasefire agreements and subsequent peace agreements indicates that prohibitions on rearmament are generally included in the final peace agreements as part of a comprehensive program on demobilization, disarmament and decommissioning of weapons. A plain text reading of the MOU coupled with this assessment of state practice indicates that the parties intended for the ceasefire to be an initial step in the resolution of the conflict, and that issues pertaining to rearmament would be addressed in the subsequent negotiations.

The LTTE further argues that in the event it appears that the MOU will be read to prohibit the importation of weapons, the prohibition should also apply to the GOSL. Throughout the MOU the parties are treated in an identical fashion with equal rights and responsibilities. The overall principle of parity reflected in the MOU is a common guiding principle found in nearly all other ceasefire agreements. Thus, if the MOU were to be read to prohibit the importation of arms, under articles 1.2 or 1.7 or any other article, then those provisions would apply equally to both parties. As such, the Sri Lankan armed forces would be prohibited from purchasing or otherwise importing weapons and munitions.

Clarifying the Ceasefire: Interdiction at Sea

The GOSL maintains that the Sri Lankan navy has authority to interdict LTTE vessels at sea. They base their argument on the fact that the importation of weapons is a direct violation of

the ceasefire and they are entitled to enforce the ceasefire. They further argue that under Article 1.3 of the ceasefire,

The Sri Lankan armed forces shall continue to perform their legitimate task of safeguarding the sovereignty and territorial integrity of Sri Lanka without engaging in offensive operations against the LTTE.

Interdictions are consistent with the need to protect sovereignty and thereby are permitted. They argue that such interdictions are by their nature defensive and not offensive operations.

The LTTE believe that the GOSL argument is legally insufficient on four grounds. First, the intent of the paragraph is to permit the Sri Lankan armed forces to undertake the legitimate defense of the sovereignty and territorial integrity of Sri Lanka. In most instances, threats to sovereignty and territorial integrity come in the form of external acts by other states. When referring to internal armed threats, agreements generally refer to threats to internal security and not threats to sovereignty and territorial integrity. Paragraph 1.3 should therefore be read to permit the Sri Lankan armed forces to continue their legitimate activities which are designed to protect Sri Lanka from outside threats to their sovereignty and territorial integrity. Internal security will be ensured through the observance of the MOU.

Second, while the paragraph may be read to permit the use of force to defend against an active armed attack by LTTE forces aimed at capturing territory, it clearly cannot be read to authorize the offensive use of force against a passive threat to Sri Lankan tactical interests. If paragraph 1.3 were read to include the use of force against such passive threats then it would quickly be used to justify many other acts which would rapidly undermine the stability created by the MOU.

Third, any right to protect the sovereignty and territorial integrity of Sri Lanka is qualified by the limitation that the armed forces may not engage in offensive operations. State practice clearly indicates that interdiction, especially interdiction under the threat of force, is an offensive operation. On its face, article 1.3 was crafted so as to expressly preclude the Sri Lankan armed forces from using it as a pretext for engaging in offensive operations like the one giving rise to the June 2003 naval incident.

Fourth, paragraph 1.3 must be read in conjunction with paragraph 1.2, which expressly prohibits “b) aerial bombardment; and c) offensive naval operations.” Thus, even if the Sri Lankan armed forces were entitled to take some form of action to prevent the importation of arms and munitions, they could not do so using aerial bombardment or offensive naval operations.

To resolve the conflict over the interpretation of the ceasefire with respect to naval interdiction your delegation may wish to table the attached proposal.

Measures to be Considered for Prevention Incidents between the Sri Lankan Navy and LTTE at Sea

Introduction

Ever since the ceasefire Agreement was signed, there have been a countless number of incidents related to the Parties' activity at sea. It is not an exaggeration to state that some of the most serious incidents related to the ceasefire have occurred at sea, endangering the ceasefire and the Peace Process.

LTTE has a need for sea transport of personnel and legal goods between the LTTE controlled areas, while the Navy has legitimate tasks of safeguarding the sovereignty and territorial integrity of Sri Lanka.

To prevent future incidents at sea that could threaten the stability of the Ceasefire, GOSL and LTTE at the Sixth Round of Peace Talks have decided that effective arrangements for the operation of their naval units should be worked out and implemented.

Proposed Measures

Compliance with the ceasefire and International Laws at Sea

The Parties naval units at all levels must comply fully with the ceasefire and with the international laws at Sea.

Policy on active ceasefire measures at sea

The general policy regarding active Ceasefire measures at sea must be determined at the highest level (central level). The Maritime Committees should work out the details.

Maritime Committee

As a tool to prevent incidents and violations at sea, two Maritime Committees should be established. The Committees should consist of representatives from the two Parties' naval units and should be headed by international monitors. These Maritime Committees should play a proactive role.

Recognition of the LTTE Sea Tigers

In the spirit of the ceasefire the GOSL, and especially the Navy, should recognize the LTTE Sea Tigers as a de facto naval unit and the LTTE should be excluded from the law concerning limitations on outboard motors horsepower.

Identification

The Parties' vessels should be marked in accordance with the United Nations Convention on The Law of The Sea (UNTCLS) of 1982.

Confidence building measures

For mutual trust and understanding and as a confidence building measure, the Navy and the LTTE Sea Tigers should permit observers from the other Party onboard their vessels while conducting exercises and training. Notification of such naval exercises should also be implemented as a normal procedure

Inspections

The Navy's obligations and legitimate tasks of safeguarding the sovereignty and territorial integrity of Sri Lanka are undebatable. Hence, any vessels challenged or intercepted by the Navy, will obey instructions and orders given by the Navy, including (but not limited to):

An intercepted vessel must accept peaceful and legal inspections by the Navy and monitored by the international monitors.

Destruction of evidence as well as committing suicide to avoid inspections will be considered as grave violations of the ceasefire.

In accordance with the ceasefire the Parties should not obstruct or prevent vessels carrying non-military goods.

Offensive naval operations

Neither the Navy nor LTTE Sea Tigers will conduct offensive or aggressive operations and movements at sea. The minimum distance between the Parties' vessels should be kept to one (1) NM. In emergencies or when situations require it, a shorter distance between the vessels may be agreed on.

Briefing on the ceasefire and Laws at Sea

All crews on all vessels belonging to the Navy or LTTE Sea Tigers should be thoroughly informed and briefed on the ceasefire, rules and regulations governing the Sea and good Seamanship.

Navy and LTTE Rules of Engagement

When an incident at sea occurs, the Parties should refrain from escalating the situation by reinforcing the maritime presence at the scene. Hence, the Parties rules of engagement at sea should be revised to meet the new requirements.

Exercise and Training Areas

The Navy and LTTE Sea Tigers should have specific marked exercise and training areas at sea, designed for navigation training and for live firing exercises as well. LTTE vessels when at sea outside exercise areas should not carry weapons or explosives onboard.

Legal maritime supply lines

The Parties should discuss the possibility of creating safe and legal maritime supply lines for transporting of personnel and non-military goods.