

Constitutional Crisis and the Peace Process in Sri Lanka

Dipankar Banerjee & N Manoharan
Director & Research Officer, IPCS

The Crisis

Sri Lanka has plunged into an impasse threatening its stability and the peace process. It was not entirely unexpected given the political realities in the Island, the verdict in the last parliamentary elections and the constitution of the country, with overwhelming powers with the President where there is no history of political cohabitation between parties. The crisis has also stalled the move towards peace, which in spite of recent difficulties was showing promise of a positive outcome.

The current crisis struck the Island unawares when President Chandrika Kumaratunga suddenly took three steps on 4 November 2003 in "national interest". She assumed control over the ministries of Defence, Interior and Mass Communication; prorogued the Parliament; and declared an island-wide emergency. The latter two measures were revoked or denied in the next few days, raising doubt over both her motives and style of functioning. Moreover these actions were taken when the Prime Minister, Ranil Wickremasinghe, was on a state visit to the USA, making it look suspiciously like a Presidential coup.

According to the President, the Defence and Interior ministries had to be taken over to "safeguard the sovereignty, security and territorial integrity of the country." The immediate provocation was the LTTE's demands put forward on 31 October 2003 in response to the Government's earlier offer. No doubt the LTTE's offers contained the seeds of a separate state, which according to the President, questioned the peace process itself initiated by the Prime Minister. Hence she considered it her constitutional duty to assume direct responsibility

under Article 44 of the Constitution and set things right. The take-over of the Ministry of Mass Communication was justified "to correct some of the shortcomings of the institutions" that fell under the Ministry.

The LTTE proposals for an Interim Self Governing Authority (ISGA) should not have come entirely as a surprise to the President. After all the thrust of its proposals are encapsulated in the Thimpu proposals of 1985. As an initial position in a complex negotiating process and in a situation where the LTTE was never defeated in battle, it is not easy to find fault with these proposals, no matter how much one may disagree with its contents. Instead the proposals were initially dismissed out of hand as a stepping stone for an Eelam.

A careful reading would reveal that there was room for optimism. There is indeed included the concept of a homeland (Clause 1), nation and self-determination (through provisions for elections, Clause 3; finance, Clauses 11, 12, 13). However, it may not necessarily be interpreted as a separate state but a form of federation or even confederation. Separate homeland, nation and self-determination as long as they are not 'external' are characteristic features of a federal set-up in ethnically plural societies. The LTTE has renounced 'external self-determination' and has of late been talking in terms of 'internal self-determination' as was evident in the Oslo Agreement of December 2002 at the end of the third round of talks. The LTTE also maintained that these proposals were not to be considered as final and were subject to negotiations. Thus, without allowing an opportunity for discussion, arriving at a conclusion of a separatist agenda was premature.

The President perhaps accepted this when she

retracted her earlier position to state that the LTTE document, along with government proposals, could be a "broad basis for negotiations". Was this based on international pressure, her pragmatic reassessment of the ground reality, or Ranil's impressive popularity as displayed by the huge crowd that turned out at the airport to receive him on his return from the US on 7th November.

The Political Backdrop

Like in all such situations, politics is the key factor and it is necessary to examine briefly both the backdrop as well as current political developments.

Chandrika Kumaratunga came to power riding a wave of popular support in 1994 on two principal electoral planks. One, to initiate a peace process with the LTTE and two, to abolish the Executive Presidency. Though she never kept the second promise, she initiated a serious dialogue with the LTTE in 1995 and later proposed a revised constitution to allow for a federation with greatly devolved political powers. Though it went a long way in meeting some of the LTTE demands, these were not supported by the opposition United National Party, which was necessary for a two thirds majority required to pass a constitutional amendment. The proposals also had little chance of being accepted by the LTTE.

Other recent developments affected the political situation. First, was the defeat of the government forces and the loss of the Elephant Pass in April 2000. This caused a serious crisis threatening loss of the Jaffna peninsula. The other was the suicide attack by fourteen LTTE cadres on the Kattunayake airport in July 2001 destroying half the aircraft of the government airlines. Both these incidents nearly destroyed the economy and led to a serious crisis threatening peace and development in the south. To counter this situation a peace constituency emerged led by the business community and civil society. When elections came to Parliament at the end of 2000, Ranil rode a sympathy wave to victory on a clear mandate for peace with the LTTE.

The process initiated by Ranil Wickramasinghe's government was a major departure from the past. Instead of looking first at the end point and working out a solution to the complexities of resolving the constitutional dilemma, it focused on

the process of peace. Hence the first agreement was on a cease-fire followed by a steady move towards normalization, development and rehabilitation, to undo decades of devastation in the Island particularly in the north and the east. The strategy appeared to succeed and the twenty months of peace made a tremendous difference all over the Island. Once the process reached the delicate stage of evolving constitutional provisions to satisfy all constituencies, it would then require delicacy and high statesmanship, qualities not always found in recent Sri Lankan history.

There are other issues that are relevant as well but which need not detain us over much. These are; the President's powers to dissolve the Parliament after one year and the Parliament's powers to impeach the President and also the Chief Justice of the Supreme Court. But the latter two would require a two thirds majority, which given the complexities of representational elections in the country were unlikely. That such moves were indeed afoot created considerable uncertainty. Perhaps the President also expected that the LTTE proposals would lead to a certain backlash of Sinhala opinion, which might help her politically to regain lost ground. This does not seem to have worked.

An issue on which most observers would agree was that the President was marginalized in the last near two years on issues of governance and the peace process. Under a constitution that strongly favoured the Executive President, Chandrika had to reluctantly concede much of the initiative to the Prime Minister. Ranil's electoral success and popularity could not nullify this reality, yet he tried to move around her in developing the peace process. Perhaps it was this that contributed significantly to the present crisis. In a country where leading political parties cannot even come together to celebrate the national day, cohabitation politics is not a reality even in perceived "national interest".

Prospects of Peace

Since the announcement of ceasefire in February 2002 there were six rounds of talks at various places with moderate achievements. Where does the peace process stand? A few issues need examination.

- **Ceasefire Agreement (CFA)**

Though the President assured her continued support for the CFA, there are problems in sustaining it. Firstly, it is not sure how long she would abide by her assurance. Secondly, as long as the Defence portfolio continues with the President, possibilities for the break-out of hostilities between the LTTE and the Sri Lankan Armed Forces (SLAF) remain high. The discretionary powers of the SLAF in allowing the LTTE cadres into government-controlled areas for political work is likely to emerge as a potential source of conflict. Thirdly, the President has her own strong reservations on the provisions of the CFA. In her reaction to the Agreement in March 2002 she expressed concern that the CFA could "carry a threat to the country's sovereignty". What if she suddenly uses that justification to abrogate the present CFA and demand the signing of a new agreement?

- **Terms of Talks**

With the UNF government backing out of the peace process it is not clear who will engage the Tigers in the future and under what terms. The LTTE has ruled out talking either with Chandrika or her nominees. Not only the President's team but also her terms are unacceptable to the Tigers. Realising this the President wants Ranil's government to take charge of the peace process under her "guidance". This is of course a non-starter and Ranil has refused the bait. He is insistent on a return to the pre-November 4 status before he will accept the task. This of course means a complete reversal of position for the President and seems very unlikely. This puts the entire political process in a state of limbo, which could even last as long as the next Presidential elections in end 2005.

- **Facilitation**

There is also a large uncertainty over facilitation of the peace process. It was Chandrika who initially introduced the Norwegians to facilitation, but later she turned into a bitter critic accusing that their role was "incompatible with the sovereign status of Sri Lanka." The Norwegians were also accused of bias towards the LTTE. Given this background, it is not surprising that Oslo withdrew, albeit temporarily, citing the unsettled political condition in the south, stating that their options

were "now exhausted". The Norwegian Deputy Foreign Minister and chief facilitator Vidar Helgesen warned that, "the single impediment (to the resumption of talks) is the political crisis in the south". He also warned that the "ceasefire will become increasingly fragile". To sound a bit dramatic, the situation may be likened to a patient (the peace process) in a coma, which might last up to two years, with the doctor having gone away and the medical attendants remaining as mere spectators. Will the patient survive and can it be revived?

The Way Ahead

Unless there is a southern consensus there is no possibility of a permanent settlement to the two decades old internecine war. Attempts are on to resolve the present deadlock. Various options are open. There is a proposal for forming what is known as a National Government for Reconstruction and Reconciliation, a "grand alliance" of all political parties. Such a proposal is not new, but its prospects are not bright. Though the two major parties- UNP and SLFP are making an effort to find a compromise. A committee has recently been formed to arrive at a possible working mechanism. At the minimum a MoU between the President and the Prime Minister is on the cards. How far such an arrangement will work is a pertinent question. What is 'national interest' for one party may not be perceived so by another. As there are traditionally inherent contradictions in the approach and views of the parties on various issues, there is more room for clashes than cooperation. Liam Fox Agreement of 1998 aimed to bring together the two main parties on the ethnic issue failed to work precisely because of this. There is little doubt that as even the talks progress, parties are keeping all options open.

Meanwhile, the LTTE seems to keep its military options open as well. Its military strength has gone up appreciably and some authorities talk of a strength in excess of 10,000 armed cadres. Weapons stockpiles have been replenished and enhanced. Over 30 "informers" are said to have been eliminated. Nearly 100 Black Tigers are suspected to have sneaked into Colombo alone ready to undertake offensive operations. The LTTE is in de facto control over the north and the east and the other Tamil groups are marginalized. The

LTTE is riding a crest of popularity among the Sri Lankan Tamils. Its international legitimacy is also on the ascendancy. It is in this entirely unenviable position that the emerald Isle suddenly finds itself, as if confronting an abyss with no means to cross over. There is not much that the outside world can do except to hope and pray that the evil days will finally go away.

India's Policy Options in Sri Lanka

Another challenge faces India in its Sri Lanka policy after a decade and a half. But, the strategic realities are entirely different and the distinction is important to note. The Cold War has ended. Rival navies of the East and the West do not ply the Indian Ocean. The US is the sole super power with whom India has etched a relation of close strategic understanding. A possible communications base in the Island no longer threatens any one, in an era of hundreds of communications satellite over the sky. Indian Oil Corporation now controls a few of the huge oil tanks in Trincomalee and is opening up retail petroleum outlets in the Island.

There are other differences as well. The LTTE is no longer the favourite terrorist group in South India. It has assassinated an Indian Prime Minister and its own leader stands convicted of this dastardly crime and is subject to extradition to India. The LTTE is known to support other terrorist groups in India, though the extent of this cooperation is not clear. Relations between Sri Lanka and India are on an entirely new footing. The success of the Free Trade Agreement promises to be an example that could be emulated elsewhere with great profit. Ranil Wickremasinghe's visit to India in October 2003 (supplemented by earlier two visits) promised the beginning of an entirely new cooperative relation, which has the potential to transform regional associations.

India has its own concerns over the disruption of peace process in Sri Lanka. A stable Sri Lanka is in the political, social and economic interests of New Delhi. The effect of the ceasefire was reflected in the return of refugees, though not in great numbers, to the Island. A new round of hostilities may well lead to a new wave of refugees to India. With the repatriation of remaining 67,000 refugees, the social situation in the southern state of Tamil

Nadu might stabilize. India is also concerned about the growing linkages between the LTTE and other militant groups in India. A permanent settlement in Sri Lanka and the consequent dissolution of the military arm of the LTTE might sever this connection. The protracted conflict also means growing influence of outside powers in the region. The President's actions are constitutionally right, but are not convincing. The threat from the LTTE is not new and did not arise merely with the submission of its proposal. The short period of peace has brought economic dividends not only to Sri Lanka but also to India in terms of larger exports and investments in the Island. The free trade agreement that is in place between the two countries has given greater market access for Indian goods in Sri Lanka.

But, India has limited options to exercise. It tried in vain both military and political means to settle the issue in the past. A proactive military or political intervention is not in its interests and there is no political consensus for such an option. At the same time, turning a blind eye to the developments in its neighbourhood is not judicious. New Delhi could encourage and develop the unity between the two political parties for a greater Sinhala consensus on the ethnic issue. It could also try and muster the support of like-minded countries to bring in sustained international pressure for peace in the Island. While doing so India should be cautious enough not to allow itself to be perceived as a biased country either by the Tamils or the Sinhalese.



**INSTITUTE OF PEACE
AND
CONFLICT STUDIES**

B 7/3 Safdarjung Enclave,
New Delhi 110029 INDIA