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Author(s)	Keerawella, Gamini
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DISCUSSION PAPER No. 3

**The LTTE Proposals for an Interim
Self-Governing Authority and
Future of the Peace Process in Sri Lanka**

Gamini Keerawella*

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Abstract

The political brinkmanship of the Liberation Tigers of the Tamil Eelam has been illustrated vividly by the way in which it brought forward its proposals for an Interim Self-Governing Authority by exploiting the vulnerabilities of the United National Front Government. In the proposals the LTTE articulated its political intentions in concrete constitutional terms for the first time. The Proposals rationalize the armed struggle and a contractual agreement outside the Constitution. The plenary powers of the ISGA exceed the federal formula; effectively exclude the institutions of the state of Sri Lanka from the North-East; and clear the route for a separate state. This situation demands a redirection of the peace process which requires a clear political vision and a proper strategy with alternative proposals on the part of the government. In the face of present impasse of the peace process the challenges before the new Freedom Alliance government are formidable.

Keywords: ethnic conflict, peace process, interim proposals, negotiations

* Professor of Modern History, University of Peradeniya, Sri Lanka and Visiting Research Fellow, Institute of Developing Economies, Japan

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INSTITUTE OF DEVELOPING ECONOMIES (IDE), JETRO
3-2-2, WAKABA, MIHAMA-KU, CHIBA-SHI
CHIBA 261-8545, JAPAN

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Preface

After six rounds of peace talks with the Sri Lankan government, the Liberation Tigers of Tamil Eelam (LTTE) unilaterally decided to withdraw from the peace talks in April 2003. All the attempts made on the part of the Norwegian facilitators and other international players including Japan to bring the LTTE back to the negotiating table had been failed. The LTTE had adamantly refused even to attend the Tokyo Conference on the Reconstruction and Development of Sri Lanka held in June 2003. It appeared that the Sri Lankan Peace Process had been frozen on the brink. The LTTE, meanwhile, successfully maneuvered the desperate United National Front government to present three sets of proposals for an interim arrangement one after another and rejected them all. In turn, the LTTE presented its own proposals for an interim administration in November 2003 and emphasized that hereafter any future peace talks must be based on their proposal for an Interim Self-Governing Authority (ISGA). In presenting these proposals the LTTE for the first time articulated its political intentions in concrete constitutional terms. The LTTE proposals on ISGA have, quite naturally, attracted worldwide attention and raised many questions about the future direction of the peace process in Sri Lanka. This article intends to trace, firstly, the politico-historical genealogy of the idea of interim administration in the discourse of peace in Sri Lanka. With this backdrop it will closely read the contents of the proposed ISGA of the LTTE to trace their underlying political overtones. Final part will be devoted to discuss the challenges that the Sri Lankan peace process would face in reaching a negotiated settlement to the ethnic conflict in the next phase of dialogue with the LTTE.

Indo-Sri Lanka Peace accord and Interim Arrangement

The issue of an interim period/administration in the discourse of peace-building process in Sri Lanka first emerged in the context of the Indo-Sri Lanka Accord in 1987. It set provisions for an interim period beginning from the temporary merger of the Northern and Eastern provinces until the proposed referendum in the Eastern Province which was expected to give the people in the Eastern Province an opportunity to decide whether the Province remains merged or de-merged. Soon after the signing of the accord, an arrangement was made to set up an Interim Administration with the participation of the

LTTE. It was agreed to give seven slots to the LTTE in the twelve-member interim council. Later on, however, disagreements emerged between the Sri Lankan government and the LTTE over the headship of the administration. In no time the settlement forged by the Accord collapsed and the LTTE took up arms against the Indian Peace Keeping Force. The proposed interim administration did not take off the ground.

Peace Initiatives of the People's Alliance Government and Interim Formula

It should be noted that the issue of interim administration did not formally crop up during the brief period of dialogue and truce between the Peoples' Alliance (PA) government and the LTTE soon after the new government assumed power in August 1994. In the initial phase of dialogue the PA government unilaterally decided to setup a Presidential Task Force for Rehabilitation in the North. Even though the LTTE did not directly bring up the issue of setting up of an interim council when one analyses the long trail of correspondence between the President and the LTTE leader, it is not difficult to comprehend that the LTTE was gradually setting the background for the demand for an interim administration. From the very beginning of the dialogue the LTTE was emphasizing the need for 'returning to normalcy', 'addressing the urgent day-to-day problems' of people before embarking on a serious dialogue on any substantive political issues which the PA government emphasized. In his letter addressed to Minister Anurudda Ratwatte, dated 8.12 1994, the LTTE leader accused the PA government that:

'Though the government delegation pledged 'to alleviate the hardships of daily life presently experienced by the people', no action has taken so far to redress the grievances of our people. The urgent problems of our people can not be reduced to 'some reconstruction and repair works'. There are far more pressing problems, which have to be resolved to create genuine conditions of peace and normalization of civilian life in the war torn areas'.¹

The next logical step in this framework of argument of the LTTE would be the emphasis on the need for a proper administrative mechanism to discharge the responsibility of attending 'the hardship of daily life' and 'the urgent problems of our people'. The LTTE was not in agreement with the parallel approach which the PA government was emphasizing. Before

¹ Letter of V. Pirabakaran, addressed to Col. Anuruddha Ratwatte, dated 1994

reaching the point of discussing the issue of appropriate mechanism to address the urgent day-to-day problems, the dialogue and the truce collapsed. By giving the first ultimatum that they '*be compelled to make a painful decision*', Pirabakaran in his letter to the President dated 16.3.1995 stated '*(In our several communications addressed to you during the last six months and during the peace negotiations we have been consistently reiterating the urgency of resolving the immediate day to day problems of our people. Our insistence on these issues should not be misconstrued as attempts to by-pass discussions on fundamental political issues underlying the ethnic conflict*'². As the talks between the PA government and the LTTE collapsed in April 1995 before making any head way in negotiations, the idea of interim administration did not surface at all.

Both the first version of the Devolution Proposals of the PA government in August 1995 and the Proposals for a New Constitution of October 1997 were silent on an interim administration. It was during the subsequent long process of multi-tiered discussions with the Tamil Parties and the Muslim Congress on these proposals that the issue of an interim administration once again came up. The Constitutional Proposals of October 1997 have introduced a series of referenda to determine the unit of devolution in the North and East. In the subsequent discussions with the Tamil political parties it was felt that an interim process was necessary until the unit of devolution was finally determined after these referenda under the new constitution. At the discussions between the PA and the UNP on the constitutional proposals an agreement was reached to have an interim council for the North and East for a period of five years, appointed by the President among nominations by political parties and independent groups with due consideration to the ethnic composition and administrative districts of the North and East. Once again, after the long consultation with the Tamil Parties, it was decided to extend the period of interim administration from five to ten years, the five years of nominated Interim Council followed by another five years of an elected Regional Council. The agreed provisions on the establishment of an interim council were included in the Chapter XXVII of the ill-fated 'Draft Bill (N0.372) to Repeal and Replace the Constitution of Democratic Socialist Republic of Sri Lanka.'

² Letter of V. Pirabakaran, addressed to the President Chandrika Bandaranaike Kumaratunga, dated 16.3.1995.

While the inter-party consultations were in process the President made an arrangement to set up an Advisory Council for the Northern and Eastern provinces by promulgating an Emergency Regulation under the Public Security Ordinance. The Gazette Extraordinary issued on November 2, 1999 provided for an Advisory Council consisting of eleven to seventeen members appointed by the President to advise the Governor in regard to the civil administration and maintenance of law and order in the Northern and Eastern Provinces. Despite a gazette notification, in the light of the lukewarm response from other Tamil political parties, let alone the opposition of the LTTE, appointments to the council were never made. Hence, the Advisory Council never saw the light of the day in actual practice.

Peace Initiative of the UNF Government and the Interim Administration

The issue of setting up of an interim administration for the North and East figured in the understanding between the UNP and the LTTE, even prior to the General Elections in 2001. After the withdrawal of the LTTE from the Peace Talks, Anton Balasingham recalled, in his letter dated 21 May 2003 addressed to Vidar Helgesen, that *‘Originally the idea of an interim administrative structure for the Northeast was mooted by the LTTE months before the last general elections. The UNP leadership endorsed the proposal and the Prime Minister Mr. Ranil Wickramasinghe openly campaigned in support of an interim administrative structure with the active participation of the LTTE’*.³ The Election Manifesto of the UNF stated that it would set up an interim administration. It was a brief reference and no details were given in relation to the conditions or powers to be vested with it. The faltered peace process appeared to have received a new lease of life after the UNF assumed power in December 2001. Soon after the UNF assumed power the LTTE unilaterally declared a ceasefire and the UNF government responded positively. The removal of street check points, cancellation of cumbersome authorization permits for the movement of the people and goods created an optimistic mood throughout the country. ‘Agreement on a Ceasefire between the Government of the Democratic Socialist Republic

³ Letter of Anton Balasingham addressed to Vidar Helgesen, Deputy Foreign Minister of the Royal Norwegian Government, dated 21.5.2003.

and the Liberation Tigers of Tamil Eelam' was signed on 22 February 2002. The Agreement made no reference to an interim arrangement.

It was expected that direct peace talks between the UNF government and the LTTE would soon follow the Ceasefire Agreement. In responding to the concerns of the delay, Minister G.L. Peiris assured in the cabinet press briefing on 27 March that 'peace talks will be held in the first week of May 2002'. At this point the LTTE brought the issue of interim administration. In April the LTTE laid down four conditions to commence talks: the lifting of the LTTE ban, lifting the economic embargo in the uncleared areas, setting up an interim administration in the North-East for two years and lifting fishing restrictions. In this context, in May 2002, the UNF government announced a series of constitutional change as part of the 18th amendment to the constitution which was considered to be a prerequisite for any move to setup an interim administration for the North and the East. Minister G.L Peiris was reported to have stated that 'the government was in consultation with the opposition members to secure the two thirds majority in parliament required for the amendments to become law'⁴. The peace talks did not take place in May despite Minister G.L Peiris' assurances. The UNF government was under high pressure to deliver goods as promised. But the LTTE was not keen to commence the peace negotiations. The situation began to change after Minister Milinda Moragoda had discussions with Anton Balasingham in London on 27 July 2002. This was the first direct meeting between a Minister of the Sri Lankan Government and the Chief LTTE Negotiator, Anton Balasingham. At this pre-Talk discussion held at the Norwegian Ambassadorial residence in London the question of an interim administration was discussed for the first time in addition to the issues regarding the implementation of the Ceasefire agreement and preparation of direct talks in Thailand. Once again the Minister Milinda Moragoda and Anton Balasingham met in Oslo on August 14⁵. This was a continuation of the first meeting and the parties decided to commence formal talks in Thailand between 22 and 27th of September. A day after the announcement of dates for Peace Talks, BBC World Edition reported: '*Asked by*

⁴ People's Daily - Beijing (English edition), May 24, 2002.

⁵ In addition to the Minister Moragoda and Balasingham, Bernard Gunatilake, Adela Balasingham, Vidar Helgesen, Eric Solheim, Jon Wesborg and Lisa Golden attended the discussions.

*journalists how the government had convinced the Tamil Tigers it could actually implement any political solution, Professor G.L. Peris said “ I told you we will change the constitution so we will do it and show them that we can do it. That is the best way of proving that one can do it’.*⁶

Those who anticipated that the LTTE would demand an interim administration at the first round of Peace Talk held in Sattahip, Thailand were taken by surprise when the LTTE agreed to establish a Joint Task Force for Humanitarian and Reconstruction Activities. Instead of raising the issue of interim administration, at the talks the parties expressed ‘their willingness to work together towards the establishment of a provisional administrative structure for the North and East’. According to the Agreement at the first session, at the second round of peace talks held in Thailand during the period from 31 October to 3 November, parties took steps to establish a Sub-committee on Immediate Humanitarian and Rehabilitation Needs (SIHRN).

In October 2002, the Supreme Court of Sri Lanka struck down the two constitutional amendments initiated by the UNF government. The court declared that the conscience clause of the 19th Amendment is unconstitutional and the provisions for reducing powers of the President relating to the dissolution of Parliament needs two-thirds majority in the Parliament and approved by the people in a national referendum. After the Supreme Court judgment the environment of the peace talks began to change. The changed atmosphere was reflected when the LTTE announced its decision to withdraw from the Sub-committee on De-escalation and Normalization after the 4th Round of Talks held in Thailand held on January 6-9, 2003. The 5th and 6th Rounds of Talks held in Berlin and Hakone respectively did not make any new initiatives and the talks appeared to have bogged down over the issue of High Security Zones (HSZ). Meantime, the SLMM made a proposal for preventing incidents between the Sri Lankan Navy (SLN) and the LTTE at sea where it proposed to ‘recognize the LTTE Sea Tigers as a de facto naval unit’, to demarcate areas at sea for ‘live firing exercise’ by Sea Tigers and ‘neither SLN nor the LTTE Sea

⁶ http://news.bbc.co.uk/2/hi/south_asia/2195289.stm

Tigers will conduct offensive or aggressive operations and movements at sea'. The SLN strongly rejected the SLMM proposal. In April 21st Anton Balasingham informed the Prime Minister the decision of the LTTE to suspend its participation in the negotiations for time being. He further stated that the LTTE leadership has decided not to participate in the international donor conference to be held in Japan in June.

It is true that immediately behind the LTTE withdrawal was the exclusion of LTTE from the preparatory aid conference in Washington. However, in addition to the exclusion from the Washington conference, Balasingham mentioned continuous suffering and hardships experienced by internally displaced peoples (IDPs) and deprivation and marginalization of Tamils in the macro economic policies and strategies of the government as reasons for the LTTE withdrawal. In this letter he did not make any reference to interim administration. The Washington aid conference was more in the nature of a seminar and the LTTE decision was really a calculated move taken after a thorough strategic analysis on its part. It became evident to the LTTE that international involvement in the process, especially in the international donor confab, would result in creating conditions and obligations to the LTTE too. Still they were not ready for it. Hence, the LTTE wanted to avoid conveniently any situation that compels it to be a signatory/party to an international declaration that emphasizes and endorses 'effective promotion and protection of human rights of all people, norms against the recruitment of child soldiers, the recognition of diversity in the East and parallel process towards a final political settlement'. At the same time, the LTTE capitalized on the situation to achieve international recognition by creating conditions for international actors to come and beg the LTTE to participate in the Tokyo aid conference. The LTTE strategy worked well. Subsequent to the LTTE decision, many internationally reputed diplomats went to the Wanni jungles and waited in the queue to meet the LTTE hierarchy to urge them to attend the conference.

The demand of an 'interim administrative structure with adequate powers to undertake North-Eastern re-construction and development activities' was brought to the focus by Pirabakaran once again on 15 May 2003 when he met Norwegian Foreign

Minister Jan Peterson when he went to the Wannai jungles to persuade the LTTE to attend the Tokyo aid confab. With no time the UNF governments responded to the LTTE demand by proposing a North East Development and Reconstruction Council. The Government response was spelt out in three separate documents--a Draft Agreement, an informal paper on 'Elements of a strengthened and Expanded Mechanism for Development of North and East' and a letter suggesting the use of locally elected bodies as a basis for development activities. In his letter dated 21st may 2003, Balasingham flatly rejected the UNF government's proposals and urged the Prime Minister to respond to the LTTE proposal for an interim administration and urged 'to establish a new innovative structure for the reconstruction and development in the North and East. Nevertheless, he kept issues open and stated: *'A positive and constructive response from the Prime minister setting out his ideas and proposals in clear and concrete terms will certainly help our leadership to take a crucial decision on the resumption of peace talks and participation at the donor conference in Japan'*. Being so impatient about getting LTTE participation in the Tokyo donor confab, the UNF government presented another set of proposals on 27th May 2003, in response to the LTTE request for 'the establishment of a new innovative structure'. In this proposal 'regarding Administrative and Financial Arrangements to Expedite Efficient Implementation of Programmes and Projects Relating to Relief, Rehabilitation and Development in the North East' the Government offered a three layered structure with *'a Apex Body (Council) for decision making in regard to all immediate and medium term rehabilitation, reconstruction and development work in the North East and advising on policy development'*⁷ Just in 48 hours the LTTE rejected the second set of proposals claiming that it was far short of its expectations. In his letter to the Prime Minister dated May 30, 2003 Balasingham further stated

...our sense of equal partnership in peace building and reconciliation suffered a severe blow when the main international and regional players continued to treat the LTTE shabbily as a proscribed entity with a terrorist label to be excluded from international forums. We are also concerned over the growing involvement in the peace process of

⁷ The Sunday Times, 1 June 2003.

international ‘safety net’ to bring undue pressure on the freedom of our people to determine their political status and destiny⁸

The subtle diplomacy of the Norwegian and Japanese peace envoys to bring the LTTE to the Tokyo aid confab bore no fruits and it took place as scheduled without the LTTE participation. In the face of the intransigency of the LTTE the peace process seemed struck in limbo. In this context, on 17 July 2003, the UNF government presented its third proposal- ‘*Provincial Administrative Structure for the Northern and Eastern Province*’. The government claimed that the new proposals were basic ‘discussion document’ aimed at drawing at LTTE response. Legal and constitutional advisors of LTTE met in Paris in mid-September and again in the Northern Ireland to chart out their responses. The LTTE response was the presentation of its desired version of an interim administration- ISGA. The chronology of events clearly reveals how the UNF government unwittingly played in the hands of the LTTE because of its apparent desire to link the peace process to its own political survival while ignoring all the calls from the President for a bi-partisan approach.

Contents of the Proposals and their political Overtones

ISGA proposal is a well structured and carefully crafted document to indicate in no uncertain terms the type of interim arrangement the LTTE wanted in line with its future political objectives. It is prefaced with a long preamble and it provides the conceptual foundations, the political philosophy, the framework and parameters for the proposed Interim Self-Governing Authority (ISGA). The Preamble is utilized to rationalize the armed struggle and a contractual arrangement to set-up an Interim Self-Governing Authority. Therefore, it is necessary to read the paragraphs detailing out the ISGA in the light of its preamble.

⁸ TamilNet, May 30,2003.

Rationalization of the Armed Struggle and Contractual Agreement Outside the Constitution

The reference to the '*right of self determination of peoples*' in the opening paragraph of the preamble is very significant because of its political implications. The often-quoted 'Oslo Declaration' issued after the Third Round of Talks only referred to '*the principle of internal self-determination*'. The difference of the two concepts with and without the prefix *internal* is significant. The concept of self-determination is a highly contested and evolving one. Since the Principle of Self-determination of Peoples was incorporated into the Charter of the United Nations it has been subjected to different interpretations and even at the United Nations General Assembly there were two resolutions, one defining it in terms of the de-colonization (1514 (XV)) and the other in terms of representative government formula (2625 (XXV)). However, the term 'internal self-determination' is relatively more precise. It denotes regional self rule within the parameters of the overall sovereignty and territorial integrity of the state, i.e. a high degree of devolution of power on territorial or non-territorial basis. Implicit in this paragraph, and also in other sections of the text, is an attempt to define the Tamil ethnicity in Sri Lanka as 'peoples' in line with UN General Assembly Resolutions and other international instruments such as the Helsinki Declaration and the Charter of Paris. At the same time no reference what so ever to the territorial integrity is noticeable in the proposal.

Their use of arms ('*armed struggle*') against the state has been rationalized '*as a measure of self-defense and as a means of the realization of Tamil right to self-determination.*' However, the LTTE raised arms against the populace in the North and East including the Muslims, other Tamil political parties and the democratically elected Tamil political leaders too. More importantly, the preamble attempts to justify the interim arrangement based on an agreement between the LTTE and Sri Lankan Government even outside the constitution. In this respect the last two paragraphs of the preamble are particularly important. It proposes the reliance on '*international precedents for establishing interim governing arrangements in war-torn countries having the force based solely on pacts or agreements between the warring parties recognized by the international*

community'. Very interestingly it quotes the Ceasefire Agreement, the Sri Lanka Monitoring Mission (SLMM) as valid precedents.

The main Text of the Proposals details out the proposed contractual arrangement between the UNF Government to set up the ISGA. Even though the establishment of an interim authority arising out of such contractual arrangement outside the constitution is rationalized on the basis of international precedents, the international experiences in setting up of interim authorities based on contractual arrangement between the warring parties outside the constitution reveals that it is possible only in the failed states where the legitimate institutions of power and governance *ante* are collapsed completely. By way of constructing the background to this claim, the LTTE proposal refers to Sri Lanka only as an empty geographical space, in the politico-judicial sense, where the erection of any structure based on a contractual arrangement could be justified. It is not a simple *faux pas* that the Republic of Sri Lanka, the sovereign politico-judicial entity recognized by the international community in the island of Sri Lanka, has never been mentioned in the document.

There is no reference to any sort of framework of the solution to the ethnic problem in the ISGA proposals. The parameters of the interim arrangement can only be decided in relation to the framework of a possible final solution to the ethnic problem. The ethnic conflict is not simply a conflict between the ethnic groups. At the root of the ethnic conflict is the discord over the structure of the state and the exercise of political power. Any interim arrangement must facilitate the final solution. Once interim authority is established it is the interim process that decides the subsequent political development. When it is set up without an agreed framework of a post-conflict settlement, the interim arrangement itself would decide the parameters of final settlement. Hence, an open-ended interim arrangement without any linkages to a framework of final political settlement may end up only as a respite for another phase of the armed conflict. The LTTE proposal maintains that '*reaching a final negotiated settlement and the implementation thereof is expected to be a long process*' and interim arrangement is necessary to carry out reconstruction work.

Constitutionality and Democracy

It is not possible at all to be silent on the issue of constitutionality of the ISGA, although the Constitution is not a sacrosanct document. If the Constitution is found to be an obstacle in reaching a lasting solution it could be amended or replaced with a new one, openly with a mandate from the people. It is a basic tenet in the democratic political practice. Any attempt to ignore the constitution or to forge a contractual arrangement over and above the existing constitutional framework will have serious political repercussions. The opening paragraph of the preamble refers to the principle of the rule of law. The constitution is considered to be the supreme law of the state. The whole issue of constitutionality could be satisfactorily addressed if the interim arrangement comes as an integral part of a final settlement. The Provisions for Interim Administration in the 13th Amendment to the Constitution and the Interim Council in the Constitution Bill of August 2000 can be cited as examples for having an interim administrative authority set up as an integral part of a final settlement.

There is no room for any other stakeholders except the marginal niche carved out for the Muslims in the ISGA- a contractual arrangement only between the UNF Government and the LTTE. In the present context, it may be practicable for the LTTE to have a lion's share, if other conditions are fulfilled, in the proposed interim arrangement, but the room for different voices must be opened up by incorporating all the stakeholders through democratic content and practice.

Purview of the Proposed ISGA

The purview the ISGA has been presented in such a way that one could interpret it in its own way. It says '*the urgent need of the people of the northeast by formulating laws and policies and, effectively and expediently executing all resettlement, rehabilitation, reconstruction and development in the Northeast*'. In the first part of the paragraph, the purview and areas where laws and policies are formulated are not specified. The second part refers to 'resettlement, rehabilitation, reconstruction and development' but the powers that are proposed to be vested with the ISGA far exceed the satisfactorily discharging of the

task. In the main text of the proposal, the jurisdiction of the ISGA is defined as ‘plenary powers of governance of the northeast’. Further more, it will include ‘control over all the marine and offshore resources of the adjacent seas and the power to regulate access thereto’. The term ‘governance’ covers the entire gamut of the authority of the state including defense. According to the Longman Dictionary of Contemporary English the term ‘plenary’ denotes “(of the power of government) complete; without limit”, and according to the Oxford Concise Dictionary, ‘entire, absolute, unqualified’. The document refers to the term ‘regional administration’ but what is meant by implication is administration of the region.

The LTTE proposal for ISGA, in effect, goes beyond the Federal formula. After the Third Round of Talks between the UNF government and the LTTE in Oslo it was declared that ‘both parties agreed to explore a solution founded on the principle of internal self determination in areas of historical habitation of the Tamil speaking people, based on a federal structure within a united Sri Lanka’. After the talks, Minister G.L. Peiris appeared before the state television and hailed this as a ‘paradigm shift’. However, when the LTTE prepared its counter-proposals for an interim administration, there is no mention of the term federal or even confederation, let alone devolution, in the entire document. In brief, the federal principle implies the dispersion of state power between the general and several regional governments where citizens will come under two tiers of government within one sovereign state. In the federal system of two-tier governments, the center is responsible for things common to the entire state and retains functions that are best executed at one place. In the proposed ISGA there is no link or role what so ever to the Sri Lankan Government except appointing some members to the ISGA.

Exclusion of the Sri Lankan State from the North and the East

There is no role for the institutional expressions of the Sri Lankan state in the proposed ISGA. In effect, all the institutional apparatus of executive, legislative and judicial functions of the state are excluded from the North and East. Nirupama Subramanian of *The Hindu* observes that the Government of Sri Lanka figures in the

Proposals only in three contexts: *'the vacation of Tamil lands by the Sri Lankan armed forces and compensation by the Sri Lankan state to those whose lands were taken over by the armed forces during the War; to state that the ISGA will control all funds allocated by the Sri Lankan Government to it and those flowing to the Sri Lankan Government from international aid agreements for the North-East; and in the composition of the ISGA, in which there is a provision for government representation.'*⁹ The proposal makes provision for the establishment of separate institutions for the administration of justice for the North and East and *'judicial powers shall be vested with in such institution'*. The document is silent as to whether these institutions come under the Sri Lankan Supreme Court. There is no reference to the judicial structure presently in operation in the North and East. The ISGA has powers to borrow internally and externally and *'provide guarantees and indemnities, receive aid directly, and engage in or regulate internally and external trade'*. Accordingly, the Central Bank of Sri Lanka is effectively excluded in its functions in the North –East. 'The Northeast General fund' will be established under the control of ISGA and all the funds, loans and grants will be under its control. The Government of Sri Lanka is to make contributions from the consolidated fund on the recommendation of the Financial Commission appointed by the ISGA. But the Government of Sri Lanka has no any control over the expenditure of such funds. The ISGA appoints its own Auditor General sidelining effectively the Auditor General who is functioning under the Article 213 and 214 of the Constitution.

The Eastern Question

The ISGA offers no viable plan to deal with the complexities in the Eastern province, especially, the Muslim dimension, and to incorporate all the stakeholders in the East on the basis of equality and partnership. Any political arrangement, interim or otherwise, which does not provide adequate guarantees and safeguards for the security of all the three communities living there, would usher in a new phase of calamity and disaster. In fact, the Eastern Province is a multi-ethnic entity in the real sense of the word where all three communities lived side by side historically. Hence, it is a test case for accommodation and

⁹ Nirupama Subramanian, 'An interim separate state', *The Hindu*, 02.11. 2003.

compromise in reaching a political settlement to the ethnic problem. Any political arrangement that does not accept ethnic diversity of the Eastern Province and make all the three Communities, especially the Muslims who constitutes well over one thirds of the population of the province, as stake-holders of the process is doomed to fail. The ISGA extends the majoritarian practice to the Eastern Province and makes necessary provisions to place it under the firm control of the LTTE. One may wonder how the same principle which has been challenged in the South will be applicable in the East. It is obvious that the cry of the LTTE for 'territorial unity of the historical Tamil homeland' has been put into practice in the proposed the ISGA. Irrespective of whether they come from South or North the exclusive and traditional homeland concepts ('Sinhala Buddhist' or 'Traditional Tamil Homeland') as presented by nationalist projects are not tenable in a multiethnic context and they create more problems than solving them. Even though the history is often used to justify such political projects, the past historical evidences point to the diversity of historical processes.

However, in deciding contemporary political issues what is more important is the present ground realities, not the historical title. The validity of historical title in deciding the destiny of a territory was examined by the International Court of Justice in the Western Sahara case of 1975. Spanish Sahara (Oro de Rio) was conquered by the Spanish in the context of the new imperial scramble of European powers in Africa after 1870 and it had been a Spanish colony since 1884. In the wake of the rapid dissolution of remaining colonial holdings in Africa, Spain ultimately agreed to hold a referendum in Western Sahara in 1975. At this point both Morocco and Mauritania claimed the territory on the basis of historical title and objected to the referendum. In this situation the General Assembly decided to refer the case to International Court of Justice to obtain Advisory Opinion.¹⁰ The Court observed that the Western Sahara was not *terra nullius* because the territory had been inhabited by nomadic people who were socially and politically organized. Further, it found that there was no evidence which demonstrated political authority

¹⁰ GA Resolution 3239(XXIX), 13 December 1974. Advisory Opinion was sought on two matters: firstly, whether Western Sahara was *terra nullius* prior to Spanish colonization and, secondly, if it is not the case, what legal ties existed at this time between the Western Sahara and Morocco, on one hand, and Mauritania on the other.

amounting to sovereignty on the part of both Morocco and Mauritania despite some Saharan tribes had ties of personal allegiance to Morocco. However, more important was the opinion expressed by the judges in relation to self-determination and historical title.

Judge Dillard declared that;

It is for the people to determine the destiny of the territory and not the territory the destiny of the people. Viewed in this perspective it becomes almost self-evident that the existence of ancient 'legal ties' of the kind described in the Opinion, while they may influence some of the projected procedures for decolonization, can have only a tangible effects in the ultimate choices available to the people¹¹.

In the same vein, the people who live presently in the East must be allowed to decide the political future of the territory. The mechanisms in built in the Interim Arrangement offered in the Constitution Bill of August 2000 in relation to the East provide a good example for such arrangement. In other words, some form of consociation arrangement among all the stake-holders provides the key to way out.

De-commissioning and De-militarization

Another important aspect ignored in the ISGA is demilitarization including decommissioning of arms. Usually, negotiated political settlements to armed conflicts require militant groups to demobilize their soldiers and to give up arms in return for political power in an agreed order. It is indeed a vexed issue and a complex process because of 'pathologies of leadership', to borrow a term from S.J. Stedman, in any conflict situation¹². Nevertheless, if it to be credible, the interim arrangement must address the issues of mutual and balanced demilitarization. As Chris Smith observed '*(R)ecent events in Northern Ireland reflect the crucial political importance of weapons decommissioning and the extent to which disarmament can quickly become the key aspect of an advanced peace process. Certainly, this will also be the case in Sri Lanka and will consistently test the LTTE commitment to a political peace process*'.¹³ It goes without saying that one of

¹¹ICJ Reports 1975, p.122.

¹² Stephen John Steadman, "Negotiations and Mediation in Internal Conflict" in Michael E. Brown, ed., *International Dimensions of Ethnic Conflict* (Cambridge. Mass: The MIT Press, 1996).

the key problems that need to be addressed in the interim arrangement is the resettlement of internally-displaced. In this respect, the issue of rolling back of High Security Zones (HSZ) will become a critical matter that needs to be addressed without delay. However, the issue of high security zones cannot be addressed in isolation and it must be a part of a broader plan of de-escalation where decommissioning of arms constitutes an integral element. Even if the composition of the proposed ISGA is changed to reflect the ethnic and political plurality of the North and East as long as one group is armed, it is not possible for the interim administration to be democratic. In order to ensure a democratic political environment the civil administrator and the armed carder need to be separated. All other Tamil political parties, who do not toe the line of the LTTE, fear that without decommissioning of arms any interim arrangement under the hegemony of the LTTE would usher in an authoritarian regime in the North and East at the expense of all democratic values. During the long years of conflict the people in the North and East have been deprived of democratic structures and processes enjoyed by the people in the South. Once the interim process is set in motion, how can it be possible to deny the people in the North and East the democratic practices prevailing in rest of the country?

Sovereignty of the State and the Control of Marine and Off-shore Resources

The provisions relating to the marine and off-shore resources in the proposals impinge directly on the sovereignty of Sri Lankan State, not in the Westphalian sense but in terms of international legal definition. The proposed ISGA, to quote the text, '*shall have control over the marine and off shore resources of adjacent seas and the power to regulate access thereto*'. Marine and off-shore resources of a country and the power to regulate access to them squarely come under the purview of the external dimension of sovereignty of the state. In discussing internal and external elements of sovereignty Barry Buzan pointed out that states may share their internal sovereignty with non-state entities but never

¹³ Chris Smith, In the Shadow of a Cease-fire: The Impacts of Small Arms Availability and Misuse in Sri Lanka, Small Arms Survey-Occasional Paper No. 11, Geneva: Graduate Institute of International Studies, October 2003, p. 6.

the external sovereignty¹⁴. Since the state is a legal abstraction, its concrete existence depends on the assignment of such status to it by other international actors. The international regimes that set the rules, norms and the decision-making procedures in the international political arena recognize only the states as the unit of behavior. This is precisely why the states cannot share its external sovereignty with non-state entities.

Accordingly, once ISGA is established the two thirds of Sri Lankan Territorial waters will be controlled by a non-state entity where the Sri Lankan State does not have any say because all the 'plenary powers' are vested with it. It will have very serious implications on international shipping in our territorial waters. All the procedures and decision making mechanisms relating to the international shipping take only the sovereign state as the unit of behaviour. It should be noted that concurrent with the jurisdiction with the Flag state the coastal states also have some degree of control over vessels in its territorial waters. These powers of the coastal states are now written into a number of IMO conventions, such as SOLAS (International Convention for the Safety of Life at Sea) and into the Law of the Sea Convention. Sri Lanka as a sovereign state can not simply abandon these obligations. The Article 111 of the UNCLOS authorizes only the navies of the sovereign states the right of 'Hot Pursuit'.

The term 'off-shore resources of adjacent seas' covers the territorial waters, the Exclusive Economic Zone and also the continental shelf. According to the Third Law of the Sea Convention (UNCLOS-III), continental shelf of the coastal state comprises the submerged prolongation of the land territory of the coastal state – the seabed and subsoil of the submarine areas that extend beyond its territorial sea to the outer edge of the continental margin, or to a distance of 200 nautical miles where the outer edge of the continental margin does not extend up to that distance. The continental margin consists of the seabed and subsoil of the shelf, the slope and the rise. Sri Lanka can claim part of the Bengal Deep Sea Fan which is considered the largest tectonic element on earth. It extends from the

¹⁴ See, Barry Buzan, *People, State, and Fear: An Agenda for International Security Studies in the Post-cold War Era*. (Lynne Rienner Publishers, 1991).

Ganges-Brahmaputra Delta, past Sri Lanka and beyond Equator. In addition to the seabed oil resources, this seabed and sub soil is highly endowed with other mineral resources. In the view of the possibility of nearing the depletion of land-based mineral resources, the exploitation of off-shore mineral resources will acquire added importance in the future. According to article 76 of the UNCLOS-III, India and Sri Lanka have to establish outer limit of our continental shelf beyond 200 nautical miles by establishing the foot of the continental slope by meeting the requirements stated for the thickness of sedimentary rocks, distance and depth criteria. Both Sri Lanka and India have already embarked on a coordinated effort to demarcate outer limit and submit their respective claims to the United Nations by 2005. The grave repercussions of the provisions giving authority over the marine and off shore resources of adjacent seas to the ISGA should be understood when in conjunction with the other provisions which empower the ISGA to enter into any agreement with any other party.

The powers bestowed upon the ISGA to regulate the access to marine and off-shore resources compels it to have a naval arm of its own to execute this responsibility. Even though the Proposal does not mention directly to the Sea Tigers, the sea wing of the LTTE, the above provisions legitimize the Sea Tigers by giving them a 'lawful' role and, in effect, strips off the Sri Lankan Navy from its responsibilities in the North-Eastern waters. The legitimization of the Sea Tigers in the North-Eastern waters would definitely have grave implications on Sri Lankan national security. It is well known that the North-Eastern waters are used by the LTTE to smuggle arms to the Island. The LTTE maintains links with the clandestine international arms trade network and its arms supply route lies via the North-Eastern waters. The *Small Arms Survey* published by the Geneva based Graduate Institute of International Studies observed: *'The illegal procurement system developed by the LTTE over the course of the conflict is perhaps the most innovative and impressive ever witnessed for a non-state organization. Backed by expatriate Tamils willing to provide money and contacts, the LTTE was able to trawl many countries in Southeast Asia- Bangladesh, Hong*

*Kong, India, Myanmar and Singapore- for the weapons and non-military equipment it required to sustain the civil war.*¹⁵

There were many confirmed evidence on LTTE attempt to smuggle more sophisticated weapon systems to the island across the sea during the period of ceasefire. To cite an example, the Russian Ambassador in Sri Lanka, in a ‘*non-paper*’ submitted by to the Foreign Ministry in May 2003, intimated that members of the LTTE in Laos (Vientiane) approached the representative of the Russian state organization Rosboronoexport to procure small arms, portable anti-aircraft missile complex (IGLA), communication means and other types of Russian weapons.¹⁶ The recognition of its Sea Tigers and the free access to waters remained a long-time demand of the LTTE. It should be noted that when the Scandinavian Monitors (SLMM) presented a proposal in the earlier occasion to recognize the Sea Tigers and allocate sea space for their firing practice during the ceasefire the objections were so strong that it was not even discussed. As Chris Pattern, the External Relations Commissioner of the European Union, observed, the LTTE still has ‘*a long way to go to change from rebel outfit into legitimate political group*’. He is further reported to have stated ‘*We want to be absolutely sure that the LTTE have given up violence. There is a difference between Kalashnikovs and the ballot-box and we want it to be absolutely clear that they have stopped murdering people for political ends*’¹⁷. The implications of assigning the Sea Tigers of the powers to control the ‘adjacent seas’ for the national security need to understood in this background.

Regional Security Implications

The implications of the control over marine and off-shore resources of adjacent seas and power to regulate access by ISGA stretch beyond the national parameters. The legitimization of the third naval force in the waters between India and Sri Lanka is a matter

¹⁵Chris Smith, *In the Shadow of a Cease-fire: The Impacts of Small Arms Availability and Misuse in Sri Lanka*, Small Arms Survey-Occasional Paper No. 11, Geneva: Graduate Institute of International Studies, October 2003. pp. vii and 11.

¹⁶Sunday Times, March 9, 2003.

¹⁷*The Telegraph (Calcutta)*, November 22, 2003.

of grave concern for India. Given the fact that the proposed ISGA is in reality a LTTE Authority, if the provisions relating to 'Marine and Off-shore resource' are implemented, the security architecture of the South Asia has to take into account the emergence of another navy which is controlled by a non-state entity in the South Asian waters. India has a legitimate right to be concerned on this matter as the Indian Navy has to share the maritime boundary between Indian and Sri Lankan territorial waters with the Sea Tigers. Sri Lanka as a sovereign state located in South Asian geo-strategic sub system has definite obligation in relation to the regional peace and stability. Any lapses on the part of Sri Lankan state in fulfilling these obligations in the context of the regional security architecture create serious destabilizing effects on entire South Asia.

Another important issue is the control of Trincomalee. It is not a just another harbour located on the eastern shore-line. The strategic value of Trincomalee in relation to the defense and security of the entire island is enormous. The Headquarter of the EastCom of the Sri Lankan Navy is located there and it is the nerve center for all the naval operations in the eastern waters. Even in any Federal set-up such strategic locations essential for national defense come under the purview of the central government. When one considers all the inferences of the provisions of the Proposal together, it is obvious that Trincomalee harbour will be under the exclusive control of the ISGA. In view of the sensitivities and concerns of the regional and extra-regional powers over the way in which Trincomalee relates to their strategic planning, the fabric of strategic linkages of Trincomalee needs to be decided carefully without leaving any room for a security dilemma syndrome. In this context, the control of Trincomalee by the LTTE is not acceptable to any regional or extra-regional power. In such eventuality, its national and regional implications for peace and stability in the respective spheres would be far more profound, which Sri Lanka will be compelled to grapple with.

Clear the route: To Where?

The interim arrangement must clear the route for a final negotiated settlement. Where is the proposed ISGA heading? If the proposal for an ISGA endorses the existence

of a separate army, navy and financial powers to borrow internally and externally, to control external trade, to enter into agreements and contracts with any other entity and exclusive control over funds from the donor countries and international agencies, could the corresponding final political settlement be anything less than a separate sovereign state? The legal experts of the LTTE are very well aware of the fact that obtaining international recognition after secession is not that easy. According to international conventions and practices the recognition of new states is very restricted. The territories designated by the United Nations as non-self-governing (colonial) units can exercise their right of self determination through plebiscite as in the case of East Timor. Further, voluntary and consensual separation of con-federal or federal entities are permitted as in the cases of separation of Senegal from the Mali Republic in 1960, Jamaica from the West Indian Federation in 1961 and Singapore from Malaysia in 1965 and Checks and Slovaks ('the velvet divorce') in 1993. The Bangladesh case presents genocide and oppression on ethnic grounds could be the valid reason for session. Even then, as Onyeonoro Kanenu stated, '*It must be demonstrated that all other political arrangements capable of ensuring the aggrieved group a measure of self-determination short of outright independence have been exhausted or repudiated by the dominant majority*'.¹⁸ The Soviet and the Yugoslav experiences endorse secession on the ground of the disintegration of the former state. In the wake of the disintegration of the Soviet Union, the European Union, in the Alma Ata Declaration on 16 December 1991, emphasized that the new states emerged not as a result of secession but of dissolution of earlier political entity and set out a number of conditions including, *inter alia*, pre-existing republics constituted the territorial basis of dissolution and ethnic self-determination within the republics would not be recognized; and Rights of national minorities must be respected within the broader framework of democracy and human rights. In the case of the disintegration of Yugoslavia, the European community established an Arbitration Commission to deal with the issue of secession in case by case and it also took the same line in recommending the acceptance of new states in former Yugoslavia. In this context, the proposed ISGA would clear the ground in many respects.

¹⁸ Onyeonoro Kamenu, 'Secession and the Right of Self-Determination: An OAU Dilemma, *Journal of Modern African Studies*, 12 (1974), p. 361.

Firstly it will establish the LTTE control over all the aspects of governance (plenary powers) in the area and get the government administrative machinery out of the North and the East. Secondly it will establish the borders of the ISGA in line with the present Provincial boundaries. Thirdly Trincomalee will be developed as the center of the LTTE administrative control in the North and the East. And fourthly, it will neutralize international opposition, especially that of India, against the violation of territorial integrity of a sovereign state by adopting a piecemeal approach to the separate state. After four years, the formal recognition of Eelam will be requested as a *fait accompli*. The proposed ISGA will set the ground for it gradually and systematically. After five years of the Agreement coming into force 'if no final settlement has been reached and implemented by the end of said period of five years' an election will be held by an independent Election Commission appointed by the ISGA under international observation. It is nothing but the registration of the right to secede. How can the fault of not reaching a final settlement be solely attributed to the government of Sri Lanka? Unless and until it is acceptable to the LTTE they can differ reaching at a final settlement and go for the Elections in which they have full control. Compromise and the accommodation must be the basis for any solution. This clause precludes the LTTE from making any sort of compromise and accommodation in reaching a final settlement.

Future Direction of Negotiations

What would be the future direction of the peace process in Sri Lanka in this context? It should be discussed against the background of the present impasse in the peace process which was, to a larger extent, a consequence of an absence of a clear strategy on the part of the UNF government on how to deal with the LTTE and linking the peace process to its political survival. As a result the process set in motion by the UNF government in early 2002 with much media hype had struck in a serious crisis by April 2003. Almost all the joint structures and institutions established in the process of negotiations to carry out various functions related to the peace process were defunct. The GOSL has lost by default any independent initiative of its own and the LTTE had been given the opportunity to decide the agenda unilaterally in line with its political objectives.

The area of maneuverability of the Sri Lankan state has been curtailed drastically as a result of the failure of the UNF government to safeguard the vital security interests of the state. Without any clear direction just harping on the process ended up in disarray of the peace process, possibly losing another opportunity that history might never offer us again. This situation requires a redirection of the peace process urgently.

One stark reality highlighted by the proposed ISGA is that the LTTE has not yet changed its political objective of achieving a separate state of Tamil Eelam despite the repeated joint-statements declaring its intentions 'to explore a solution based on federal structure within a united Sri Lanka'. It is pertinent at this point to mention that in every such statements the LTTE agreed just to explore the possibility of finding a solution based on federal structure only with a number of qualifications, and it was careful enough not to commit itself firmly to a federal solution. The UNF government, however, seemed over jubilant with these statements and interpreted them as to effect that LTTE has moved away from its separatist flank. But the LTTE was often straightforward, if not blunt, in articulating its objectives. In addressing Tamil expatriates in Düsseldorf in Germany after the 5th round of Talks held in Berlin in February 2003, for example, Blasingham acknowledged candidly that: *'This journey (i.e. peace talks) is a diplomatic move. We are moving towards a goal. We can not continue war for a long period. Our fighters and the people want an interlude. We need this to build the economy and the quality of life of our people'*.¹⁹ Quite naturally, such statements created apprehensions as to true intentions of the LTTE in attending in the peace talks. But in every occasion the UNF government not only ignored such statements but also came forward to justify them by highlighting the LTTE's need to pacify its constituency. At the same time, the verbiage of Minister G.L. Peiris at the official press briefings created undue expectations among the people for a possibility of an early political settlement of the conflict while camouflaging its real difficulties and challenges. Even as late as late July 2003, after presenting the third set of proposals for 'Provincial Administrative Structure' by the LTTE, Minister G.L. Peiris told reporters that *'As far as the progress is concerned we have every reason to be satisfied that*

¹⁹ *The Sunday Times*, February 16, 2003.

*the process is moving forward. The developments are positive*²⁰. Ultimately the UNF government became a victim of its own self-proclaimed prophesy.

The Changes in the LTTE Strategy

Even though the LTTE has not moved from its earlier separatist flank they are now ready to pursue its objectives in a political-constitutional sphere. It is a positive development. The rules and norms of behavior relevant and the competencies required in the politico-constitutional spheres are quite different from those relevant and required in the politico-military sphere. Therefore, the LTTE is compelled to modify its *modus operandi*. In order to utilize this change to push the LTTE towards a positive direction further and drive them into the democratic political process it is essential for Sri Lankan government to have a clear vision and a proper strategy.

By the time the UNF assumed power in 2002 the LTTE had been compelled to change its strategy from politico-military front to politico-constitutional front. It was partly due to the strategies carried out by the earlier Peoples' Alliance regime and also partly due to the changed international and domestic situation. According to Chris Smith six main issues are relevant to understand the shift in the LTTE strategy. The second generation of Tamil expatriates has become less and less interested in the ideology of Eelam and consequently the reduction of remittances. The stalemate of the war created a no-win situation for the both parties and the Tamil population became extremely war-weary. In addition, in Chris Smith's words, *'the global concern over the proliferation of illegal SALW (small arms and light weapons) may yet come to have an adverse effects upon the LTTE weapons procurement programme'*²¹. Consequent to a serious of assassinations by the LTTE, the international support for the Tamil cause has been on the wane and the weight of international opinion has shifted in an unexpected but unequal way to favour the Sri Lankan state. Further more, the global coalition against terrorism following the 9/11 would have profound implications on the behaviour of the LTTE which had been already

²⁰ *The Sunday Times*, July 27, 2003.

²¹ Chris Smith, *op.cit.*, p. 3.

proscribed as a terrorist organization by a number of countries. In this context, the risk involved with the continuation of the armed struggle would entail grave dangers and serious repercussions. The changed demography in the island in general and in the North and the East especially was a serious concern for the LTTE. *'The diaspora of Tamils has resulted in the migration of 500,000 Tamils overseas, and an additional 200,000 have relocated to the south of Sri Lanka. Overall, this has reduced the Tamils to eight percent of the population, from 12 percent at the start of the Conflict.'*²² Another important factor contributed to influence the LTTE to change emphasis from the bunker to the table is the influence of the new expatriate Tamil business community and professionals who back the LTTE. These elements operating internationally are much more sensitive to the winds and pressures in the international arena despite the fact that the 'long-distance nationalism' can be a stronger but cushioned poignancy. Whatever may be the reason or combination of reasons and conjunctures, there is a shift in the LTTE strategy. How to utilize this shift to induce a paradigm shift in LTTE political agenda is the responsibility of the government. It needs a proper reading of the LTTE strategy and a clear perspective with counter-strategy. Unfortunately, the UNF government lacked both; its penchant for the goodwill of the LTTE at any cost and over-appeasement did not create any compulsion for LTTE to change its aims and objectives.

The visible shift of emphasis in LTTE strategy may be a tactical move; but its significance cannot be overlooked at any rate. The prevailing ceasefire is one positive outcome. This is the longest ceasefire that the people are experiencing since the outbreak of the armed conflict. It should not be forgotten that the conflict had ultimately reached a level of a frontal warfare with trenches on both sides. The sufferings and destruction created by the war became enormous. The entire social and cultural fabric of the country was bleeding. The human toll in both sides was very high. Higher the scale and the intensity of the conflict, greater the solace brought about by the ceasefire to the people. It was in this context that the ceasefire and its continuation, with all the shortcomings, and the retaining of the LTTE in the dialogue framework can be considered a positive development.

²²

Ibid.

However, the political price that the Sri Lankan state paid to maintain the ceasefire was very high. The LTTE has been allowed to gain a status almost in par with the GOSL, nationally and internationally and it has been offered openings to build their international legitimacy. The LTTE has been provided with the space to acquire the paraphernalia of a state in every aspect in the North and the East and it was allowed to extend its weight on the civil administration of the state. The government turned a blind eye when the LTTE systematically annihilated many other Tamil political leaders in order to justify its claim to don the mantle of the sole representative of the Tamils. At the same time the government sat mute over extortions, smuggling arms via sea and building up new military camps encircling strategic locations such as the Trincomalee. It was really an unwarranted political price because without these the LTTE could have been retained within the ceasefire framework. Accordingly, the government has failed to make use of the shift in the LTTE strategy to create a solid foundation for a negotiated political settlement by setting the peace process on a correct tract.

Now it is high time to come to grips with the realities of the present peace process. After twenty months of ceasefire and six rounds of peace talks it was failed to force the LTTE to alter its political objectives conceived in the framework of a separate state. Nevertheless, the government was able to retain the LTTE within the ceasefire framework. There is a long way to go in order to reach a mutually acceptable settlement with the LTTE. Such an agreement must be acceptable to all the stakeholders to the conflict.

Present Priorities

The maintaining the ceasefire regime is an immediate priority despite its serious flaws. Many of them are emanating mainly from the shortcomings of the Ceasefire Agreement signed between the GOSL and the LTTE in February 2002 which provided the basis for the present ceasefire regime. The Ceasefire Agreement was unbalanced and structurally flawed. It granted many unwanted concessions to the LTTE without being reciprocated. It marginalized other Tamil political parties operating in the North and East rendering them vulnerable to attack by the LTTE. The role of the people, their forums,

religious and other civil society organizations are a missing element in the present ceasefire arrangement. It must be emphasized that the abrogation of the Ceasefire Agreement and unilateral withdrawal from the ceasefire will not be a solution to any of these limitations and shortcomings. The price has already been paid. The new Freedom Alliance government also assured its commitment to the ceasefire and its determination to continue it. The ceasefire should not be considered as an end in itself. In most of the countries with records of successful peace processes, such as in Angola, Mozambique, Zimbabwe, El Salvador and Nicaragua, no ceasefire was in place before the settlement and fighting continued while the parties negotiated. Sri Lankan situation is different as ceasefire is already in place. How to minimize the damage caused by the adverse clauses of the Ceasefire Agreement is a difficult issue. Any revision of the clauses in the agreement needs the consent of the LTTE. In case of LTTE reluctance to any such change of the present Ceasefire Agreement, a way out is the shortening of the period of the ceasefire regime by expediting discussions on core-political issues relating to the settlement and corresponding interim arrangement.

How to induce the LTTE to change its objectives to settle with a mutually acceptable political solution is the formidable challenge. As the LTTE had not abandoned its military strategy simply because it entered into a ceasefire agreement, it has not abandoned its separatist flank simply because it had presented its political objectives in a constitutional sphere. In order to force LTTE to change its separatist flank it is necessary for the Sri Lankan government to be ready, firstly, with a viable political construct for post-conflict constitutional arrangement as an alternative to the separatist political project and, secondly, with a proper negotiation strategy to deal with the LTTE. Separatism is primarily a political challenge and it should be first defeated on the political plane. The proposed alternative political construct must invest power with the people in the region to manage their regional affairs, to sustain and promote their ethno-national identities without any adverse effects on the unity of the people and the territorial integrity of the state. Instead of going along with labels what is required is to identify a political construct which is capable of addressing the challenges that the country confronts in an era marked by ethno-political mobilizations. A system of two-tier governments similar to the Indian

model has proved to be successful in accommodating ethno-political mobilizations in a multi-ethnic set-up. However, in addition to the dispersal of ethnic plurality throughout the country, the geo-strategic unity of the island, the central mountain range and the pattern of water resources and the distribution of natural resources demand strong center also. Therefore, a two-tiered political system, with some form of power sharing arrangements at the center, between the center and the regions and also within the region itself could be a viable solution to the challenge of separatist political project. If the parties to the conflict agree on principle to such political construct as a solution, an interim arrangement can be worked out in line with the agreed framework.

Need for an Alternative Interim Arrangement

In the course of conflict transformation an interim arrangement could be a useful strategic move if it is properly established in a correct context. Firstly, it is considered an appropriate arrangement to address issues in a transitional phase. The transition from conflict environment to a post-conflict settlement is a complex process and it creates serious security concerns and vulnerabilities for the both side. An interim arrangement will offer some space for the both parties to adjust to the new situation. Secondly, it will offer an opportunity to the both parties to test the *bona fide* of each other. In the conflict normally each believes the other party is the cause of the conflict. It is not possible to dispel mutual suspicion overnight. The fear that the other will utilize the settlement to gain monopoly of power prevents both from reaching a settlement. Thirdly, an interim arrangement can be used as a training ground for civil administration and democracy to militants. On the battlefield the logic of war determines the behavior. Skills and training required for a proper civil administration in democratic environment differ from what was useful in war. A good soldier does not necessarily make a good administrator. While there is a division of labour in this regard on the part of the state, there is no such division in the LTTE. Fourthly, if carefully executed interim arrangement can be used to alleviate fears of general public in the conflict-ridden areas and outside. Building of trust and confidence is necessary for the implementation of the post-conflict settlement. The interim phase can be utilized to build mutual trust and confidence. Further more, Interim arrangement can be

utilized to dispel fears of the imagined consequences of a settlement before implementing the negotiated settlement in toto. However, in order to reach above benefits of interim arrangement in the peace-building process, it must fulfill six conditions. Firstly it should be established as a part of an agreed political settlement for a specific period till the arrangements are made to implement fully the agreed political settlement. Secondly the composition of the interim council should be such that it must include all the stakeholders, political and ethnic, enable it to have democratic content and practice. As has been mentioned earlier, even it is composed to reflect the multi-ethnic and multi-party complexion of the region, as long as one group is armed, interim administration will not be democratic. Thirdly, it follows that the establishment of interim council must be linked with decommissioning of arms. Fourthly, powers and functions of the interim council must be clearly delineated and provisions made for the government at the center to execute its legitimate functions and responsibilities are to be in place. Fifthly, it should contain in-build system of checks and balances incorporated within the constitutional framework. Finally, any administrative arrangement should take care of the protection of human rights of the people in the region.

Challenge of Resuscitating the Peace Process

Finally, it comes to the issue of resumption of negotiations with the LTTE. Consequent to the past strategic errors and blunders of the UNF government in handling the peace process the earlier confidence and the support base in the south as well as in the North and East for a negotiated settlement has now been eroded considerably. Those who oppose the resuming of negotiations with the LTTE at this juncture argue that the LTTE has not changed its political objectives even after six rounds of talks. What the LTTE had really done in attending the Peace Talks was to take the UNF government in a ride to get closer to the Eelam. Further, they point out that it is not possible to talk with the LTTE on the basis of ISGA as it is not acceptable. In this context, some fundamentals relating to negotiations need to be highlighted. First, it is not unusual for parties in the conflict to come to negotiations without changing its hard-held positions. They view negotiations as another means of achieving the same goal. In the process of negotiations, however, these

positions change depending on the correct strategy adopted. Second, if there is no difference it is not necessary to negotiate and bargain over it. Negotiation is necessary in situations only where parties do not agree. Why the Sri Lankan government needs to negotiate with the LTTE is not to accept what the LTTE has proposed but to find a mutually acceptable common ground by changing LTTE positions through bargaining. In internal ethno-nationalist conflicts, no lasting peace can be achieved on the basis of a complete victory or defeat of one part. A negotiated settlement invariably implies to talk and bargain.

With the unilateral withdrawal of the LTTE from the negotiating table in April 2003, one phase of negotiations with the LTTE has come to an end. A new and structurally different phase in the negotiation process is to evolve with the presentation of LTTE proposals for an ISGA. A new government led by the Freedom Alliance replaced the UNF government after the General Elections in April 2004. The GOSL cannot afford to make any more blunders in the next phase of negotiations which will be marked by a long and laborious process of hard bargaining. A careful analysis of the positive and negative aspects of the peace process under the UNF government is very essential. The weak bargaining strength *vis-à-vis* the LTTE is one of the problems that the GOSL may confront in this phase because Sri Lanka has already forfeited its many bargaining tools as a result of the appeasement strategy of the UNF government even before the hard bargaining commenced. The negotiations must be prepared to endure a rough and stormy ambiance with the commencement of bargaining over substantive issues relating to a post-conflict political construct. It is essential for the Sri Lankan government in this phase to view negotiations as an integral part of a broader strategy with clear targets, proper tactics, identified milestones, and, more importantly, strong fall back positions.

Conclusion

The sharp political brinkmanship that the LTTE had excelled in lately has been illustrated once again by the way in which the LTTE presented its proposals for an Interim Self-Governing Authority. In the context of the present impasse in the negotiations, the

challenges before the new Freedom Alliance government in Colombo in guiding the peace process in a proper direction so as to reach a mutually acceptable solution to the ethnic conflict are enormous. In order to achieve this tall goal a sophisticated approach with a clear political vision is necessary. In order to develop a proper strategy, not only to deal with the LTTE effectively but also in relation to the negotiated political settlement, a broader southern political consensus, reinforced by bi-partisan approach, is an essential requirement.

Appendix

THE 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 NORTHEAST OF THE ISLAND OF SRI LANKA

Consistent with the principles of the rule of law, the human rights and equality of all persons, and the right to self-determination of Peoples,

Determined to bring lasting peace to all persons of the island of Sri Lanka,

Acknowledging with appreciation the services of the Royal Norwegian Government, the Norwegian People, and the international community in attempting to bring peace to the island,

Recognizing that a peaceful resolution is a real possibility, despite the challenging history of the peace process between the Tamil people and the Sinhala people.

Determined to establish an interim self-governing authority for the NorthEast region and to provide for the urgent needs of the people of the NorthEast by formulating laws and policies and, effectively and expeditiously executing all resettlement, rehabilitation, reconstruction, and development in the NorthEast, while the process for reaching a final settlement remains ongoing.

Being aware that the history of the relations between the Tamil People and the Sinhala People has been a process of broken promises and unilateral abrogation, by successive governments of Sri Lanka, of pacts and agreements solemnly entered into between the government of Sri Lanka (GOSL) and the elected representatives of the Tamil People,

Bearing in mind that successive Governments of Sri Lanka have perpetrated persecution, discrimination, State violence and State-orchestrated violence against the Tamil People,

Noting that the Tamil people mandated their elected representatives to establish an independent sovereign, secular State for the Tamil people in the elections subsequent to the Vaddukoddai Resolution of 1976,

Bearing in mind that the Tamil armed struggle as a measure of self-defense and as a means for the realisation of the Tamil right to self-determination arose only after more than four decades of non-violent and peaceful constitutional struggle proved to be futile and due to the absence of means to resolve the conflict peacefully,

Recalling that the Liberation Tigers of Tamil Eelam (LTTE) first took measures towards

peace by unilaterally declaring the ceasefire in December, 2000 and again in December, 2001, opening highways, facilitating trade and the free movement of people, and entering into peace negotiations in good faith in the hope of creating an environment conducive to the return of normalcy and a just resolution of the conflict,

Taking Note of the political courage of the present GOSL in reciprocating to the 2001 cease-fire,

Realizing that the war in the island of Sri Lanka was principally confined to the NorthEast, resulting in the destruction of the social, economic, administrative, and physical infrastructure of that area, and that the NorthEast still remains the region in the island of Sri Lanka affected by war,

Recognising that the majority of the Tamil People in the NorthEast, by their actions in the general elections held in the year 2000, gave their mandate acknowledging the LTTE as their authentic representative,

Knowing that the LTTE exercises effective control and jurisdiction over the majority of the NorthEast area of the island of Sri Lanka,

Realising that reaching a final negotiated settlement and the implementation thereof is expected to be a long process,

Affirming the necessity for the safe and free return of all refugees and displaced persons and their urgent need for unimpeded access to their homes and secure livelihoods at land and sea in the NorthEast,

Mindful that institutions and services provided by the GOSL have proved to be inadequate to meet the urgent needs of the people of the NorthEast,

Recognising the failure of the Sub-committee on Immediate Humanitarian and Rehabilitation Needs (SIHRN) and other Sub-Committees formed during the peace negotiations, which failure was due to the composition of such Sub-Committees, which repeatedly led to inaction,

Acknowledging the recognition by the GOSL of the necessity for an Interim Authority, as mentioned in its 2000 election manifesto,

Realising that maintenance of law and order is an essential pre-requisite for a just and free society,

Recognising the need for raising revenue to meet the urgent needs for the Resettlement, Rehabilitation, Reconstruction and Development of the NorthEast region, which has been devastated by war, and for the carrying out of any function of Government,

Recognising the importance of control over land in resettlement, rehabilitation, reconstruction and development,

Mindful that the Tamils did not participate in the making of the 1972 and 1978 constitutions, which institutionalized discrimination and denied them an effective role in the decision-making process,

Noting the practice in international relations over the last decade of solving conflicts between Peoples through agreement between the parties to the conflict on terms of equality and through innovative and imaginative measures,

Relying on international precedents for establishing interim governing arrangements in war-torn countries having the force of law based solely on pacts or agreements between the warring parties recognized by the international community,

Noting that measures such as the Ceasefire Agreement, including the role of the Sri Lanka Monitoring Mission (SLMM), and, the establishment of the SIHRN and the NorthEast Reconstruction Fund (NERF) constitute valid precedents for making such arrangements,

Wherefore, the Parties, namely the Liberation Tigers of Tamil Eelam and the Government of Sri Lanka, hereby agree to the following provisions:

1. Interim Self-Governing Authority

An Interim Self-Governing Authority (ISGA) shall be established comprised of the eight districts namely: Amparai, Batticaloa, Jaffna, Kilinochchi, Mannar, Mullaitivu, Trincomalee and Vavuniya in the NorthEast, until a final negotiated settlement is reached and implemented.

Representatives of the Muslim community have the right to participate in formulation of their role in the ISGA.

2. Composition of the ISGA

- 2.1. The ISGA shall consist of such number of members as may be determined by the Parties to this Agreement.
- 2.2. The composition of the ISGA shall be:
 - 2.2.a. Members appointed by the LTTE,
 - 2.2.b. Members appointed by the GOSL, and
 - 2.2.c. Members appointed by the Muslim community in the NorthEast.
- 2.3. The number of members will be determined to ensure:
 - 2.3.a. An absolute majority of the LTTE appointees in the ISGA.
 - 2.3.b. Subject to (a) above, the Muslim and Sinhala Communities in the NorthEast shall have representation in the ISGA.
- 2.4. The Chairperson shall be elected by a majority vote of the ISGA and shall serve as the Chief Executive of the ISGA.

2.5. The Chairperson shall appoint the Chief Administrator for the NorthEast and such other officers as may be required to assist in the performance of his/her duties. The Chairperson shall have the powers-to suspend or terminate any such appointment.

3. Elections

The provisions of Clauses 2.2 and 2.3 shall continue until elections for the ISGA are held. Such elections shall be held at the expiry of five years of the coming into force of this Agreement, if no final settlement has been reached and implemented by the end of the said period of five years. An independent Election Commission, appointed by the ISGA, shall conduct free and fair elections in accordance with international democratic principles and standards under international observation.

4. Human Rights

The people of the NorthEast shall be accorded all rights as are provided under international human rights law. Every law, regulation, rule, order or decision of the ISGA shall conform to internationally accepted standards of human rights protection. There shall be an independent Human Rights Commission, appointed by the ISGA, which shall ensure the compliance with all such human rights obligations. The Commission will seek the assistance of international human rights bodies to facilitate the rapid establishment of an effective regime for protecting human rights. The Commission shall be entitled to receive petitions from any individual person, award compensation to any such affected person, and ensure that such person's rights are restored.

5. Secularism

No religion shall be given the foremost place in the NorthEast.

6. Prohibition against Discrimination

The ISGA shall ensure that there is no discrimination on grounds of religion, race, caste, national or regional origin, age or gender in the NorthEast.

7. Prevention of Bribery and Corruption.

The ISGA shall ensure that no bribery or corruption is permitted in or under its administration.

8. Protection of All Communities

No law, regulation, rule, order or decision that confers a privilege or imposes a disability on any community, which is not conferred or imposed on any other community, shall be made concerning culture or religion.

9. Jurisdiction of the ISGA.

9.1. The ISGA shall have plenary power for the governance of the NorthEast including powers in relation to resettlement, rehabilitation, reconstruction, and development, including improvement and upgrading of existing services and facilities (hereinafter referred to as RRRD), raising revenue including imposition of taxes, revenue, levies and duties, law and order, and over land.

These powers shall include all powers and functions in relation to regional administration exercised by the GOSL in and for the NorthEast.

9.2. The detailed modalities for the exercise of such powers and the performance of such functions shall be subject to further discussion by the parties to this agreement.

10. Separation of Powers

Separate institutions for the administration of justice shall be established for the NorthEast, and judicial powers shall be vested in such institutions. The ISGA shall take appropriate measures to ensure the independence of the judges.

Subject to Clauses 4 (Human Rights) and 22 (Settlement of Disputes), of this Agreement, the institutions created under this clause shall have sole and exclusive jurisdiction to resolve all disputes concerning the interpretation and implementation of this agreement and any other disputes arising in or under this agreement or any provision thereof.

11. Finance

The ISGA shall prepare an annual budget.

There shall be a Financial Commission consisting of members appointed by the ISGA. The members should have distinguished themselves or held high office in the fields of finance, administration or business. This Commission shall make recommendations as to the amount out of the Consolidated Fund to be allocated to the NorthEast. The GOSL shall make its good faith efforts to implement the recommendation.

The ISGA will, giving due consideration to an equitable distribution, determine the use of funds placed at its disposal. These funds shall include the NorthEast General Fund, the NorthEast Reconstruction Fund (NERF) and the Special Fund.

The GOSL agrees that any and all of its expenditures in or for the NorthEast shall be subject to the control of the ISGA.

11.1. NorthEast General Fund

The NorthEast General Fund shall be under the control of ISGA and shall consist of:

11.1.a. The proceeds of all grants and loans made by the GOSL to the ISGA and the proceeds of all other loans made to the ISGA.

11.1.b. All allocations by the GOSL from agreements with states, institutions and/or

other organizations earmarked in any such agreements for the NorthEast.
11.1.c. All other receipts of the ISGA, other than the funds specified below.

11.2. NorthEast Reconstruction Fund

The NERF shall continue to exist in its present form except that control over it will be transferred to the ISGA.

All grants given for the reconstruction of the NorthEast, will be received through the NERF. Utilization of resources from NERF will be directly determined and supervised by the ISGA.

11.3. Special Fund

All loans and any grants which cannot be channeled through the NERF for the specific purpose of RRRD will be received into the Special Fund. As in the case of other Funds, the ISGA shall control the Special Fund.

12. Powers to Borrow, Receive Aid and Trade.

The ISGA shall have powers to borrow internally and externally, provide guarantees and indemnities, receive aid directly, and engage in or regulate internal and external trade.

13. Accounting and Auditing of Funds.

13.1. The ISGA shall appoint an Auditor General.

13.2. All Funds referred to in this Agreement shall be operated, maintained and audited in accordance with internationally accepted accounting and auditing standards. The accounts will be audited by the Auditor General. The auditing of all moneys received from international sources shall be subjected to approval by an internationally-reputed firm appointed by the ISGA.

14. District Committees.

14.1. In the effective exercise of its legislative and executive powers, the ISGA may create District Committees to carry out administration in the districts and delegate to such Committees, such powers as the ISGA may determine. The Chairpersons of such committees shall be appointed by the ISGA from amongst its members in order to serve as a liaison between the ISGA and the Committees.

14.2. The other members of the Committees shall also be appointed by the ISGA, which shall have the powers to suspend or terminate any such appointment. In appointing such members, due consideration shall be given to ensure representation of all communities.

14.3. The Committees will function directly under the ISGA.

14.4. The Chief Administrator of the ISGA shall appoint Principal Executive Officers in the districts, who shall also function as the Secretaries to the

Committees. The Chief Administrator shall have the powers to suspend or terminate any such appointment.

14.5. All activities and functions of the Committees shall be coordinated through the respective Secretaries to the Committees.

14.6. Sub-committees may also be appointed to facilitate administration.

15. Administration

As part of the exercise of its executive powers the ISGA shall have direction and control over any and all administrative structures and personnel in the NorthEast pertaining to the powers set out in Clause 9 of this Agreement.

The ISGA may, at its discretion, create expert advisory committees in necessary areas. These areas will include but are not limited to Economic Affairs, Financial Affairs, Judicial Affairs, Resettlement and Rehabilitation Affairs, Development of Infrastructure, and Essential Services.

16. Administration of Land

Since land is vital to the exercise of the powers set out in Clause 9 (jurisdiction of the ISGA), the ISGA shall have the power to alienate and determine the appropriate use of all land in the NorthEast that is not privately owned.

The ISGA shall appoint a Special Commission on Administration of Land to inquire into and report on the rights of dispossessed people over land and land subject to encroachment, notwithstanding the lapse of any time relating to prescription.

The ISGA shall determine the term of competencies of the Special Commission.

17. Resettlement of Occupied Lands

The occupation of land by the armed forces of the GOSL, and the denial to the rightful civilian owners of unfettered access to such land, is a violation of the norms of international law. Such land must be immediately vacated and restored to the possession of the previous owners. The GOSL must also compensate the owners for the past dispossession of their land.

The ISGA shall be responsible for the resettlement and rehabilitation of displaced civilians and refugees in such lands.

18. Marine and off-shore resources

The ISGA shall have control over the marine and offshore resources of the adjacent seas and the power to regulate access thereto.

19. Natural Resources

The ISGA will have control over the natural resources in the NorthEast region. Existing agreements relating to any such natural resources will continue in force. The GOSL shall ensure that all monies due under such agreements are paid to the ISGA. Any future changes to such existing agreements should be made with the concurrence of the ISGA. Future agreements shall be entered into with the ISGA.

20. Water Use

Upper riparian users of river systems have a duty to ensure that there is a fair, equitable and reasonable use of water resources by lower riparian users. The GOSL and the ISGA shall ensure that this internationally recognized principle is followed in the use of water resources.

21. Agreements and contracts

All future agreements concerning matters under the jurisdiction of the ISGA shall be made with the ISGA. Existing agreements will continue, but the GOSL shall ensure that all proceeds under such agreements are paid to the ISGA. Any changes to such existing agreements should be made with the concurrence of the ISGA.

22. Settlement of Disputes

Where a dispute arises between the Parties to this Agreement as to its interpretation or implementation, and it cannot be resolved by any other means acceptable to the Parties including conciliation by the Royal Norwegian Government, there shall be an arbitration before a tribunal consisting of three members, two of whom shall be appointed by each Party. The third member, who shall be the Chairperson of the tribunal, shall be appointed jointly by the Parties concerned. In the event of any disagreement over the appointment of the Chairperson, the Parties shall ask the President of the International Court of Justice to appoint the Chairperson.

In the determination of any dispute the arbitrators shall ensure the parity of status of the LTTE and the GOSL and shall resolve disputes by reference only to the provisions of this Agreement.

The decision of the arbitrators shall be final and conclusive and it shall be binding on the Parties to the dispute.

23. Operational Period

This Agreement shall continue until a new Government for the NorthEast, pursuant to a permanent negotiated settlement, is established. The Parties will negotiate in good faith to reach such a settlement as early as possible.

Provided, however, that at the end of four years if no final agreement has been reached between the Parties to this agreement, both Parties shall engage in negotiations in good faith for the purpose of adding, clarifying, and strengthening the terms of this Agreement.