

The following are the summary and recommendations extracted from a recent study on Sri Lanka's peace process entitled The Sri Lankan Peace Process at the Crossroads-Lessons, Opportunities and Ideas for Principled Negotiations and Conflict Transformation (January 2004)

SRI LANKA'S PEACE PROCESS: TOWARDS PHASE II

Tyrol Ferdinands, Kumar Rupesinghe, Paikiasothy Saravanamuttu, Jayadeva Uyangoda, Norbert Ropers

The Sri Lankan peace process is at crossroads. Seven months after it withdrew from talks the LTTE presented its proposal for an 'Interim Self-Governing Authority' (ISGA) for the North-East on 1 November 2003, and has expressed its preparedness to resume negotiations with the Government of Sri Lanka (GoSL). The southern polity however is once again entangled in a power struggle between the United National Party (UNP) and People's Alliance (PA) and their respective leaders; both sides nevertheless have also expressed their willingness for the resumption of talks. The differences between them with respect to the substance of the peace negotiations are small. The actual problems are about who should take over the main responsibilities for the peace negotiations and how they should be pursued. Therefore, the resolutions of the ethnic conflict and of the inter-party political conflict in the South is inter-twined.

The Ceasefire Agreement (CFA) has lasted for nearly two years, much longer than any previous agreements, and it has created a unique opportunity for achieving a lasting peace. The vast majority of the people of this country don't want to risk any re-escalation of the ethnic conflict; they long for a concerted effort of all the parties to sustain the ceasefire and to work towards a just settlement.

The first phase of negotiations, between September 2002 and March 2003, demonstrated that the parties were able to engage in discussions, identify common ground, manage critical incidents and agree on exploring 'a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking peoples, based on a federal structure within a united Sri Lanka' (Oslo Communiqué, December 2002).

There is significant goodwill among all principal stakeholders to proceed with the peace process. However, the country needs more than a mere agreement. All of them must review their efforts critically and do their utmost to develop a common strategic framework that overcomes the serious shortcomings of the first phase of the peace process.

The most fundamental shortcoming of this period was the lack of a clear, transparent and common strategic framework which could have guided and structured the negotiations as well as helped to mobilise public support for the peace process. Instead, all principal stakeholders had their particular strategies on how to maximize

power and influence through their attitude towards the peace process. These were often linked to their own goals of maximizing their power and influence. The net effect was a pragmatic and ad hoc muddling through of the negotiation process, which made it difficult to address the crucial contentious issues and move towards inclusivity.

A clear, transparent and common strategic framework is needed not only for the negotiations between the GoSL and the LTTE but also for transforming the dual power structures in the South as well as in the North-East. The main protagonists in the South, the UNP and the PA, have to overcome the legacy of confrontational politics and to work towards an effective and fair mechanism of cohabitation and power sharing for the sake of the peace process.

Another consensual power-sharing arrangement is needed in the North-East to transform the de facto dual regimes of the LTTE and the GoSL/Sri Lanka Armed Forces (SLAF) from hostile to peaceful coexistence and towards an effective and democratic regional administration. Finally, the Muslim community, the Up-country Tamils and the other minorities need to be brought into a strategic framework to become co-owners of the next phase of the peace process as well as of the interim power-sharing agreements.

The essence of the ethnic conflict concerns equal individual as well as group rights of all communities and citizens, and that those communities share the right to co-constitute the political system of Sri Lanka. The essence of conflict resolution is therefore a fundamental restructuring of the Sri Lankan state. The Oslo Communiqué has to be translated into a Road Map for a genuine federal Sri Lankan state.

Nearly two decades of war have generated a situation of multiple human rights violations in which both sides blame each other for the worst atrocities. Human rights violations have continued throughout the ceasefire period and threaten to erode public support and legitimacy for the peace process. Therefore, it will be crucial that any progress in the negotiations is closely linked to improvements in the human rights record. Otherwise, public support and legitimacy of the peace process is in danger.

The resumption of talks at the beginning of 2004 will offer a unique opportunity for reviewing the peace processes, for elaborating an inclusive, transparent and common strategic framework for the

future peace negotiations, and for moving towards a comprehensive set of conflict transformation processes.

Recommendations in Brief

To All Parties

(1) Develop a comprehensive and common strategic framework of multiple peace negotiations and peace building which: (a) ensures that all parties become co-owners of the peace process (principle of inclusivity); (b) is based on an explicit understanding of organizing the processes of negotiations (principle of transparency); (c) utilises various levels and channels of bi- and multilateral problem-solving methodologies (principle of multi-track diplomacy); and integrates international human and humanitarian rights standards through a holistic MoU.

(2) Imbue the next phase of peace talks with the concept of 'principled negotiations.' This is comprised of four basic principles: (a) the conflict issues (e.g. the Interim Administration) as well as the relationship between the parties (e.g. the trust building between the LTTE and the parties in the South) have to be addressed; (b) the talks should try to identify the enlightened and common interests of the parties and overcome bargaining from adversarial positions; (c) these discussions should be framed and organized in such a way that mutual gain is achieved, and agreements should be based on jointly accepted principles (e.g. principles of fairness, justice, equality, democracy, good governance and pluralism).

(3) Consider an early Framework of Principles Agreement that outlines the contours of the final agreement between the main stakeholders. A similar agreement should be formulated for an Interim Constitution, which is based on a multi-stakeholder consensus.

(4) Ensure representation of women at all levels of the peace process. Consider the gender-specific needs, interests and roles of women, men and children in the peace process. Implement the UN Security Council Resolution 1325 on Women, Peace and Security, and develop benchmarks for its meaningful implementation in Sri Lanka. Support and integrate women's peace-building activities on all levels of engagement and ensure that women's concerns are reflected in all programmes for relief, reconstruction and rehabilitation. Help to develop benchmarks for a meaningful implementation of UNSCR 1325 in Sri Lanka.

(5) Clarify the third-party role of Norway and identify the most suitable combination of facilitation (organizing and supporting the communication and interaction between the parties according to their requests) and mediation (structuring the process pro-actively according to the concept of principled negotiations). Encourage Norway to assist in the coordination of the multiple international efforts for promoting the peace processes.

To the President/PA and the Prime Minister/GoSL/UNP

(6) Utilize the historic opportunity for a paradigm shift in the southern polity and establish an interim power-sharing arrangement between the President/PA and the Prime Minister/UNP-led GoSL, with joint ownership in the peace processes. Negotiate an MoU outlining in detail the principles, norms, rules and procedures for cohabitation as well as sharing the responsibility, the credit and the blame for the course of the peace processes. Develop a 'Framework for Peace in the South,' in collaboration with the other parties, civil society and the corporate sector, to establish an overall conceptual as well as institutional framework for the interim arrangement.

(7) Exhibit exemplary and joint leadership with respect to the national mission of bringing an immediate, just and sustainable peace to the country. Leaders of various stakeholder groups should consider possible gestures of conciliation towards acknowledging past wrongs, moving towards a new inclusive nation-building process. For example, the two main political parties that constitute the 'Sinhala state' could extend a joint statement of apology to the minority communities for past human rights violations, such as the attacks on places of worship and on schools where civilians had taken refuge, and the burning of the Jaffna Library. (Similarly, the LTTE leadership could extend apologies for attacks on civilian villages, places of worship including the Temple of the Tooth.)

(8) Initiate a comprehensive programme of reforming and restructuring of the Sri Lankan state based on equal participation of all communities in the country. The conceptual basis of this initiative could be a combination of the Oslo Communiqué between the UNF-government and the LTTE from December 2002 and the PA proposals for constitutional reform from 1995.

To the LTTE

(9) Accommodate the request for a balanced self-rule and shared-rule without the loss of the internal self-determination principle for the Tamil people. Express a clear commitment to the mutually agreed-upon Oslo Communiqué and negotiate a framework agreement or an Interim Constitution based on the concept of a federal multi-ethnic Sri Lankan state that should give expression to the rightful claims of all minorities in the North-East and in the South.

(10) Elaborate further on the proposal for the ISGA to accommodate concerns of the Muslims and the Sinhalese in the North-East through a 'Framework for Peace in the North-East' and explicit power-sharing mechanisms, while taking into account upcoming proposals from the Muslim community. Support adequate participation of a Muslim delegation in the peace talks.

(11) State explicitly the commitment of the LTTE to establish a representative and pluralist democratic system in the North-East,

and elaborate on the mechanisms for guaranteeing human rights and the rule-of-law.

To the Muslim Polity

(12) Elaborate a common framework for pursuing Muslim interests in the peace process, and enhance the capacities of Muslim experts to contribute to the discourse and the negotiations on restructuring the state. Identify multiple tracks to promote the interests of the Muslim community through participation in the negotiation process as well as through direct negotiations with the LTTE and the UNF/PA.

To Norway as Facilitator

(13) Provide more capacities for facilitation and engagement with other stakeholders within and outside the country. Expand the knowledge base for principled negotiations among all stakeholders. Take the lead function for burden sharing among national and international agencies that might help in disseminating this knowledge.

(14) Make use of 'single-text procedures' when negotiating agreements, i.e. generate drafts of common papers and use them as the main basis for consensus building rather than allow the parties to stick to formulations because they came out of 'their' drafts.

(15) Address the conceptual and human security shortcomings of the CFA, and elaborate on it further together with the parties towards a Consolidated Ceasefire Agreement (CCFA) including a set of Confidence and Security-Building Measures (CSBMs). Explore together with the parties how the leadership of the Sri Lanka Monitoring Mission (SLMM) could be handed over to another country without endangering the stability of the truce in order to ensure no conflicts of interest between the roles of the facilitator and of the monitor.

To the International Community

(16) Facilitate a comprehensive framework for a pro-active and complementary support of the peace process among the co-chairs as well as India and all like-minded countries in favour of an inclusive peace process. Elaborate a clear structure of burden-sharing including the support of frameworks for peace and human rights in the South as well as in the North-East.

(17) Establish an International Support Group of eminent personages who, in their personal capacities, can assist the principal parties. They would undertake public actions and engage in quiet lobbying, particularly at critical junctures when internal capacities

for peace appear inadequate. In addition, they can provide support in understanding the dispute in the wider framework of the on-going changes in the international arena.

To the Donor Community

(18) Encourage and support a strategic framework for transition among all stakeholders for a comprehensive reconstruction and development process in the country, particularly the war-affected North-East. As a first step, assistance should be provided to facilitate a new mechanism for the delivery and implementation of short-term reconstruction and development aid to the North-East. Encourage and assist inclusive dialogues on medium- to long-term priorities for institutional and structural reform of the state, as well as on human rights capacity building, while exploring how the donors can support these reforms.

To Civil Society

(19) Expand the political space that was created by the peace processes, to take the role of critical supporter and multiplier within the overall society. What the country needs now is a highly diversified and broad-based peace movement with links and leverage in all communities. Strategic alliances should be formed to engage with all political actors and for building up a critical mass of agents of change within the civil society. Insiders representing all stakeholders should form networks of close cooperation with outsiders from trans-national civil society to make the international support of the peace process as multi-partial and pro-active as possible. The citizens of the country have to be prepared for re-constituting Sri Lanka as a multi-national federal state.

To the Diaspora, the International Community and the Sri Lankan State

(20) Involve the Tamil, Sinhalese and Muslim men and women of the diaspora in a meaningful way in the reconstruction and development of the war-affected areas in Sri Lanka. Accept that the majority of the diaspora will not return, but rather will participate in this process on the basis of circulation. It is unlikely that most members of the diaspora will return to the homeland on a permanent basis; rather, they will circulate between both their host and home countries. To support their involvement, the host countries as well as the Sri Lankan state should reformulate their citizenship, migration and development policies in the direction of dual citizenship; grant legal status to non-resident Sri Lankans; improve consular services; and establish a comprehensive infrastructure for mobilizing the skills and investment potential of the diaspora.