IMPLEMENTATION OF THE CEASEFIRE AGREEMENT

INTRODUCTION

The Conflict in the island of Sri Lanka is one of the world's most protracted and intractable. The Ceasefire Agreement (CFA) that was signed between the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan government in Feb 2002 was after nearly 30 years of continuous armed conflict except for brief intervals during previous rounds of negotiations. It was hoped the entering into the CFA would form the foundation for a process that would lead to finding a lasting negotiated solution. The fact that this Agreement was facilitated by key western countries, who were to also play a key role in not only matters pertaining to the ceasefire but also the larger negotiations process between the parties, was a crucial factor.

This paper intends to analyze the CFA and discuss the implementation of the same. In doing so the paper will first briefly look at the political background in which the Ceasefire Agreement was mooted and subsequently signed. It will then analyze the key Articles of the Agreement before making a critique of the implementation of the Agreement. The final section of the paper will be a brief conclusion that draws on the key findings of the earlier sections.

This paper will draw on the practical experience of the Author as a sitting Member of Parliament from the Northeast and as one who has been engaging with the various international actors. The paper will also draw on the Author's legal training.

BACKGROUND TO THE SIGNING OF THE CEASEFIRE AGREEMENT

The circumstances that led to the signing of the CFA are important. Since the previous round of negotiations in 1994/95, the two protagonists to the conflict had been involved in a high-intensity war that surpassed all others. The military campaign of the State was being waged as a "war for peace" with the intention of causing a total defeat of the LTTE. By the year 2000 however, this effort on the part of the State had begun to falter in an alarming way.

The territory that had been gained by the Sri Lankan armed forces, that had taken several years to capture, was lost to the LTTE within a period of a few days. The most fortified garrison of the Sri Lanka State, and one of the most strategically important, the Elephant Pass Camp, had been over-run by the LTTE. Further, the State's main air force base, along with its only international airport in Katunayake, was also sensationally attacked causing heavy losses by way of assets.

As a result, the international community that had backed the State's "war for peace" campaign (militarily, financially and politically) began to develop reservations of its military capacity. The spectacular manner in which the LTTE had regained territory and resisted attempts by the state

armed forces to advance, causing severe casualties, meant that its international backers of realized that the armed forces' morale had been broken. The fighting had to be stopped if further set backs for the state were to be stemmed.

Consequently, the international community began to push for negotiations, the result of which was the appointment of a Special Envoy of the Norwegian Government to explore the possibilities of commencing a peace process. The Special Envoy, Mr. Erik Solheim, subsequently met with the LTTE leader and the President of Sri Lanka, signaling the formal commencement of a Norwegian facilitated process.

Despite these developments taking place in the background of the major military reversals suffered by the Sri Lankan State, and a unilateral cessation of hostilities declared by the LTTE in December 2000 (that it had extended for a period of four months) the State was still intent on pursuing its military solution. A major new military offensive called "Agnikila" to recapture the Elephant Pass Camp in order to regain a strategic advantage on the military front, was launched. This operation too ended up in failure resulting in heavy losses for the State.

This latest military setback along with the very heavy toll the State's military project was having on the economy (Sri Lanka's GDP figures were indicating negative growth) and the increasing reluctance of the international community to fund, what was increasingly beginning to be seen as a unsatisfactory approach by the then Government (the Sri Lanka's Donor's Group decided to defer the releasing of funds by 6 months at its Paris meeting in 2001), resulted in a regime change in Colombo with the new Government of Prime Minister Ranil Wickremasinghe obtaining a majority in the Sri Lanka Parliament. Wickremasinghe had contested the elections, with the express commitment in his party's election manifesto, to have a cessation of hostilities with the LTTE, start negotiations, and the establishment of an "Interim Administration" for the Northeast. It was for these reasons that Wickremasinghe was heavily backed by the international community and the USA led west in particular.

The cumulative result of all of these events meant that by the end of 2001 it had become amply evident that, the Sri Lankan State was not only unable to prosecute a successful war against the LTTE, but that if hostilities were allowed to continue the dangers of the State suffering even further military reversals were far too real. Despite the international community's enthusiastic and unstinted support for the State's military campaign earlier, serious doubts about the ability of the State to even contain it, let alone defeat or decisively weakening the LTTE, had become apparent. It was in this background that key members of the international community actively pushed for the signing of the CFA. For a detailed analysis of the reasons for why the LTTE, the Sri Lankan State and the international community agreed on the CFA, see chapter 2 of this publication.

ANALYSIS OF THE ARTICLES OF THE CEASEFIRE AGREEMENT (CFA)

This section of the paper will look at the Articles of the CFA and will give an interpretation to them. It should be noted that the author at all times keeps in mind the politico-military realities prevalent at the time of the signing of the CFA and believes that the strategic balance of power that had been achieved between the parties was important to maintain if the CFA was to be sustainable.

Preamble

The Preamble of the CFA states inter alia that "the overall objective [of the Parties]…….. is to find a negotiated solution to the ongoing ethnic conflict in Sri Lanka". It goes onto state that the Parties "……recognize the importance of bringing an end to the hostilities and improving the living conditions for all inhabitants affected by the conflict. Bringing an end to the hostilities is also seen by the Parties as a means of establishing a positive atmosphere in which further steps towards negotiations on a lasting solution can be taken". The Preamble concludes by stating that the Parties will "….. refrain from conduct that could undermine the good intentions or violate the spirit of this Agreement and implement confidence-building measures as indicated in the articles below."

The aforesaid make it clear that the CFA was to form the foundation for a peace process that the Parties would embark on, in order to find a negotiated solution to the conflict. The CFA proposed to make this foundation through the implementation of two main features, namely, it recognized the need for bringing about a (i) cessation of hostilities and the need to (ii) address the humanitarian situation that had arisen as a result of the protracted conflict. The wording and the manner in which these twin objectives have been set out in the CFA suggest that the parties agreed that both these objectives were equally important. In other words, both had to be addressed in parallel, with neither of the objectives being seen as more important than the other.

Accordingly, it is this twin objective that can be read as forming the backbone of the Agreement that the Preamble in its concluding paragraph recognizes as the "spirit of this Agreement" that should not be violated.

Article 1: Modalities of a ceasefire

Article 1 is divided into three sub-headings, namely, "Military operations", "Separation of forces" and "Freedom of movement". Under each of the sub-headings there are several sub-sections that spell out in considerable detail the modalities that, when taken in total, give practical effect to a cessation of hostilities, which is one of the twin objectives of the CFA as mentioned earlier.

A close study of Article 1 brings out a number of important matters.

(1) Article 1.2 by stating that neither Party shall engage in any "offensive" military operations towards one another makes it clear that both Parties recognize the right of the other Party to exist. The fact that only "offensive" military operations are prohibited, coupled with the absence of any clause calling on the Parties to observe a moratorium on arms procurement, is noteworthy. This means that the CFA recognized not only the existence of the military structures of both Parties, but also permitted those being maintained and also even their capacities being built up.

(2) Article 1.2(c) prohibits "offensive naval operations" by the Parties. The fact that the Article is generally phrased mean that it is applicable to both Parties. In other words, both Parties recognize the right of the naval formations of the other to exist and function provided that neither undertakes offensive naval operations against each other. This, along with the notable absence of any modalities being stipulated with regards to the conduct of the two Parties in the Sea mean that the CFA recognized and permitted the functioning of both the Parties naval formations, with the only restriction that no offensive naval operations be undertaken against each other.

(3) Article 1.3 states that the Sri Lankan armed forces shall perform the task of safe-guarding the territorial integrity and sovereignty of Sri Lanka "without engaging in offensive operations against the LTTE". This Article reinforces the view that the CFA permitted not only the existence of all the military formations of both the Parties, but that it also didn't prohibit these formations from functioning and even being build up, provided that neither Party undertook offensive operations against each other. As regards third parties, the CFA recognizes that it is the Sri Lanka State's Navy that shall be the de jure naval force.

(4) Articles 1.4 to 1.6 stipulate the detailed modalities to keep the armed forces of both Parties in separate geographical zones. The practical effect of these three Articles is to create exclusive areas of control under each of the Parties. These exclusive areas of control of each Party are to be recognized and respected by the other Party. It is important to note that the demarcation of these exclusive areas of control is only limited to the land. Since the CFA is silent on matters pertaining to the sea and the airspace, it can be construed that such exclusive areas of control were only intended to apply to the land and that both Parties may freely operate in the sea and airspace provided that no offensive military operations were undertaken by each of the Parties against the other.

(5) Article 1.7 stipulates that "The Parties shall not move munitions, explosives or military equipment into the area controlled by the other Party". Read with Articles 1.4 to 1.6 as mentioned in (4) above, this can only mean to refer to the land and not the sea or the airspace.

(6) Article 1.8 states that "Tamil paramilitary groups shall be disarmed by the GOSL by D-day + 30 at the latest" but the individuals in these groups could serve in the Sri Lanka State's armed forces away from the Northeast if they so wish. Whilst this Article clearly recognizes the existence of Tamil paramilitary groups, the CFA however does not explicitly name these groups. Since no modalities have been specified to verify the disarmament process in the CFA itself, the Sri Lanka Monitoring Mission (SLMM) would have had to do so in consultation with both parties.

(7) Articles 1.9 to 1.13 stipulate the conditions under which safe passage will be granted to the military personnel of each Party into and through the areas of control of the other Party. These Articles are clear and unambiguous.

Article 2: Measures to restore normalcy

Article 2 is divided into several sub-sections that gives effect to the second of the twin objectives of the CFA, namely, the need to address the humanitarian situation faced as a result of the protracted war. Article 2 refers to these as "confidence-building measures".

(1) Article 2.1 states "The Parties in accordance to international law abstain from hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion and harassment". It is significant that it is only in this Article, and nowhere else in the Agreement, that reference is made to international law. Since international law is such a vast subject that covers a number of issues, the fact that reference is only made to it in the context of the Parties obligations towards civilians, indicates that as far as the CFA was concerned, international law shall have a very limited applicability confined to the relationship the parties will have towards the civilians.

(2) Article 2.2 generally states that the Parties shall refrain from offending cultural or religious sensitivities. All places of worship were to be vacated by both Parties by D-day + 30 and made accessible to the public. The Article goes on to state "Places of worship which are situated in 'high security zones' shall be vacated by all armed personnel and maintained in good order by civilian workers, even when they are not made accessible to the public". Therefore it is clear that whilst all places of worship

were to be vacated by both the Parties by D-day + 30, it is only the places of worship that fell outside high security zones that could be put to civilian use.

(3) Article 2.3 stipulates that by D-day + 160 at the latest, all school buildings occupied by either Party shall be vacated and returned to their intended use. Since there is no exceptions made like in the previous Article to schools that fall within high security zones, it is clear that even those schools that even fall within high security zones were meant to be vacated and allowed to function.

(4) Article 2.4 stipulates that "a schedule indicating the return of all other public buildings to their intended use shall be drawn up by the Parties and published at the latest by D-day + 30". An interesting feature of this Article is that it is only the "schedule" that the Parties are expected to publish by D-day + 30. On the face of it, the Parties seem to have the freedom of deciding when they will vacate the buildings. However, read with the preamble to the agreement that refers to the "spirit of the agreement", which had as one of its twin objectives the need to create conditions of normalcy, the Article would require these buildings to be vacated and put to their intended use.

(5) Article 2.5 states "The Parties shall review the security measures and the set-up of checkpoints, particularly in densely populated cities and towns, in order to introduce systems that will prevent harassment of the civilian population. Such systems shall be in place from D-day + 60". Read with Article 2.1, this Article stipulates, that whilst each Party is entitled to take security measures, such measures cannot be at the expense of the rights of the civilian population to be free from harassment as stipulated by international law.

(6) Articles 2.6 to 2.10 stipulate the modalities regarding the flow of non-military goods and the movement of civilians, to and from LTTE controlled areas. These include the opening of specified crossing points along the lines of control making roads and railways available for civilian use. These Articles are clear and unambiguous.

(7) Article 2.11 states that all restrictions on day and night fishing were to be lifted by D-day + 90 the latest. This was subject to two conditions; (i) "fishing will not be permitted within an area of 1 nautical mile on either side along the coast and 2 nautical miles seawards from all security forces camps on the coast; (ii) fishing will not be permitted in harbours or approaches to harbours, bays and estuaries along the coast". The CFA does not make clear the exact meaning of "security forces camps". This is a matter that the SLMM ought to have clarified. The ambiguous

nature of the wording of the Article and the failure of the SLMM to have clarified the matter effectively caused this Article to be ineffective, as discussed later.

(8) Article 2.12 prevents the operation of the Prevention of Terrorism Act by the Sri Lankan State. It stipulates that "due process of law in accordance with the Criminal Procedure Code" shall be the law that shall be used to perform any arrests, presumably, in the Sri Lanka State controlled areas.

(9) Article 2.13 provides that "The Parties agree to provide family members of detainees access to the detainees within D-day + 30". This Article is self-explanatory.

Article 3: The Sri Lanka Monitoring Mission

Article 3 deals with the modalities with respect to the establishment of an international monitoring mission to enquire into any instances of violations of the "terms and conditions" of the CFA. This mission was to be known as the SLMM, which was to conduct verification through "on-site monitoring of the fulfillment of the commitments entered in this Agreement…" It is beyond the scope of this paper to analyze the procedural aspects provided for under the CFA as this will be covered elsewhere in this publication. Suffice it to say that the functioning of the SLMM and the rulings given by the SLMM had to be within the express provisions of the CFA.

Article 4: Entry into force, amendments and termination of the Agreement

Article 4 is clear and unambiguous and spells out how the CFA was to come into effect. It goes onto provide for the procedure to amend the provisions of the CFA. It states that amendments can only be brought about by both Parties mutually agreeing and such agreement being conveyed in writing to the Norwegian Government. Finally, the Article provides for the procedure that should be adopted if either party chooses to terminate the CFA. It states that the termination of the Agreement can be brought about unilaterally by either Party giving two week's notice in writing to the Norwegian Government.

CRITIQUE OF THE IMPLEMENTATION OF THE CFA

The CFA came into being in the context of certain politico-military realities. When looking at the eventual implementation of the CFA, not only are the actions of the two Parties after the signing of the CFA important, but the actions of the SLMM are also as, if not more important, since the SLMM was agreed by the Parties to be the "…..final authority regarding interpretation of this Agreement" (Art. 3.2).

In other words, the SLMM's role in interpreting the CFA is considered important because the Parties in effect, through the creation of the SLMM and giving it the status of the "final authority", agreed to surrender full authority to the SLMM in complete confidence of it maintaining the balance of power when interpreting the CFA. It is inconceivable to think that either Party would have been agreeable to anything less.

In looking at the implementation of the CFA this paper concentrates on some of the more controversial issues that the Parties and the SLMM had to confront. These issues came to attract considerable attention and were openly debated in the media. It is not a coincidence that these issues were strategic in character as far as the Parties were concerned, and had the potential of altering the strategic balance of power that had in fact paved the way for the CFA in the first place.

The imperative to maintain the balance of forces and the competition between military and civilian needs

As mentioned earlier, the CFA came about as a result of certain politico-military realities coming into existence. Some call this reality a "military stalemate" (as Prime Minister Ranil Wickremasinghe points out in his speech to the Sri Lanka Parliament the day after the signing of the CFA), and others see it as a result of the strategic balance of forces tilting against the Sri Lanka State and in favor of the LTTE (as military analyst D. Sivaram (Taraki) preferred to see it). The point here is that there were certain realities that created the space for the CFA to come into existence. If the CFA was to be sustainable, the maintenance of such realities was fundamental. It was important to maintain the balance of military forces between the Parties. Although this has not been explicitly mentioned in the CFA itself, both Parties have on numerous occasions drawn attention to this need, and so has the SLMM in many of its public reports.

The second important requisite was to address the humanitarian needs of the war affected people. Whilst the effects of decades of conflict affected the entire population of the island of Sri Lanka, there can be little doubt that the people affected the most were those living in the Tamil speaking Northeast. In this regard, as mentioned earlier, the CFA gave equal importance to the need to maintain a cessation of hostilities, as with the need to restore measures of normalcy. Simply put, the CFA obligates the military issues to be balanced with the humanitarian issues, with one not having an over-riding effect on the other.

In view of the above-mentioned two points, this paper will now go onto discuss the implementation of the CFA with special reference to issues that became controversial due to their strategic implications to the balance of power equation.

The Sea Tigers, Air Tigers and the absence of modalities for the sea and airspace

The existence of the LTTE's naval wing "Sea Tigers" came to create much controversy. The Sri Lankan State severely opposed its recognition for the limited purpose of the CFA and the need to have a sustainable and comprehensive cessation of hostilities between the two Parties. The argument put forward was that a Sovereign State could not recognize the existence of another naval actor within the territorial waters and the exclusive economic zone of Sri Lanka. The argument further went that, even de facto recognition would have serious implications with respect to the international system and ran the risk of future international recognition.

The LTTE for its part argued that the CFA was signed in the full knowledge of the existence of the Sea Tigers. The Sea Tigers had played a major part in creating the strategic balance of power that in fact paved the way for the CFA. The Sea Tigers had been a very important and effective arm that formed part of the reality that the CFA was meant to recognize and give effect to, and to not do so would be tantamount to the disturbance of the balance of forces.

The SLMM for its part chose to invoke international law and ruled that the Sea Tigers could not claim a right to the sea as only a recognized Sovereign State could do so. However due to the fact that the Sea Tigers were a de facto force, they at one point, proposed that working arrangements be made between the Sri Lanka State's navy and the Sea Tigers. However, with stiff resistance coming from the Sri Lankan State, this effort was quickly abandoned. In short, the Sea Tiger's role never was institutionalized by the CFA, but in fact did the opposite and made its activities illegitimate. The question is whether such a decision by the SLMM was justified?

As posited earlier, the Preamble to the CFA makes no mention of the general applicability of international law. In fact the only time international law is mentioned is in Article 2.1 only with regard to civilians. This paper argues that the omission of any mention of international law with the sole exception of civilian issues, is deliberate, as there can be little doubt, that international law would not have even permitted the modalities spelled out in the CFA pertaining to the creation of a cessation of hostilities on the land. Accordingly, this paper argues that the SLMM ruling on the sea tigers was flawed and cannot be justified.

With regard to the role of the Air Tigers the situation was slightly more complex. It was not a confirmed fact that the LTTE had a functional air wing till a few years after the signing of the CFA. In fact the LTTE itself officially acknowledged the existence of its air wing only in March 2007.

Two questions arise; (1) Is the LTTE allowed to build up its military capability, in the form of a new arm to its military formations? (2) Would the CFA permit such new military formations to operate, provided they were not used for hostile military operations against the Sri Lanka

State? Answers to these questions are important since, when there were reports that the LTTE had built an airstrip, the SLMM sought to have access to the said site saying that it had to verify the allegation as, if in fact such an airstrip existed, it would be a violation of the CFA (eventually the LTTE refused to grant access, and the SLMM ruled the refusal as the violation).

The CFA is conspicuously silent on this issue and does not have a clause that calls on the Parties to observe a moratorium on such matters. To the contrary, it was clear that the Sri Lanka State was aggressively building up its military capabilities. The Jane's Defence report pointed out that the Sri Lanka State by 2003 had doubled the size of its navy and air force while its army doubled its artillery and gunship firepower and tripled its tank force. Since the basis of the CFA was the strategic balance of forces, in the absence of anything to the contrary in the CFA, and when the Sri Lanka State was actively involved in a major modernization and upgrading of its military capability, it can be safely assumed that the LTTE was well within its right to do so as well. This, coupled with the absence of clearly spelt out modalities to deal with the sea and the airspace should mean that, provided no offensive military operations are conducted, both Parties are free to operate in the sea and airspace freely.

Receiving military and non-military supplies by sea and air

As for the receiving of military and non-military supplies via the sea and air, the position of the Sri Lankan State was straightforward. Being a de jure actor, it is taken for granted that such resupplies may be obtained by it. It was the position of the LTTE under the CFA that was not that obvious. On a number of occasions the LTTE's supply ships were sunk. Whilst the LTTE on all these occasions admitted to the ships carrying supplies, it consistently tried to make out the supplies to be of a non-military nature. The SLMM in turn invoked international law and ruled that the LTTE was not entitled under the CFA to bring in supplies directly to its areas of control.

This paper opines that such an interpretation was flawed. As stated earlier, the CFA is silent on the modalities pertaining to the sea and airspace. It is a well known fact that the LTTE brought in its supplies prior to the signing of the CFA directly to the areas controlled by it. In the absence of any modalities being agreed between the Parties on how the LTTE would bring in supplies, it can only be assumed that nothing in the CFA could preclude the LTTE from doing so directly. It is therefore submitted that nothing in the CFA disallowed the LTTE from bringing in not only non-military supplies, but supplies of a military nature as well, via the sea and airspace, provided that whilst doing so no hostile military action was taken against the Sri Lankan State armed forces.

Movement of military material through the areas controlled by the other Party

Another issue that kept recurring was whether the LTTE could use the sea to transport its cadres and military equipment between non contiguous areas of its control. Such movements

would mean that the LTTE vessels would have to travel through the waters adjacent to the land that was under Sri Lanka State control. The question is whether, when such movements take place and the LTTE vessels are in transit in waters adjacent to Sri Lanka State control, such movements can fall within the ambit of Article 1.7 which prohibits the movement of "….munitions, explosives or military equipment into the area controlled by the other Party"? The need for a closer look at this matter is because there were several occasions when LTTE naval vessels carrying cadres and weapons were apprehended whilst in transit and the SLMM ruling such instances a violation by the LTTE.

Although Initially the SLMM did involve itself in trying to coordinate such LTTE movements, such movements were restricted to cadres and not military hardware. These movements were also only to take place with the approval of the Sri Lanka State. It was clear that this effort was an exception to the rule. In reality he LTTE was never recognized as having a right to such movements.

In this regard, the CFA in Article 1.7 only prohibits the movement of military material "into the areas controlled by the other Party". The CFA does not spell out the modalities for the sea. Despite both Parties having operational navies at the time of signing, the sea had not been demarcated into areas of control. Therefore, where such military material is transported by sea from one area of LTTE control to another non-contiguous area of its control, the CFA should not have been interpreted to prohibit such movements; as such activities do not contradict the term "into the areas of control of the other Party".

This paper further opines that the same reasoning can be extended to the airspace as well. Note that such movement will only be possible by sea and air and not on land since the modalities with regards the land is very clear on this, and prohibits it.

Disarming of Tamil paramilitary groups

Another contentious issue regarding the implementation of the CFA was the need to disarm Tamil paramilitary groups as per Article 1.8. Whilst these groups were to be disarmed, the CFA gave the option for the individual members of these groups to be absorbed into the Sri Lankan State's regular armed forces and to serve in areas outside the Northeast.

The complication arose since the Tamil paramilitary groups were not identified in the CFA. It was a well-known fact that these groups fronted as registered political parties. As a result the Sri Lankan State insisted that these groups could not be disbanded, as they were political parties. On the other hand, the LTTE insisted that these groups were in fact paramilitaries that merely masqueraded as political parties and hence must be disbanded in addition to them being disarmed.

What eventually transpired was that, come D-day + 30, the SLMM announced that the paramilitary elements of these groups had disarmed and that they would from then on function as mere political parties in the Northeast. Indeed there was no visible disarmament as such. The lack of transparency and the rather cavalier fashion in which this Article was implemented (or not implemented as became evident later) resulted in a lot of violence and bloodshed. With hindsight it can be said that there are serious doubts whether any effort was made to implement this Article at all, since the members of these very same Tamil paramilitary groups stand accused for many instances of violence and killings during the period of the CFA being operational.

Resettlement of IDPs and High Security Zones (HSZ)

Due to the protracted conflict there were several hundreds of thousands of internally displaced persons (IDPs) in the war affected areas. There were many reasons for them being displaced. The foremost being that the Sri Lanka State armed forces were occupying the private residences of these civilians and because their houses fell within HSZs. Just in the Jaffna District alone, there were over 50,000 civilians affected by such measures.

The resettlement of IDPs become obligatory under the Preamble of the CFA read with Article 2.1 and 2.5. However the Sri Lanka State was unwilling to re-evaluate its security measures to facilitate resettlement in any meaningful way. The argument was that by permitting civilians into HSZs the Sri Lanka armed forces would be made vulnerable to LTTE infiltration and attack.

Whilst the argument put forward by the Sri Lankan State should be given consideration, the question is whether such military imperatives override the civilian needs of resettlement that was fundamental if normalcy was to return to the war affected areas. As mentioned in great detail in earlier parts of this paper, the wording of the CFA make it clear that whilst military considerations were important, the civilian needs were as important, and a balance between the two had to be worked out.

The SLMM Head issued a statement in December 2002 that stated the following:-

> "…People want normalization and security, but one must not undermine the other. Representatives of the LTTE have stated that maintaining their military strength is vital if they are to be successful in their negotiations. What applies to the LTTE in this context should also apply for the Government. The paradox in the peace argument is that the priority of normalization goes before that of security, while both rest on the present military balance. In order to build peace the forces on both sides must be kept stable. In Jaffna, simply dismantling High Security Zones for resettlement and handing over land

for cultivation will decrease both security and combat potential of the Government forces. The balance of forces is the basis of the Ceasefire agreement and disturbing that balance is disturbing the Ceasefire. An unrealistic normalization program in the name of progress and development should not be allowed to come into force at the expense of security, as this could undermine the building of permanent peace. It is therefore clear that further implementation of the Ceasefire agreement is linked to the harmonizing of normalization and security."

Unfortunately, no meaningful steps to deal with the resettlement of IDPs were taken and many thousands continued to be displaced due to the intransigence of the Sri Lanka State's security measures. This paper whilst agreeing with the sentiments of the SLMM maintains, that the Sri Lanka State ought to have been prevailed upon to permit the resettlement of civilians without dismantling the HSZs, by imposing suitable conditions on the civilians who were to be resettled within these zones. Only such a step would have resulted in the Sri Lanka armed forces maintaining their security apparatus whilst enabling normalization of civilian life.

The return of places of worship, schools and public buildings to their intended use

The need to return of places of worship, schools and public buildings to their intended use also came to draw much controversy. As analyzed earlier, the CFA deals with these relevant issues under Articles 2.2, 2.3 and 2.4 respectively. Of the three categories of buildings, a reading of the Agreement makes it clear that all schools, whether they fall within HSZ's or not, were to be released with effect from D-day + 160 the latest. Unfortunately this provision whilst complied with in some instances was not fully implemented by the Sri Lanka State till the very end. This resulted in many thousands of children being affected

In the case of places of worship, the areas under LTTE control were not problematic as none were occupied by the LTTE. In the case of Sri Lanka State controlled areas, all buildings were vacated in areas outside HSZs by the Sri Lanka armed forces. Whilst even within the HSZ the places had been vacated, these places were not made available to civilian use. This latter factor also caused much controversy. The CFA makes it clear that all places of worship had to be vacated by the Sri Lanka forces, but those that fell within the HSZs need not be made accessible for public use. Since the wording of the CFA on this is unambiguous, whilst there was much dissatisfaction from the civilian population, there was very little that the SLMM could have done, except to appeal to the Sri Lankan State to be flexible.

On the issue of "other public buildings", Article 2.4 is rather ambiguous. All that the Article states is that the two Parties are to make a schedule of the buildings that each occupied and the proposed date they hoped to vacate them by. The CFA does not make the vacation of these buildings mandatory. However, as the very spirit of the agreement was to create conditions of

normalcy for the civilians, the non-vacation of the buildings would clearly be contrary to the spirit of the Agreement. Accordingly, the SLMM ought to have worked towards this end by liaising with the two Parties and finalizing modalities that would have lead to the vacation of all the public buildings. This was not pursued vigorously by the SLMM resulting in expectations amongst the civilians being raised with no delivery.

Fishing restrictions

Article 2.11 of the CFA made it mandatory for all fishing restrictions to be lifted by D-day + 90. However there were two exceptions. (1) fishing was not permitted near coastal camps in Sri Lanka State controlled areas, and (2) fishing was also banned in all harbours, approaches to harbours, bays and estuaries.

Whilst the second exception was unambiguous, the first ended up causing much frustration as the term “security forces camps” was not defined. The reality was that the entire coast along the Sri Lanka State controlled areas was dotted with the presence of its armed forces in some form or another. The Sri Lankan armed forces used this fact to refuse to allow the fishermen access to the sea. Despite the good intentions of the Article, the practical effect was that the fisher folk depended entirely on the discretion of the Sri Lanka State armed forces, which changed on a weekly, if not daily basis. The SLMM for its part proved to be ineffective as it failed to define the term “security forces camps” which would have given much clarity to the public and helped in reducing tensions.

Child recruitment

Recruitment of underage children was a major complaint against the LTTE from the inception of the CFA. In fact a considerable number of the CFA violations ruled against the LTTE were attributed to recruitment of underage children. The prohibition of underage recruitment of children fell within the general Article 2.1 of the CFA. Whilst there is no express mention of the prohibition of recruitment of underage children in the CFA, Article 2.1 is the only instance that invokes international law, and the SLMM has clarified that it is through the application of international law on the question of underage recruitment that the rulings against the LTTE were made. The research part of this chapter deals with this issue in detail. This section will now look at international law pertaining to underage recruitment to critique the rather narrow interpretation given by the SLMM.

The first international legal instrument pertaining to underage recruitment was the Additional Protocols to the Geneva Conventions of 1977, which imposed a minimum age of 15 for recruitment into the armed forces of States. The same minimum age applied to recruitment by non State armed groups. The said Protocols also required that children under the age of 15 should not be allowed to take part any in direct hostilities.

Subsequently in 1989, the International Convention on the Rights of the Child, without referring to non State armed groups, further reiterated the 15 year minimum age for recruitment for State actors.

Subsequently the Rome Statute of the International Criminal Court provided in 1998 that the Court shall have jurisdiction in respect of war crimes. Such a crime was to include 'conscripting or enlisting children under the age of fifteen years' into the armed forces of State actors or non State armed groups, and where underage children used by such Parties were made to participate actively in hostilities.

In 1999 the “Worst Forms of Child Labor Convention” was adopted by the International Labour Organisation. The convention provided that each Member that ratified the Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. It also provided that 'for the purposes of this Convention', the term 'child' shall apply to all persons under the age of 18 and that the term “the worst forms of child labour” included 'forced or compulsory recruitment of children for use in armed conflict'.

In 2002 the Optional Protocol to the Convention on the Rights of the Child provided that State actors may not compulsorily recruit those under 18 years. However it retained 15 years as the minimum age for voluntary enlistment. The Optional Protocol however provides a different standard for non State armed groups. It requires that non State armed groups may not “under any circumstances”, recruit persons under the age of 18 years. Further, whilst it requires that States actors take all “feasible” measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities, the Protocol requires non State armed groups to not “under any circumstances” use in hostilities, persons under the age of 18 years.

The aforesaid make it clear that recent developments in international law pertaining to recruitment of underage children apply different standards to State actors and non State armed groups. It is beyond the scope of this paper to question the different standards that are being applied to State actors and non State armed groups. However, the question that this paper raises is whether the LTTE can in fact be considered a non State armed group, as the SLMM has concluded?

The reality is that in addition to the LTTE’s military formations, it also consisted of an administrative arm. The latter consisted of a judiciary, police and civil administration that had been in existence for at least a decade before the CFA was signed. Further, such recognition was granted under the CFA itself when under Article 1 the areas controlled by the LTTE were

acknowledged. The effective functioning of these civil structures meant that people had to be recruited to work in them. The point here is that the LTTE was much more than a non State armed group and was in fact a de facto State. This would mean that it falls outside the rather narrow framework spelt out in the current international law instruments.

Suffice it to say that despite a range of pressing issues relating to children affected by armed conflict (such as the inability of over 50,000 children to attend school in the Northeast, the continued displacement of hundreds of thousand of children etc.) there was a singular and extremely contestable interpretation of international law focusing on recruitment of underage children by the LTTE to the almost entire exclusion of other matters. This was rather surprising considering the ambit of Article 2.1 was very wide, and the number of children affected as a result of recruitment, were relatively small in number when compared to the several hundreds of thousand of children severely affected by other reasons of the conflict. It is rather unfortunate that the SLMM's interpretation of international law pertaining to, not only children but also other civilian matters, gave the perception of some laws being more important than others.

CONCLUSION

As opined at the inception of this paper, whilst many reasons can be attributed to the eventual signing of the CFA by the Parties and the strong support extended by the international community towards it, this paper argues that the overriding purpose of the Sri Lanka State and its international supporters was an agenda of containment of the LTTE. For its part, the LTTE had little doubt that it was precisely these drivers that motivated key foreign Sates to support the CFA, however it was satisfied that it had done enough on the military front to create the necessary politico-military space to maintain a critical check on the Sri Lanka State to keep it focused on the essential political nature of the conflict. In other words the necessity to maintain the said politico-military realities was fundamental if the CFA was to be sustainable.

Accordingly, the role of the international community through the role of the SLMM in the CFA was pivotal. The Parties by accepting the SLMM to be the final authority on the interpretation of the CFA effectively handed over to it the responsibility of maintaining the politico-military realities that created the space for the CFA in the first place. It was obvious that such sustainability was only going to be possible by maintaining the strategic balance of power between the Parties whilst the CFA was in force.

In the preceding section of this paper, the SLMM's findings on issues that had strategic implications were critiqued in detail. From the issues that dealt with the LTTE's key military formations (Sea Tigers and Air Tigers), to whether the LTTE was entitled to bring in supplies to

sustain itself, were ruled against the LTTE, despite these being a reality prior to the CFA coming into being.

Whatever may have been the motivations of the SLMM, the cumulative effect of its rulings was to tilt the balance of forces in favor of the Sri Lankan State and against the LTTE. The result was that, the Sri Lanka State that prior to the CFA was struggling to prevent the balance of power tiling against it, suddenly found the balance tilting in its favor. The LTTE for its part found that hard won realities on the battlefield were systematically being denied to it through the CFA.

To compound matters further, one of the twin objectives of the CFA, the need to restore normalcy, failed to materialize. Hundreds of thousands of IDPs were unable to resettle. Despite a cessation of hostilities between the Parties, the absence of war didn't translate into any tangible benefits to the civilian population of the Northeast.

In an international system that is heavily tilted towards State actors, the international community that found in Sri Lanka a situation where the State was failing when confronted by a de facto State actor, had one of two choices. Once it pressured the two Parties to enter the CFA, it could have pursued a conflict resolution process by maintaining the balance of power between the Parties and thereby make the CFA sustainable to resolve the underlying causes of the conflict; or it could have used the CFA as a counter insurgency tool to effectively reinforce the State and weaken the de facto State actor to the point where the State could be allowed to pursue yet another military solution to the conflict. Very unfortunately, whatever the intentions of the international actors in Sri Lanka may have been, the ultimate effect of their role was to ensure the latter, rather than the former.