

Chapter 5

Interpreting CFA

5.1 Introduction

The overall objective of CFA is to find a negotiated solution to the ongoing ethnic conflict in Sri Lanka. Parties have agreed to refrain from conduct that could undermine the good intentions or violate the spirit of CFA and implement confidence-building measures as indicated in the various articles to,

- To find a negotiated solution
- End to the hostilities and improving the living conditions
- Establishing a positive atmosphere
- Implement confidence building measures

These are the salient features of the CFA that stress the importance of the spirit of the agreement rather than the letter. CFA is thus the bedrock on the progress of the peace process is to be built.

Taking into account that CFA is only six pages long and the complexity of the issues at hand, interpreting CFA in spirit as well as in letter is of huge importance especially to build confidence between the parties.

5.2 Interpreting CFA Clause 1.3

This clause states that SLAFs shall continue to perform their legitimate task of “*safe guarding the sovereignty and territorial integrity of Sri Lanka*”. There is an unavoidable self contradiction in this clause. That contradiction is the existence of CFA itself. CFA exists because “*the sovereignty and territorial integrity of Sri Lanka*” has been compromised by the LTTE military. Therefore, when interpreting CFA for ruling over an alleged incident concerning LTTE and SLAFs, the interpretation of this clause must also take into account that this “*sovereignty and territorial integrity of Sri Lanka*” has already been compromised by the existence of CFA. Did past rulings of the SLMM pay adequate attention to this internal contradiction?

5.2.1 Ruling over sea access

In 2003, three separate incidents at sea took the lives of 26 LTTE members. See Section 5.6.1 for detailed analysis. Three LTTE members took their life by blowing up their trawler when SLAFs surrounded and tried to abduct them in February. In March SLN sank an LTTE merchant vessel in international waters 220 nautical miles off Trincomalee coast and 11 LTTE members were killed. In June 2003 another 12 LTTE members were killed under very similar circumstances. All of these were NOT ruled by SLMM as CFA violations of the SLAFs.

In all of SLMM rulings involving incidents in sea, SLMM has ruled that SLAFs was performing its legitimate task of safe guarding the “*sovereignty and territorial integrity of Sri Lanka*”. Through this, SLMM has interpreted that CFA denies LTTE access to sea without prior permission from GoSL. This applies even to the sea adjoining coastal areas controlled by LTTE. It is worth noting that there have been incidents where GoSL delayed giving permission for legitimate sea access to LTTE to transfer between land areas controlled by LTTE.

5.2.2 Arrests of LTTE members by SLAFs

There are cases where SLMM ruled that arrests of unarmed LTTE members by SLAFs is also the SLAFs legitimate task of safe guarding the “*sovereignty and territorial integrity of Sri Lanka*”. This ruling can also be challenged for the reasons cited in the above section.

By arresting LTTE members, is the SLAFs performing its legitimate task of safe guarding the “*sovereignty and territorial integrity of Sri Lanka*”? Considering the fact that it was the members of LTTE who challenged “*sovereignty and territorial integrity of Sri Lanka*” and then compromised it by the creation of CFA, should they then be at the mercy of SLAFs arrest powers?

Another aspect to the issue of arrest of LTTE members by SLAFs is the way SLMM rules on the reciprocal action by the LTTE of arresting members of SLAFs in the areas under LTTE control. SLMM has ruled that these are abductions and not legitimate arrests, a position totally different to the one SLMM takes in the reciprocal cases.

5.2.3 Right to home & private property in HSZ Vs Child Rights as per Child Soldiers

Child Soldiers: A large chunk of the CFA violations recorded by SLMM against LTTE relate to under-age youths joining LTTE. As described by Rachel Brett & Irma Specht in “*Young Soldiers, Why They Choose to Fight*”, and by several other authors there are a large number of sociological reasons that push the youths into joining an armed struggle. The same applies to under-age youths joining LTTE through lying about their age. CFA does not specifically state under-age youths joining LTTE as a CFA violation. Rather this violation though counted as a separate violation is based on Clause 2.1 that refers to “harassment”.

Several under-age youths who were released by the LTTE during the CFA period were either unwilling or unable to go back to their home. Please see Chapter 3 on “Child Rights”. Is it a CFA violation to take these youths into LTTE and later put them in the care of some appropriate service provider for the youths? SLMM statistics on CFA violations also fails to take into account any consideration of the release of these youths either back to their family or to some appropriate service provider.

High security zone violations: More than 30,000 home owners were evicted from their homes due to the SLAFs own brand of HSZ. Please see Chapter 4 on HSZ. At very minimum each house owner denied access to their home is a CFA violation. SLMM did receive such cases of complaints but did not rule it as a CFA violation.

One could ask why the denial of a home to the home owner is not a “harassment” under Clause 2.1 but an under-youth willingly joining LTTE through lying is a “harassment” as

discussed in the section above. Again SLMM would use Clause 1.3 to defend its ruling which is the task of safe guarding “*sovereignty and territorial integrity of Sri Lanka*”.

5.2.4 The bias towards State

Four separate categories of CFA violations were discussed in this section, namely incidents in sea, arrests of members of one party by the other party, child soldiers and private homes seized by SLAFs in high security zones. It was observed that SLMM rulings in all of these cases placed unwarranted degree of emphasis on Clause 1.3. while ignoring, the implied internal contradictions to this clause in CFA which if ignored in interpretation will upset the balance of power and international standards for the right to adequate home and property rights.

Another way of looking at this same issue is that “balance of power” and the ensuing “parity of status” is of utmost importance to further the peace process. The above SLMM rulings go against this spirit of CFA.

It is very important to note how this balance of power in sea has been upset by the SLMM ruling that over emphasised Clause 1.3.

On 24 December 2001, LTTE declared unilateral ceasefire. Two months later CFA was signed. At that time and even prior to it, SLN vessels did not dare to enter the seas controlled by the LTTE and kept at a safe distance away. SLMM ruling has obviously upset this balance of power. The accusation that the Sea Tigers are transporting ammunitions is an untenable one because ammunitions are an essential part of conducting exercises.

It is therefore fair to say that a clear bias towards the “State” (i.e GoSL) in the SLMM rulings to date exists.

5.4 Non inclusion of SLAFs assisted paramilitary violation

Within one year of its birth, LTTE warned that the attacks on its members are carried out by the paramilitaries (including the Karuna group) with full knowledge and assistance from SLAFs. This call by the LTTE was ignored by the SLMM, GoSL and the international community until in early 2005 when it was discussed openly by the SLMM. This does not mean that the paramilitaries came into being only in early 2005.

SLMM statistics on CFA violations does not include violations by the paramilitaries. Paramilitaries have of course carried out, assassinations, extortions, harassment, and abductions. For more detailed account of paramilitary operations please see Chapter 4 on “Partners in Crime”.

5.5 Clause 2.12, PTA and ER

Clause 2.12 of CFA bars arrest under Prevention of Terrorism Act. At the time of the introduction of CFA, ER (Emergency Regulation) was not in force. Therefore those who drafted the CFA did not consider it necessary to include barring of arrests under ER into the CFA. However, PTA and CFA are easily interchangeable legislations.

In matters of such serious nature should the SLMM act on its own without waiting to receive a complaint and deliberate on it under CFA and make a ruling? Are the arrests under ER a CFA violation? LTTE certainly thinks so. When SLMM fails to take such initiative is it again showing a preference for Clause 1.3 discussed above at the expense of giving emphasis to the UN international conventions. If ER had been ruled as a CFA violation then all arrests made under ER should also be ruled as CFA violations.

5.6 GoSL's CFA Violations

5.6.1 Military Operations:

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

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

Ambushes, assassinations, abductions, destruction of civilian or military property, sabotage and activities by deep penetration units are the areas that are considered as violated under this clause:

Cases:

1. 26 June 2005: A convoy carrying Amparai Political Head of the Liberation Tigers, Mr. Kuyilinpan and other LTTE political staff, with Sri Lanka Army (SLA) escort facilitated by Sri Lanka Monitoring Mission (SLMM), was attacked at Welikande. The bus carrying around 40 LTTE members from Kilinochchi to Batticaloa was ambushed, but none were killed as the vehicle narrowly escaped. One LTTE cadre was injured in the attack. The ambush took place between two Sri Lankan military camps, at Botale, around 1 km from Welikande SLA base.
2. 03 January 06: Major Jeyanathan, LTTE Vavuniya West area political head and a civilian, Mr. Vinotharan Thevarasa, were killed when a Claymore mine exploded by the SLAFs' deep penetration unit at Chinnavalaiyankattu. A deep penetration unit of the Sri Lanka Army (SLA) is known to operate from the Iranai Illuppaikulam SLAFs base which is engaged in reconnaissance missions and ambush operations in violation of the Cease Fire Agreement.

3. 06, January 06: The Deep Penetration Unit of the Sri Lankan Army (SLA) in Thambalakamam jungle has killed two LTTE cadres on 06th of January 2006. The attack took place inside the LTTE held area. Captain Suman (Vensumin Anpurasa) of Trincomalee and Lt. Umainsan (Perinaparasa Sasitharan) of Muttur were killed in this claymore attack.
4. 10, March 2003: The Sri Lankan Navy sank the LTTE merchant vessel and killed eleven LTTE cadres in international waters as a gravest ceasefire violation. The vessel caught fire and sank after being attacked by the Sri Lankan Navy in international waters, 220 nautical miles off Trincomalee, on 10 March 2003.
5. 14, June 2003: An LTTE oil tanker, MT Shoshin, was attacked and sunk by the Sri Lankan Navy in international waters 266 nautical miles off the coast of Mullaitivu (1147N.8431E). In this Sri Lankan Navy attack 12 LTTE members were killed.

5.6.2 Separation of forces:

1.4 Forward defence localities have been and continue to be a contentious issue:

1.5-6 Drawing up demarcation lines (Target D-day + 30) should be undertaken with the assistance of SLMM in contentious areas.

In the background of the overall objective being a negotiated political settlement which would eventually result in SL occupying military moving away from the occupied Tamil habitats, the SL forces should realistically comprehend the truth that a peace process is on, backed by a CFA and there is no need for them to shift positions on the presumption that it is advantageous for 'them' in annexing extra territory, for they are anyway going to leave it one day when a political arrangement acceptable to the Tamil people comes on board.

Cases:

1. 01 January 2003 to 15 July 2003: LTTE filed complaints with the SLMM detailing that three SLA posts had been constructed in the Muhamalai area within 100m, 110m and 130m of LTTE forward defence lines (FDLs) and another two SLA posts had been established in Nagar Kovil are 40m and 90 meters away from LTTE lines.

5.6.3 Freedom of movement:

1.9 – 1.13

1.10 provides for UNARMED GoSL troops in plain clothes as of D-day + 60 unlimited passage between Jaffna and Vavuniya using the Jaffna-Kandy road (A-9).

1.11 obligates LTTE to facilitate the use of A-9 by GoSL troops unarmed and in plain clothes with recommendation from the area commander.

1.13 provides similar facility for unarmed LTTE members.

LTTE did make use of these provisions to enter military occupied Tamil areas unarmed and in plain clothes with the necessary authorisation papers and subjecting members to body check by SLA at the check- points.

SLA did not avail of this facility during the last four years of cease- fire. Why?

This is a pointer to the mindset of SL troops and the hierarchy, in that more than the mistrust it is the over-arching supremacist and majoritarian thinking that dictates to the pan-Sinhala forces that it is infra-dig to travel unarmed in plain clothes in areas administered by LTTE and subject themselves to body check by LTTE members, in other words Tamils.

One observes here the commitment of the LTTE to the CFA and by extension to the peace process in spite of personal indignity its members suffer while passing through SLA check points and while in military occupied areas doing political work, adhering strictly to the terms of the CFA. One has to juxtapose this flexibility of the LTTE with the rigid position GoSL's troops hold. Is this in any way confidence building?

Cases:

1. **12, February 2003:** Eight unarmed women members of LTTE engaged in political activities and several Tamil civilians were injured when soldiers of the Sri Lanka Army (SLA) unleashed violence at Manipay junction following the refusal by LTTE women cadres to remove their waist-belt which is only a part of their civilian dress and not a component of military attire.

5.6.4 Measures to restore normalcy

Confidence building measures with the aim of restoring normalcy

What is normalcy for the Tamil people who have been subject to military oppression from mid fifties, reaching its peak in the seventies culminating in a civil war in the making for a decade and let loose on the populace in full scale in the eighties including the farcical peace accord with another country to land its troops in the Tamil territories under the guise of a peace keeping force but in actuality to wipe out the freedom movement?

Restoring normalcy for this people primarily means that their freedom of movement must be free of 'vigilantly watching hostile eyes' of a military that indiscriminately bombed their habitats including holy shrines where people took refuge during aerial bombardments, caused the death of over 80,000 innocent civilians, destroyed the entire social and economic infrastructure, displaced over a million to seek asylum outside the country, made an internally displaced population of hundreds of thousands, drove away them from their traditional habitats and Sinhalsed them with settlers, arbitrarily arrested and buried in mass graves hundreds of Tamil youths during a 'war for peace'.

Articles 2.1 – 2.13 provide with time frames, maximum being 160 days from the D-day (22 February 2002) the steps to be taken to restore normalcy. Has the GoSL caused such measures to restore normalcy in the areas where its 'occupying forces' are 'ruling' the Tamil civilian population?

2.1 Torture, intimidation, abduction, extortion and harassment:

Please see Section 2.4 in Chapter 1 for details of attacks on civilian gathering.

2.1 Forces vacating from places of worship – D-day + 30 days.

The subject of “High Security Zones” referred to in this clause vis-à-vis places of worship, is being dealt with separately in this paper, for it is the most inhuman element in the whole equation of restoring normalcy: This arbitrary classification of a large portion of civilian habitats including farmlands and sea beds as “High Security Zone” has deprived hundreds of thousands of Tamil families displaced from as far back as 1990 their basic right to life in their natural habitat with access to their usual livelihood. See Chapter 3 for more details.

2.3 School buildings occupied by the forces to be vacated, beginning on the date on which the Agreement enters into force, the process to be completed by D-day+160 days at the latest:

2.5 Review the security measures and the set-up of check points, particularly in densely populated cities and towns in order to introduce systems that will prevent harassment of the civilian population – D-day + 60 days.

LTTE has removed all its fortifications positioned in civilian populated areas effective D-day itself.

This has never been done in the military occupied areas and on the contrary more and more rigidity and harassment takes place and new SLA checkpoints and military fortifications have come up.

5.6.5 Militarization of civilian space:

Please also see Section 1.6 in Chapter 1 on Human Rights for incidents of continuing militarization of civilian space. Also see Chapter 3 on HSZ for more details.

2.6 Unimpeded flow of non-military goods to and from the LTTE-dominated areas.....:

An accelerating pattern of restrictions on non-military goods including food items and medicines to the civilian population living in LTTE areas is observed and reported by civilians and humanitarian agencies:

Cases:

01.

November 2005: Sri Lanka Army (SLA) imposed embargo on transporting essential food items, fuel and building materials through Kaddaiparichchan and Mahindapura army camps situated in Trincomalie district. Fuel embargo has affected operation of agricultural machinery and embargo on building materials has curtailed reconstruction and rehabilitation work in tsunami affected areas.

2.11 As of D-day + 90 days, all restrictions on day and night fishing shall be removed.....:

This has not taken place. More and more restrictions of fishing hours and locations are being placed on the fishing population.