



War and peace in Sri Lanka

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“We stand at the crossroads of history. We can either become the Switzerland of the East by following the middle path of negotiation, conciliation, and good will or the Lebanon of South Asia where intransigence, violence and hate have made it a playground for destruction in which all the powers of the world have a stake.”

[Committee for Rational Development, *Sri Lanka: The ethnic conflict* (New Delhi, 1984), p. 21]

On 19 May 2009 the President of Sri Lanka, Mahinda Rajapakse, declared that the conflict between the Government and the Liberation Tigers of Tamil Eelam (LTTE) was over and that the Government had prevailed. Dramatic military advances since the beginning of 2008 have led to the LTTE’s apparent military defeat and the elimination of most, perhaps all, of its leadership. However, the humanitarian cost has been very high and both parties to the conflict stand accused of war crimes. Sri Lanka now faces the twin challenges of reconstruction and, if peace is to be sustainable, implementing political and constitutional reforms that will give genuine autonomy to the north and east, where Tamils are in the majority.

This paper provides a brief historical and social survey of Sri Lanka, including the origins of the conflict between the Sri Lankan Government and the LTTE. It then gives an account of developments since 2002, when a ceasefire was agreed and hopes were raised – rapidly to be dashed – that there might be a peaceful negotiated resolution of the conflict. The paper also surveys the stance taken by the international community on the conflict, the military capabilities of the Sri Lankan military, and aid and development issues. It concludes by considering Sri Lanka’s future prospects, including assessing how real the Government’s military victory is and whether genuine political and constitutional reforms are likely to be introduced.

This paper replaces Standard Note SN/IA/4326, *War and peace in Sri Lanka*.

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Summary

In February 2002, having fought each other to a standstill over the course of more than a decade, a ceasefire agreement between the Sri Lankan Government and the Liberation Tigers of Tamil Eelam (LTTE, also known as the Tamil Tigers) was successfully brokered by the Government of Norway, which subsequently headed a largely Scandinavian mission, the Sri Lanka Monitoring Mission (SLMM), tasked with monitoring the ceasefire. The 2002 ceasefire agreement raised hopes both domestically and internationally that an end to Sri Lanka's internal conflict, in which a militant minority Tamil nationalism had pitted itself against what it claimed had been decades of political and economic marginalisation at the hands of the Sinhalese majority, might at last be in sight. A crucial component of a durable peace would be genuine political autonomy for the north and east of the island, where Tamils were in the majority. However, by the end of 2003 mutual mistrust and intransigence had led to the stalling of peace talks. They were never to resume. What followed over the next five years was the slow death of the ceasefire agreement and the so-called 'peace process'. The international community made efforts to prop it up but neither party showed much confidence or faith in these efforts. Indeed, key stakeholders came to be accused of taking sides in the conflict.

Levels of violence steadily increased between 2004 and 2007. While for a long time it looked as if there had simply been a return to the military stalemate between the Government and the LTTE, in retrospect the advantage was clearly shifting in favour of the Government. In 2004 the LTTE suffered a major split. This was eventually to pave the way for the military defeat of the LTTE in the east. At the same time, the Government began to increase its defence expenditure and strengthen its offensive military capabilities, notably with the assistance of China and Pakistan. President Rajapakse, who was elected in November 2005, appeared increasingly intent on achieving a military victory over the LTTE. The LTTE's financial networks were also being restricted internationally. In 2006, following the example of the US and India, the EU declared the LTTE a terrorist organisation, and imposed a travel ban and asset freeze.

On 16 January 2008 the Government formally pulled out of the 2002 ceasefire agreement. It took a year for its strategic and military advantage to tell. In January 2009 the Sri Lankan armed forces achieved a decisive breakthrough in the north. The Tamil Tigers lost the key town of Kilinochchi and Elephant Pass, the strategic causeway between the Jaffna peninsula and the main body of the island of Sri Lanka. The army then laid siege to Mullaitivu, the last remaining town controlled by the LTTE, and quickly captured it too. The Sri Lankan Government declared that total military victory was imminent. By early February it was estimated that the LTTE had only around 1,000 remaining armed personnel remaining, concentrated along a 30 square kilometre area of coastline in the northern Vanni region. There were reportedly around 250,000 civilians in the area, with dozens allegedly being killed every day. The Sri Lankan Government unilaterally designated this area a 'safe zone' and called upon civilians to make their way there in order to avoid being caught up in the fighting. Over the following three months the Sri Lankan military gradually reclaimed the last remaining territory. The authorities largely ignored growing international condemnation of its failure to protect the civilians caught up in the fighting. The LTTE was accused of using civilians as 'human shields'. Both parties to the conflict were accused of committing war crimes. The end finally came on 18 May, when the last piece of territory was claimed. Most, if not all, of the LTTE's leadership, including its commander in chief, Vellupillai Prabhakaran, were killed.

Most independent observers agree that, while the militant Tamil nationalism espoused by the LTTE was as exclusivist and chauvinist as that voiced by Sinhalese ultra-nationalists, many of the political and economic grievances which gave birth to it remain fundamentally unaddressed. Many Tamils opposed the LTTE, but most of them view these long-standing grievances as entirely legitimate. Some warn that there is a real danger that, while unexpectedly successful on its own terms, the ruthless military campaign that has been conducted by the Sri Lankan military may simply lay the seeds for the next generation of Tamil militants, whether under the flag of the LTTE or in the shape of new groups that are yet to emerge. In that event, the estimated number of 75-80,000 people who have died over the 25 years of this conflict – well over 7,000 this year alone, and it could be many more – will very likely be added to in future years.

The Sri Lankan Government has indicated some awareness of the need for political and constitutional reform to address the grievances that have underpinned the conflict. President Rajapakse has pledged that, now that military victory has been secured, the Government will turn its attention to establishing autonomy arrangements for the north and east. Rajapakse is now in a position of strength, and so may be in a position to persuade hardliners that a genuine autonomy deal need no longer be a 'trojan horse' for Tamil separatism. But the Sinhalese ultra-nationalists on whom Rajapakse relies for his political base continue to reject the very legitimacy of Tamil nationalism or, indeed, ideas of federalism. Other minorities, including Sri Lanka's Muslims, will also want to be catered for under new arrangements. Accordingly, some fear that electoral and political exigencies may perpetuate limited approaches to political and constitutional reform unless Rajapakse decides to break with his current allies and form a more moderate governing coalition. Donor pressure could affect his calculations. Large sums of money will be required for the reconstruction of the north and east, including the care and eventual resettlement of hundreds of thousands of internally displaced persons. However, relations between the Sri Lankan Government and many of its traditional donors are now very poor, and are unlikely to be improved if calls for an independent war crimes investigation are pursued. In this context, China and other countries less concerned about human rights could offer Sri Lanka an alternative source of funds, with considerably fewer 'strings attached'.

In recent months, relations between the UK and Sri Lankan Governments have deteriorated considerably. The UK Government is a strong supporter of calls for an independent investigation into allegations that both the Sri Lankan Government and the LTTE committed war crimes. The Tamil community in the UK has become much more politically mobilised since the beginning of 2009. However, for all the current turbulence in relations between the two countries, the UK Government remained consistent in its rejection of the goal of Tamil separatism and the methods of the LTTE. The UK Government has stated that since the abrogation of the ceasefire agreement in January 2008 the UK has not issued any licences for lethal goods or for other military goods that would prolong or aggravate the internal conflict in Sri Lanka. During 2008 23 British export licences for items on the military list were granted for Sri Lanka, totalling approximately £4.1m. The UK Government has provided £12.5 million in humanitarian aid since October 2008. Provided that the current humanitarian crisis in the north is resolved sufficiently to its satisfaction, the UK Government is likely offer financial support for future reconstruction efforts. Provided the UK Government deems them to be credible, it will also support Sri Lankan moves to establish greater autonomy for the north and east.

1 Background

1.1 Historical and social survey¹

The first known inhabitants of Sri Lanka were the forest-dwelling Vedda. While an estimated 2,000 Vedda remain today, they have largely disappeared over the centuries due to a combination of subjugation and assimilation. The majority group today is the Sinhalese, comprising an estimated 74% of the population, who are overwhelmingly Theravada Buddhist in their religious affiliation. The largest minority group is the Tamils, comprising an estimated 18% of the population, who are predominantly Hindu. The other significant minority group is the Sri Lankan Muslims, who make up an estimated 7% of the population. Other minority groups make up 1% of the population. These include the Burghers – descendants of Portuguese and Dutch settlers who married into the local population – Malays, Chinese and Vedda. The latest estimate of the size of the total population is 21 million.²

Caste is an important factor for both the Sinhalese and Tamils. Although far from static and unchanging in character, the main caste divisions amongst Sinhalese are between the Karava, Durava, Navandanna and Vahumpura, which are high castes, and the Goyigama, which is the lower caste. The main caste divisions amongst Tamils are between the Vellala, which is the high caste, and lower castes such as the Koviya, Karaiya, Mukkuva, Pallar, Nalava, Paraya and Vanna, the last four of which are often described as the castes of ‘minority Tamils’.

The Sinhalese and Tamil communities both have elaborate narratives about the date and circumstances of their arrival in Sri Lanka from India. Competing claims about who preceded who in the distant past have been increasingly forcefully presented over the past 100 years or so as oppositional cultural and political identities hardened. The first Sinhalese are generally believed to have arrived from north India at the beginning of the Sixth Century BC. Many Tamils claim that their descendants, originally from south India, had already been present by then for several hundred years. Many devout Sinhalese also believe that Sri Lanka has a special place in Buddhism as “the island of the faith”. Such ‘immemorial’ claims are not amenable to definitive adjudication but have played an important mobilising role at times. The Muslim presence is also longstanding; it was apparently established by Arab traders relatively soon after the emergence of Islam itself.

Both Sinhalese and Tamil have long-established traditions of statehood, originally expressed in the form of monarchical kingdoms. There were periods of military confrontation between their respective aristocratic elites in the past. Nonetheless, the two groups have also often intermixed and coexisted. One historical example of this is the way in which caste ideas and practices came to be adopted by the Sinhalese. Indeed, some argue that the emergence of more rigid and homogenous forms of ‘communal identity’ is a relatively ‘modern’ phenomenon that intensified during British colonial rule.

¹ This section draws on a wide range of sources. Amongst the most notable are: I. Ahmed, *State, Nation and Ethnicity in Contemporary South Asia* (London, 1996), chapter 9 on Sri Lanka; N. Wickramasinghe, *Sri Lanka in the Modern Age. A History of Contested Identities* (London, 2006)

² CIA World Fact Book at: <https://www.cia.gov/library/publications/the-world-factbook/geos/ce.html>

Sri Lanka experienced three successive periods of European colonial rule: Portuguese between 1505 and 1658; Dutch between 1658 and 1796; and British between 1796 and 1947. Under both the Portuguese and Dutch, the degree of effective control over parts of the country was limited. Most notably, the Sinhalese central highland Kingdom of Kandy was able to retain its independence. The Tamil Kingdom of Jaffna in the north of the island lost much of its independence but remained in existence. However, the advent of British rule over what was then named Ceylon led to the abolition of both kingdoms as a far more concerted effort to establish a centralised administration was undertaken. Ceylon became a Crown Colony in 1802 and by 1815 full control had been established.

While the emergence of increasingly homogenous communal identities may have been one of the main legacies of the British colonial period, other processes of differentiation also occurred which have tended, retrospectively, to be underplayed. These processes survived the end of colonialism and, often beneath the surface, have continued to play a significant part in the trajectory of post-independence politics and conflict on the island.

Crucially, under British rule, a range of fault-lines *within* the two largest groups, the Sinhalese and Tamils, exerted considerable influence. Perhaps the most important were those between the Kandyan Sinhalese in the central highlands and Sinhalese southern 'lowlanders', many of them lower caste; and those between long-established Tamils, known as 'Ceylon Tamils', mainly in the north and east of the country, and more recently arrived Tamil indentured labourers who arrived to work on commercial plantations (initially growing coffee but later tea, rubber and coconut) in the central highlands, known as 'Indian Tamils'. 'Indian Tamils', who make up about one-third of the total Tamil population today, were predominantly low caste and had relatively little interaction with the rest of the Tamil population. There were also significant social and cultural differences between the Ceylon Tamils of the north and east. In addition, caste differences were a powerful fault-line within the two largest groups. As for Sri Lanka's Muslims, there developed significant differences between those living in the north and east, in close proximity to Tamils, and those in other parts of the island, where the Sinhalese made up the majority of the population.

At the same time, dividing lines that straddled both groups also grew in importance – for example, between those that converted to either Protestantism or Catholicism and those that did not. Those that converted were often, but not always, members of the elite. Another dividing line, inevitably, was that between rich and poor. A strong overlap emerged between class and caste. While upper-caste Sinhalese joined the colonial administration and professions, and benefited from the plantation economy, elite Tamils were particularly strongly represented within the administration and professions under British colonial rule. The north and east of the country were less conducive to agricultural development, which led to the extensive movement of Tamils to other parts of the country, including the capital, Colombo. There was also a small Muslim elite in Colombo, which was mainly involved in the gem trade. However, most Muslims were poor peasants and traders based in the east.

Ideas that the Sinhalese were a distinct race began to be articulated by Buddhist scholars around the middle of the 19th century. Concepts of a collective Tamil identity also gradually developed, although here the social glue was a common language rather than a common religion. Ceylon Tamil leaders during the British colonial period often claimed that the Muslims were ethnic Tamils and should not be viewed as a distinct community. However, Muslim leaders increasingly challenged this view. In turn, the

small communities of non-Tamil Muslims, such as the Malays, increasingly sought to differentiate themselves from other Muslims.

Not every impulse was towards an increasingly homogenous communal politics. Internal divisions within each group, as already discussed, remained salient. There was also a sustained period of co-operation between Sinhalese and Tamil elites on political issues around the turn of the 20th century. However, Sinhalese leaders increasingly came to argue from the 1920s onwards that their community had been disadvantaged and under-represented under British colonial rule. In addition, Tamil links with the Indian mainland, along with the continuing migration of indentured labourers from there, provoked Sinhalese claims that, far from being an overwhelming majority on the island, they were in fact a vulnerable minority that needed better protection.

For its part, the British colonial administration in Ceylon at no point appears to have viewed the Sinhalese and Tamils simply as homogenous groups. Nonetheless, overall, through a combination of design and default it allowed the emergence over time of an increasingly homogenous indigenous politics of 'communal representation', generally acquiescing in the claims of rival elites to this effect. Yet Britain dramatically switched its approach towards the end of the colonial period, espousing universal adult suffrage and a unitary form of government when it came to draft a Constitution for an independent Ceylon. The Constitution, which came into force in 1947, the year before independence, was notable for its lack of detailed protection for minority rights.

Accordingly, critics have argued that the legacy of British colonial rule was a contradictory combination of a predominantly communalised politics with a centralised, 'majoritarian', Westminster-based system of government which was, in the end, highly likely to favour the Sinhalese and thereby disadvantage minority communities.

The dominant political party immediately after independence in 1948, the United National Party (UNP), sought to present itself as a 'nation-building' party that welcomed both Sinhalese and Tamils into its ranks, and continues to seek the support of 'moderate Tamils', particularly the Colombo-based middle class. However, this nation did not initially include the Indian Tamils. Almost immediately after independence, the new Government passed the *Ceylon Citizenship Act*, which denied citizenship to the roughly 800,000 Indian Tamils. This met with little protest from Ceylon Tamils. However, in 1951, a breakaway group from the UNP founded the Sri Lanka Freedom Party (SLFP), led by SWRD Bandaranaike, whose political programme was a more explicit exclusive Sinhalese nationalism, overlaid with a left-of-centre agenda. Power has since alternated between these two parties and their allies. Left-inclined Buddhist monks have also played an increasingly significant role in shaping Sinhalese political discourse.

While there have been some political differences between the UNP and the SLFP, both share a common origin in Sri Lanka's "Anglicised, post-colonial elite". The UNP has been dominated by "an extended Sinhalese clan of Senanayakes, Jayewardenes and Wickremesinghes". The SLFP has been dominated by the Bandaranaike family. This elite presides over a political culture that is dominated by class, caste and patronage and which, according to the International Crisis Group (ICG), "has only ever been partially democratic." The ICG adds:

Political leaders have tried to find ways to mobilise voters that ensure their election, while not undermining the system that they seek to dominate.

Nationalism has offered both parties the simplest and most effective mobilisation strategy in the south.³

There has been a partial democratisation of Sinhalese politics since independence, represented by the rise to the top of the SLFP of Sri Lanka's current President, Mahinda Rajapakse, whose origins are outside the elite. However, this partial democratisation has strengthened the power and popular resonance of Sinhalese nationalism.

Nonetheless, the tide of Sinhalese nationalism has ebbed and flowed repeatedly since 1948. Its first high point came in 1956, when an SLFP Government introduced the *Sinhala Only Official Languages Act*, making Sinhalese the national language and effectively reserving the best jobs for the Sinhalese. As a result, the Tamil minority started to push for a federal system of government with greater autonomy for the north and east. That year also saw the first in a series of Sinhalese-Tamil riots that stretched through to 1983 and beyond. In 1957, what is known as the BC Pact was signed to protect Tamil interests through a regional autonomy package. Brokered between Sinhala Prime Minister Bandaranaike and the Tamil leader Chelvanayakam, the pact collapsed following pressure from Sinhalese ultranationalist extremists, encouraged by Buddhist fundamentalist clergy. In 1959, Bandaranaike was assassinated by a Buddhist monk.

Moves towards autonomy for the north and east remained still-born throughout the 1960s and early 1970s, during which time Sri Lanka in many respects shifted leftwards politically. By this time it had become well-known internationally for its 'welfare state', which led to impressive human development outcomes by comparison with the rest of South Asia. The plantations were nationalised. The ICG has argued that one of the purposes of this welfarism was to entrench a unified but "exclusivist" Sinhalese nationalism.⁴ However, by the early 1970s the country was experiencing an economic downturn. This set the stage for deepening class divisions within the Sinhalese majority, which led to an anti-government insurrection in 1971 by tens of thousands of educated but unemployed Sinhalese young adults who joined the JVP (People's Liberation Army). The JVP, which had emerged from the Maoist wing of the Sri Lankan Communist Party, combined extreme Sinhalese nationalism with revolutionary Marxism. The Sri Lankan army responded by launching a ruthless counter-insurgency. 5-10,000 people were reportedly killed as the insurgency was quickly defeated.

Since the 1950s, Tamil aspirations had been embodied in the Federal Party. In 1972 it was one of the founders of the Tamil United Liberation Front (TULF), which brought the main organisation of the Indian Tamils, the Ceylon Workers Congress, into formal alliance with Ceylon Tamils for the first time. The TULF was the first Tamil organisation to come out unambiguously in favour of an independent homeland for the Tamils in the north and east of the island. Although it remained committed to parliamentary politics, some of the TULF's membership was eventually to leave, opting instead for armed struggle to achieve this objective.

As part of moves to placate Sinhalese nationalist feeling, a new Constitution was introduced in 1972 by the SLFP Government which formally gave Buddhism special

³ International Crisis Group (ICG), "Sri Lanka: Sinhala nationalism and the elusive southern consensus", *Asia Report No. 141*, November 2007, p. 2. Available at: <http://www.crisisgroup.org/home/index.cfm?id=5144&CFID=5059048&CFTOKEN=37162557>

⁴ *Ibid.*, p. 7

status and confirmed Sinhala's status as the official language. Tamil was designated a national language, to be used officially in the north and east. Ceylon was also officially declared a unitary socialist republic and renamed Sri Lanka ('resplendent land'), ending the Queen's role as head of state. In the years that followed, Tamil places at university were increasingly cut back and Tamil representation within the government services and the professions was also reduced. The security forces were also gradually 'Sinhalsed'. Furthermore, from 1977 onwards – following a UNP victory in national elections – ambitious, state-led, welfare programmes, which had until then accompanied processes of Sinhalsation, began to wither on the vine as the country's economic performance deteriorated and economic liberalisation became the global fashion.

Such developments contributed towards an outbreak of civil unrest in Tamil areas, leading to a state of emergency. As a result, more militant Tamil groups began to emerge. In 1975 the LTTE (the Liberation Tigers of Tamil Eelam), also known as the Tamil Tigers, was formed to fight for an independent Tamil state.⁵ Its leader was Vellupillai Prabhakaran. The Tiger was the emblem of the Chola kings, who in the past had ruled the Tamil Kingdom of Jaffna. The LTTE accused Sinhalese-dominated governments of deliberately promoting Sinhalese settlement in 'Tamil areas', particularly in the east. At the end of the 1970s, the Government banned the LTTE and instituted the draconian Prevention of Terrorism Act. Another new Constitution was agreed in 1978 which replaced the Westminster-style political system with proportional representation and an executive presidency. The Federal Party and TULF, both of which had at points been prepared to co-operate with the UNP, rejected the 1972 and 1978 Constitutions because they failed to provide for genuine autonomy for the north and east. The TULF was banned for a period after 1983, when the constitution was amended to ban organisations that advocated secession.

The Tamil Tigers escalated the armed struggle in 1983. An ambush of an army convoy killing 13 Sinhalese soldiers set off an anti-Tamil rampage in Colombo and elsewhere in July. Mobs of Sinhalese killed thousands of Tamils and destroyed property in pogrom-like attacks. At least 2,500 people were killed (some claim as many as 30,000) and at least 100,000 Tamils were displaced by the violence. The Sri Lankan Government was widely accused of failing to act to protect Tamils. The actions of the Sri Lankan armed forces also appeared increasingly partisan. In the ensuing crisis, half a million Tamils left the country to seek refuge in India and elsewhere. The diaspora soon became a major source of support for the range of Tamil armed militant groups that were emerging.

Between the early 1960s and late 1980s a 'solution' of sorts was reached over the future of Sri Lanka's Indian Tamils, who, it will be recalled, had been denied citizenship in 1948. In 1964 India and Ceylon agreed that while 300,000 of them would be allowed to remain and be given citizenship, over 500,000 would be repatriated to India by 1979. This left the status of another 150,000 unresolved. In 1974, it was further agreed to divide the 150,000 evenly between the two previously agreed options. Most of those repatriated did not go voluntarily. By the late 1980s, Sri Lanka had granted citizenship to nearly 400,000 Indian Tamils. The Indian Tamils have since become increasingly politically mobilised, with many migrating to the north and east.

The LTTE ultimately emerged supreme not just over Tamil parliamentary parties but also over a plethora of armed Tamil liberation movements that emerged during the 1980s and

⁵ The Tamil Tigers were originally called the Tamil New Tigers.

early 1990s. It did not hesitate to use violence against its Tamil opponents and in doing so deployed ruthless attacks against civilians more generally. Critics described it as being more like a fanatical cult than a political organisation, with Prabhakaran viewed as a messianic figure by its cadres and supporters. Such views were encouraged by its resort to suicide bombings and the cyanide capsules which all its fighters wore around their necks. Between 1987 and 1990 the LTTE also engaged in large-scale military attacks on Muslim civilians in the east, whose leaders opposed the administrative merger of the north and east, forcibly displacing tens of thousands of people.

Paradoxically, LTTE dominance in the north and east was finally entrenched in the context of a failed peace initiative. In 1987, India and Sri Lanka signed an Accord designed to bring about a ceasefire and an end to the conflict. The Accord offered a degree of autonomy for Tamil majority areas in the North and East, but not independence. An amendment (known as the 13th Amendment) to the 1978 Constitution was passed that provided for the establishment of Provincial Councils and specified a range of powers that would be devolved to them. An interim joint North-East Provincial Council was soon created in an effort to meet Tamil demands for the two regions to be administered as one. The merger was to be put to a referendum at the end of the interim period. Tamil was also upgraded to an 'official language'. While it did not initially oppose the Accord as a whole, the LTTE rejected the proposed autonomy arrangements. From the other end of the political spectrum, it was joined in opposition by a revived JVP, which after a brief period of engagement with parliamentary politics, had abandoned them. The organisation was banned again in 1983.

As part of the Accord an Indian Peacekeeping Force (IPKF) was sent to the island to end the hostilities and supervise the surrender of arms by the Tamil militants while diplomats attempted to negotiate a durable ceasefire. Instead, another conflict broke out, this time between the peacekeepers and the Tamil Tigers. After 1988, when presidential elections brought to power Ranasinghe Premadasa, who opposed the presence of the IPKF, there were claims that the Government briefly provided some assistance to the LTTE. The IPKF finally withdrew in 1990. In 1991, the LTTE assassinated Rajiv Gandhi, the former Prime Minister of India, who had authorised the sending to Sri Lanka of the IPKF. Since then, while mindful of sentiment in the south Indian state of Tamil Nadu, the Indian Government, which prior to 1987 had at points displayed considerable sympathy for its cause, has been very hostile to the LTTE. Many have argued since that the assassination was a major miscalculation by the Tigers.

In 1989 a second JVP insurrection broke out, mainly triggered by vociferous opposition to the presence of the IPKF on the island, although the social and economic discontent that had led to its first insurrection had also deepened. At one point, the insurrection looked as if it might succeed in capturing power. In response, many left-wing Sinhalese activists were targeted by government death squads and ultra-nationalist groups. The role of the IPKF in the north and east freed up much of the Sri Lankan armed forces to combat the insurrection and by 1991 it had been bloodily quelled.

Following the departure of the IPKF, all-out war erupted between the Sri Lankan Government and the Tamil Tigers. From 1990 the interim North-East Provincial Council was administered from the centre. Thousands of women and child soldiers were forcibly recruited by the LTTE, which – although the military balance ebbed and flowed – at points was able to 'liberate' significant parts of the north and east. The Tigers emerged as a brutal but effective paramilitary organisation, even developing a significant

conventional military capacity. The Sri Lankan military was also responsible for serious violations of international humanitarian and human rights law.

The SLFP-led Government, encouraged by a president from the same party, Chandrika Kumaratunga, sought to introduce another new Constitution during the 1990s, in which the principles of power-sharing and devolution would have been explicitly recognised and the state defined as a 'union of regions'. However, the LTTE rejected these proposals. The Government went ahead with efforts to introduce them but was unsuccessful. They were abandoned during 2000. Throughout 1999-2000 the LTTE made significant gains in the north and east. Despite the fact that the parliamentary political scene was characterised by considerable turbulence and uncertainty, in December 2000, from a position of relative strength, the LTTE declared a universal ceasefire and expressed its willingness to engage in peace talks. This offer was initially rejected and the fighting continued. However, in December 2001, a UNP-led Government, known as the United National Front, took office following parliamentary elections. The new Prime Minister was Ranil Wickremesinghe. The Government declared that it would embark on a different peace strategy to that pursued over previous decades, in which an end to the conflict would be sought first, with revised constitutional arrangements to follow through negotiation. The Tamil National Alliance, which was widely viewed as very closely associated with the LTTE, was part of the new coalition. However, the Government's relationship with President Kumaratunga, a SLFP stalwart, was inevitably a difficult one. The new Government also introduced economic liberalisation measures that swiftly became controversial.

The new strategy appeared to bear fruit. Having fought each other to a standstill over the course of more than a decade, in February 2002 a ceasefire agreement between the Government and the LTTE was successfully brokered by the Government of Norway, which subsequently headed a largely Scandinavian mission, the Sri Lanka Monitoring Mission (SLMM) tasked with monitoring the ceasefire. The 2002 ceasefire agreement raised hopes both domestically and internationally that an end to Sri Lanka's long civil war might at last be in sight.

1.2 Developments since 2002

The birth and death of the peace process, 2002-08

From the 2002 ceasefire to the November 2005 presidential elections

The key issue for peace talks, which quickly got under way, had been at the heart of the dispute between the Sinhalese and Tamil communities since independence in 1948 and was not hard to define: whether a mutually acceptable bargain could be struck for the genuine autonomy of the now largely LTTE-controlled north and east of the island. While the issue would clearly require much detailed discussion and fine-tuning, the essential precondition for success remained whether an atmosphere of trust and confidence could be created between the two main parties to the negotiations. To their dissatisfaction, other significant minorities, such as Sri Lanka's Muslims, were not included in the peace talks.

In the first flush of the ceasefire agreement, the initial signs were hopeful. In September 2002, the ban on the LTTE was lifted. Within weeks, the LTTE had declared that it was prepared to abandon its demand for complete independence, instead accepting extensive regional autonomy and self-government. However, in April 2003, the LTTE withdrew from peace talks, never to return. A donor conference in June produced aid

pledges of \$4.5 billion, despite the fact that the LTTE boycotted it. In October 2003, following government indications that it was prepared to consider an interim administration for the north and east, the LTTE published a Proposal for an Agreement to Establish an Interim Self-Governing Authority (ISGA) for the northeast of Sri Lanka. There would be elections to the ISGA after five years if it had not by then been superseded by a final peace deal. However, the proposals, which, among other things, established a guaranteed majority on the Authority for the Tamil Tigers for the first five years and provided for the continuation of the separate judicial system which the LTTE had established, proved too much for parts of the Sri Lankan Government and many Muslim leaders in the east, represented by the Sri Lanka Muslim Congress, to swallow. The LTTE also tended to talk as if acceptance of its ISGA proposal was an essential precondition for final peace talks. The Government also failed to come up with a detailed framework for interim autonomy arrangements of its own.

According to one observer,

In November, President Chandrika Kumaratunga, incensed by the perceived audacity of the LTTE proposal and also in response to her perceived exclusion from the peace process by the Prime Minister, declared a state of emergency, deployed troops in the capital, fired three ministers holding key portfolios and suspended parliament. From that point on, the political framework that underpinned the concept of self-government for Sri Lankan Tamils became history and the peace process never recovered.⁶

Another significant turning-point was the splits suffered by the LTTE during 2004, most notably the emergence in March of a breakaway faction in the east, numbering some 6,000 fighters, led by Venamoorthi Muralitharan, known as Colonel Karuna, formerly a senior figure in the leadership. Anton Balasingham, the LTTE's chief negotiator, accused the Sri Lankan armed forces of providing financial and logistical assistance to five breakaway factions. According to the *Economist*, "Independent observers think he had a point."⁷ In addition, the Sinhalese 'peace camp' was losing ground politically. An unstable minority SLFP-led Government, known as the People's Alliance and led by Prime Minister Mahinda Rajapakse, in which the JVP had an important role, emerged from April 2004 parliamentary elections.⁸ The new Government's attitude to the peace process was considerably cooler than that of its predecessor. By November 2004, Prabhakaran was threatening to withdraw from the ceasefire agreement. However, the LTTE was prevailed upon not to do so. The devastating impact on Sri Lanka of the December 2004 Asian Tsunami, in which 35,000 people died and about 600,000 were displaced, also pushed political concerns into the background for a while.

However, government moves to include the LTTE in a Post-Tsunami Operations Management Structure through which \$3 billion of aid was to be shared, proved highly controversial and led the JVP to leave the Government in mid-2005, gravely weakening it. The Supreme Court eventually ruled that the proposal was unconstitutional on the grounds that it gave a role to an organisation that was committed to secession. Then, in

⁶ C. Smith, "The Eelam endgame?", *International Affairs*, 83, 1, 2007, p. 70

⁷ "Assassination in Sri Lanka", *Economist*, 20 August 2005

⁸ The JVP has been able to broaden its appeal over the past decade and won 39 seats in the 2004 election – its best ever result. Its opposition to patronage politics has won it support amongst those Sinhalese who feel marginalised. It also has significant support within the army.

August 2005, the Minister of Foreign Affairs, Lakshman Kadirgamar, was assassinated in Colombo. The LTTE denied responsibility, but many were unconvinced. The authorities promptly re-introduced emergency regulations, under which people could be detained for three months at a time, and up to 18 months if suspected of being connected to any unlawful activity. These have remained in force ever since.

Following a long-running dispute over when it should take place, a presidential election was finally called for November 2005. The SLFP candidate was Mahinda Rajapakse, the Prime Minister. His main opponent, former Prime Minister Ranil Wickremesinghe – who had signed the ceasefire agreement in 2002, so setting in motion the peace process – was the candidate of the UNP. During the campaign, he expressed hope that the peace process might successfully be concluded within 2-3 years if he was elected. However, the public mood amongst the Sinhalese majority, following the assassination of Kadirgamar, appeared increasingly hostile to renewed peace efforts. Many also remembered Wickremesinghe's economic reform programme while he was Prime Minister, which had been unpopular at the time.

Rajapakse's manifesto was based on mistrust of the LTTE and populist economic promises. In the run up to the election, he pledged to abandon the plan to share US \$3 billion in tsunami aid with the LTTE and to end efforts to agree arrangements for genuine autonomy in the north and east. These promises were enough to bring the JVP behind his candidacy. On the day of the election, the LTTE forcibly prevented Sri Lankans living in the areas of the north and east that they controlled from voting. This proved a major blow to Wickremesinghe's prospects. The LTTE's Prabhakaran warned that unless there was a final peace within a year, the movement would formally abandon the ceasefire and return to war. It was also clear that the LTTE was preparing to resume military operations. There was evidence that fundraising efforts amongst the diaspora intensified during 2005, some of it involving intimidation or extortion. The LTTE operated an effective 'tithe system' in large parts of the diaspora.⁹

Rajapakse received 50.29% of the vote against Wickremesinghe's 48.38% and duly took up the reins of the presidency. Rajapakse picked the 73 year-old Ratnasiri Wickremanayake as his new Prime Minister.

It seems that the LTTE bought into the peace process at first, but during 2004 its enthusiasm cooled as it calculated that the Government was primarily interested in using the process to weaken it. For its part, the Sri Lankan Government also lost interest as it became clear that the peace process might weaken its position within the Sinhalese community. Both parties began to hedge their bets, resorting to 'strategies of tension' to strengthen their respective positions. During 2005, levels of violence began to creep up again on both sides. The main international mediator, Norway, tried to bridge the growing gap, supported by the other key international players – the US, the EU and Japan. However, it was becoming increasingly difficult to do so. Extreme Sinhalese nationalists had always resented the 'internationalisation' of the conflict, deriding the Norwegians as "salmon-eating busybodies".¹⁰ Following Rajapakse's victory, such views appeared in the ascendant.

⁹ C. Smith, "The Eelam endgame?", *International Affairs*, 83, 1, 2007, pp. 71-72

¹⁰ "Norwegians 'salmon-eating busybodies'" *BBC News Online*, 30 May 2003

2006-07: death of a peace process

2006

Talks in Geneva on February 2006 briefly raised tentative hopes that a credible ceasefire could be re-established. At the talks, both parties agreed to act with restraint and to rein in their forces. However, the optimism was short-lived. In March, eight sailors were killed when a navy gunboat was blown up by a fishing trawler that exploded as the gunboat drew towards it. The LTTE again denied responsibility. A further set of talks were scheduled for early April. For a while, the LTTE declared that it was unwilling to attend because the Sri Lankan armed forces were obstructing efforts to arrange a meeting of the LTTE's northern and eastern leaderships. However, few observers believed that this was the main reason why the leadership refused to go to Geneva again. Most believed that the most important reason lay in the alleged failure of the Sri Lankan Government to rein in the Tamil rebel group led by Colonel Karuna.

The LTTE definitively pulled out of the second round of the April talks. The attempted assassination of army Chief, Lt-Gen Sarath Fonseka, in Colombo on 25 April represented a major escalation of violence by the LTTE. This provoked a wave of retaliatory air strikes against LTTE positions by the Sri Lankan airforce. There then followed an escalation of clashes between the LTTE and the security forces and LTTE attacks on civilians in the north and east. At least 191 soldiers, rebels and civilians were estimated to have died in violent incidents during April 2006.

A period of 'no war, no peace' was coming to an end. While the ceasefire agreement was not declared officially dead until January 2008, the actual date of its death, in retrospect, was probably April 2006. By this point it was clear that both sides were using the ceasefire to re-arm, with the Sri Lankan Government receiving large quantities of new weaponry from long-standing allies such as China, and dramatically increasing its military budget.

In mid May, the LTTE launched a suicide attack against a navy gunboat that killed its 18-man crew. A significant number of LTTE rebels were also killed (estimates range between 4 and 50). An accompanying vessel, which included several SLMM ceasefire monitors as passengers, was also sunk. The boat was escorting a ship transporting over 700 soldiers to the Jaffna peninsula. The US and EU condemned the attack. The 60-person strong SLMM temporarily suspended its monitoring of sea operations as a result of the attack. The SLMM issued a ceasefire ruling against the LTTE following the attack. Its position was that the Sri Lankan Government had rightful use of the seas. It called on the LTTE to cease all sea-based operations. The LTTE refused to accept the ruling, arguing that the SLMM had failed to issue a similar ruling against the Sri Lankan Government following its air strikes in April against LTTE positions. It threatened to return to all-out war if any efforts were made to restrict the free movement of its naval forces.

In late May Colonel Ramanan, the LTTE's second most senior leadership figure, was killed in an ambush in the east. While a breakaway group from the LTTE claimed responsibility, the LTTE blamed the Government for his death.

During 2006 President Mahinda Rajapakse backtracked on his campaign promise not to support the principle of genuine autonomy for Tamils and pledged to produce fresh proposals on the issue. In January, with the encouragement of the international

community, he established an All Party Representative Committee (APRC) to prepare proposals for constitutional reform and devolution of power. However, its membership was far from inclusive. It came to be seen as government-dominated. At the same time, Rajapakse sought to increase the Executive's room for untrammelled manoeuvre by bypassing the 2001 17th Amendment to the Constitution. The 17th Amendment provides for the establishment of independent commissions, appointed by a Constitutional Council, with the power to appoint, transfer, promote and discipline senior public officials. Previously, these powers had rested with the president. Despite domestic and international criticism, Rajapakse refused to allow the appointment of new members of the Constitutional Council and so prevented the establishment or operation of the commissions.¹¹

By this time it was clear that the LTTE had lost faith in what remained of the peace process. In late July 2006 there was a further escalation in the violence as the LTTE and Sri Lankan armed forces battled for control of a vital dam south of the north eastern port of Trincomalee, which the Government alleged the LTTE had forcibly closed. The closure deprived thousands of families, mostly Sinhalese, of irrigation and drinking water. This represented the first sustained ground offensive since 2002. Although this dispute was ultimately resolved through the efforts of the SLMM, it did nothing to calm the situation. Both sides continued military operations. The Sri Lankan armed forces increased their air attacks on LTTE positions. In August it bombed what it believed was a camp of LTTE combatants, killing 61 people according to the LTTE. The LTTE declared that it was an orphanage that had been bombed. The Sri Lankan Government was criticised by UNICEF and the SLMM for the attack. UNICEF stated that it believed that the children killed were 16-18 year olds attending a first aid course. The Government disputed this, stating that child combatants are legitimate targets.

There were growing fears of a humanitarian crisis in the Jaffna Peninsula as the LTTE sought to take over more territory in the north. There was also heavy fighting in the east, in which the LTTE suffered a setback, losing control over Sampur district for the first time in nine years. Tamil politicians sympathetic to the LTTE were assassinated. Some analysts believed that the dissident Karuna faction was behind some, if not all, of these attacks. LTTE bomb attacks in and around the capital, Colombo, increased. Over 100,000 people were reportedly displaced by the upsurge in fighting. 17 local aid workers employed by the French charity Action contre la faim were killed in the north. The UN called for an international investigation into the killings. Some observers suspected that the perpetrators might be the security forces, rather than the LTTE.¹² As the fighting intensified, the SLMM withdrew to the capital.

The US administration expressed its support for calls by the Sri Lankan Government for the LTTE to be declared a terrorist organisation by the EU if it refused to return to ceasefire talks (as the US, UK and India had already done), a declaration that would trigger a total travel ban (there were already some restrictions in place) on its leadership and a freeze of the organisation's fund-raising efforts and assets within the EU. In mid-May 2006 the European Parliament passed a resolution in support of declaring the LTTE

¹¹ "Will Sri Lanka's president obstruct the functioning of public authorities through non-implementation of constitutional provisions?", Asian Human Rights Commission, 22 December 2005. Available at: <http://www.hrsolidarity.net/mainfile.php/2005vol15no06/2472/> [This and all subsequent links checked on 4 June 2009]

¹² C. Smith, "The Eelam endgame?", *International Affairs*, 83, 1, 2007, p. 75

a terrorist organisation. The Norwegian peace envoy, Jon Hanssen-Bauer, visited Colombo in late May 2006 to hold further talks aimed at getting the parties back to Geneva. He was able to secure agreement from both sides to attend talks in Oslo in June about the future role of the SLMM. The narrowness of the agenda represented a retreat from the broader thrust of talks to revive the ceasefire talks. Indeed, the LTTE called it a “fresh process”. It also warned that its attendance would depend on the wording of any likely EU declaration that it was a terrorist organisation. Nonetheless, on 31 May the EU announced that sanctions against the LTTE were now in force. The LTTE backed down and did attend the talks. However, the talks produced little. But the LTTE did demand that all EU members of the SLMM should leave by the end of August 2006 and stated that the EU could no longer be considered an impartial partner for peace. Over half of the SLMM's 57 members were from Denmark, Finland and Sweden. Norway began efforts to find replacements.

Between August and December 2006 the situation further deteriorated. Levels of violence dramatically increased as the Government and the LTTE turned even more towards military means to bolster their positions. In August the LTTE achieved military successes on the Jaffna peninsula, forcing the closure of the main road between Jaffna and Colombo and creating a major problem of access for humanitarian organisations. Within weeks the Sri Lankan armed forces had rolled back these gains, but its subsequent efforts to go on the offensive were themselves rebuffed. In August a Sri Lankan airforce attack on a camp in Mullaitivu left at least 61 school children dead. The Government claimed that the camp had been an LTTE base; the LTTE denied it. In October another LTTE suicide bomb attack in Habarana left over 100 military personnel dead. Naval attacks also took place.¹³ The ceasefire agreement was declared ‘defunct’ by the LTTE. However, neither the Sri Lankan Government nor the wider international community were yet prepared publicly to accept that the peace process had entirely collapsed and was beyond resuscitation.

In November 2006, the International Crisis Group offered this summation of how and why the peace process had foundered over the preceding five years:

The peace process was a brave attempt to break through an apparently intractable conflict. The 2002-2006 interlude brought a measure of normalisation to people's lives in the north and east for the first time in over a decade. But the conflict is enormously complex, and the peace process ignored many of the hard questions. It was always going to be difficult to bring together a factionalised Sinhalese polity with a semi-totalitarian armed movement in the north and produce a political settlement respectful of democracy and human rights.

It was clear that a ceasefire agreement would include the two parties which controlled the means of violence; in that sense the bilateral approach was inevitable. As soon as talk of a political settlement began, however, all the excluded political actors began to make their presence felt and undermine progress on a political settlement. And as soon as the glimmer of a political settlement appeared, the problems of allowing any territory to be ruled by the

¹³ ICG, *Sri Lanka: the Failure of the Peace Process*, Asia Report No. 124, November 2006, pp. 12-13. Available at: http://www.crisisgroup.org/library/documents/asia/south_asia/sri_lanka/124_sri_lanka___the_failure_of_the_peace_process.doc

LTTE – which showed no sign of embracing democratic values – became rapidly apparent.

At the same time, the shift after December 2005, the increasing influence of chauvinist and militarist elements on government policy and the appalling human rights abuses that have become apparent in 2006, severely undermined any trust in the state to protect minority rights. As usual, it has been civilians – Tamil, Sinhalese and Muslims – caught between LTTE oppression and security force brutality, who bear the brunt of the violence.

There were moments during the process when more progress might have been achieved with greater government initiative. There were certainly points where some LTTE flexibility could have kept the process on track. But by 2004 the rebels' interest seemed to be waning. They no longer trusted the process to produce an acceptable political result, and the military inactivity was undermining their cohesion and limiting diaspora funding. Karuna's defection was a double blow, weakening their military capability and strengthening those who saw the talks as a "peace trap", as well as encouraging Sinhalese politicians who believed peace was only possible by military victory.¹⁴

2007

During 2007 it became clear that the military position of the LTTE was not as strong as it seemed. Official Sri Lankan defence expenditure reportedly rose by 30% in 2006 and this level of investment began to tell. A further government offensive began in December 2006 which, over the following months, was to end the LTTE's control over large parts of the east, dealing the organisation a heavy blow. In January 2007 the LTTE was forced out of its main stronghold, Vakarai region, near the regional capital Batticaloa, which acted as a corridor between its eastern and northern territory. Soon after, 20 LTTE camps in Ampara district were captured.¹⁵

By April 2007 many towns and villages that had been controlled by the LTTE had come under the administration of the Karuna faction. Following these advances in the east, the Sri Lankan armed forces turned their attention back to the north. These successes provided the first serious encouragement for those within the Government who favoured an entirely 'military solution' to Sri Lanka's civil war. Norwegian-led efforts to re-start talks continued, but without success.

While it was now on the defensive, the LTTE's capacity to spring military surprises on its enemies was not entirely diminished. During April 2007 it emerged that it had acquired some aerial capability, launching three attacks by small aircraft. One was on the military air base in Colombo. These operations led to serious disruption to commercial air traffic as night flights into the capital were suspended.¹⁶ While it could not compete with the resources being now deployed by the Sri Lankan Government in an overt bid for military victory, it was far from completely penurious itself. According to one source, by 2007 the LTTE – assisted by its supporters in the diaspora – controlled a worldwide legal and illegal business empire generating up to \$300m per year.¹⁷ However, international pressure on it had increased markedly. In July 2007, the Sri Lankan Government

¹⁴ ICG, *Sri Lanka: the Failure of the Peace Process*, Asia Report No. 124, November 2006, p. 23

¹⁵ IISS, *Strategic Comments*, Volume 13, Issue 2, March 2007

¹⁶ "Tigers air attack rattles Colombo", *Financial Times*, 30 April 2007

¹⁷ "Rebel's business empire", *Independent*, 24 July 2007

announced that the defence budget for 2007-8 would increase by 45% on 2006-7 and that the size of the army was to be increased by 50,000 to 168,000.¹⁸

During the remainder of 2007, the Sri Lankan armed forces consolidated their control over the east and continued efforts to gain territory in the north. In July the army took Thoppigala in the east, which had been the headquarters of the LTTE's operations in the region since the mid 1990s. In October the LTTE staged another air raid on an airforce base, using light aircraft and suicide bombers. Independent sources indicated that the raid did major damage. In early November, the head of the LTTE's political wing, SP Tamilselvan, was killed in an airstrike. At the end of the month the LTTE made an unsuccessful attempt to assassinate the Minister of Social Services, Douglas Devananda, a pro-government Tamil politician who was formerly a member of the LTTE. Several bombs were detonated in Colombo at this time, causing loss of civilian life.

The fighting was accompanied by growing reports of violations of human rights and International Humanitarian Law. In early May it emerged that the UK had recently withheld 50% of an instalment of debt relief, worth £1.5m, pledged to Sri Lanka in 2005 following the Asian Tsunami. The reason for doing so was concern about the human rights situation in Sri Lanka.¹⁹

In June, an International Group of Eminent Persons set up by the Sri Lankan Government in 2006 to observe the work of a presidential Commission of Enquiry to investigate human rights abuses by the security forces, issued a statement criticising the Commission for failing to operate in line with international norms and standards.²⁰ In August, Human Rights Watch brought out a report alleging human rights abuses were being committed by both sides in the conflict and arguing that the international community was not doing enough to stop the violence. It asserted that since early 2006 315,000 people had been displaced in Sri Lanka as a result of fighting. It also stated that over 1,100 disappearances had been reported – the vast majority Tamil men aged between 18 and 50.²¹ The organisation joined with others in calling for the sending of a UN human rights monitoring mission to the country.²² The Sri Lankan Government rejected these calls. Then, in October, Sri Lankan human rights activists who had been on the presidential Commission of Inquiry resigned, claiming that it was proving ineffective.

With the LTTE no longer a force in the east, government efforts began, from late-2007, to re-establish a Provincial Council there and promote development and reconstruction in the region. In doing so, it worked with a new Tamil political grouping that included the Karuna faction, the Tamil People's Liberation Tigers (TVMP). However, there remained strong suspicion of the TVMP within the Muslim population and both the Tamil and Muslim communities expressed fears that the Government retained an agenda of 'Sinhalisation'. The TVMP has been accused by human rights groups of involvement in disappearances and extra-judicial executions.

¹⁸ "Resolution to Tamil conflict more remote than ever", *Irish Times*, 6 July 2007

¹⁹ "UK withholds aid from Sri Lanka", *Financial Times*, 4 May 2007; "Britain blocks £1.5m aid to Sri Lanka over human rights abuses", *Times*, 4 May 2007

²⁰ "Sri Lanka massacre inquiry answers little", *International Herald Tribune*, 25 June 2007

²¹ Available at: <http://hrw.org/reports/2007/srilanka0807/>

²² "Sri Lanka's leader takes a step backward", *International Herald Tribune*, 16 August 2007

From January 2008 to the present: A 'military solution' accompanied by growing humanitarian crisis in the north

On 16 January 2008 the Government formally pulled out of the 2002 ceasefire agreement. At the same time, the state of emergency was extended. The LTTE called for the ceasefire agreement to be revived, a call which the Government rejected. On the same day a LTTE gun and bomb attack on a civilian bus in southern Sri Lanka - close to its tourist areas - killed at least 31 people. The US, Japan, EU and Norway all criticised the Government's move. Japan stated that it was reviewing its aid to Sri Lanka. The SLMM was subsequently wound down. In the same month, the LTTE's military intelligence chief was killed. A couple of days later, a government minister was blown up by a roadside device near Colombo. At the same time, fighting between the LTTE and government forces intensified both on land and at sea. Official defence expenditure continued to rise despite signs of deterioration in the economic situation, as food prices soared and the Government struggled to meet the cost of fuel subsidies.

In March, elections were held for Batticaloa district in the Eastern Province, which the TMVP won decisively. Elections to the Provincial Council took place in May. They were won by the SLFP, in alliance with the TMVP. Meanwhile, the case of Colonel Karuna became a bone of contention between the British Government and its Sri Lankan counterpart. He had entered the UK in September 2007, allegedly on a false diplomatic passport, but was arrested. The Crown Prosecution Service announced that it was investigating whether it should also bring war crimes charges against him but ultimately decided that there was insufficient evidence to do so, a decision criticised by human rights activists. In his absence, he was nominated as a member of parliament by the SLFP. He returned to Sri Lanka in July 2008, having served a brief custodial sentence in the UK.²³

Also in March, the international panel invited by the Government to investigate alleged human rights abuses announced that it was leaving Sri Lanka, on the grounds that the authorities were obstructing its work, a claim that was denied. Two months later, Sri Lanka's attempt to get re-elected to the Human Rights Council was defeated.

In April the Sri Lankan armed forces launched another major offensive in the north. By now the asymmetry in terms of the number of soldiers was stark, with an estimated 160,000 troops ranged against about 10,000 LTTE fighters. Fighting was fierce but the offensive further weakened the LTTE. Operations continued, leading to a number of important bases, including the LTTE naval base at Viddattativu and the base at Mallavi, being captured. There were reports that coordinated naval patrols with India were cutting off significant supplies of arms intended for the LTTE.²⁴ However, tens of thousands of civilians were displaced by the renewed fighting.

In January 2009 the Sri Lankan armed forces achieved a potentially decisive breakthrough. The Tamil Tigers lost the key town of Kilinochchi and the strategic causeway between the Jaffna peninsula and the main body of the island of Sri Lanka, Elephant Pass. The army then laid siege to Mullaitivu, the last remaining town controlled by the LTTE, and quickly captured it too. The Sri Lankan Government declared that total military victory was imminent.

²³ HC Deb 28 October 2008 c801W

²⁴ "The Tamil Tigers' last stand?", *IISS Strategic Comments*, March 2009

By early February it was estimated that the LTTE had only around 1,000 armed personnel remaining, concentrated along a 30 square kilometre area of coastline in the northern Vanni region. There were reportedly around 250,000 civilians in the area, with dozens allegedly being killed every day. The Sri Lankan Government unilaterally designated this area a 'safe zone' and called upon civilians to make their way there in order to avoid being caught up in the fighting.²⁵ Aid agencies expressed concern that they were being shut out of the area and feared a major humanitarian emergency.²⁶ The International Committee of the Red Cross stated that the vast majority of civilians in the area were receiving no humanitarian aid. The Sri Lankan authorities stated that they were setting up 'welfare villages' for the internally displaced persons (IDPs) that would remain open for up to three years; critics claimed that they were more like detention centres or even concentration camps. Concerns have since been raised about the 'screening processes' adopted by the authorities in search of members of the LTTE amongst the IDPs. Western donors, who the Government appeared to hope would fund them, have also expressed doubts as to how far these 'welfare villages' comply with international humanitarian standards.²⁷

The LTTE accused the authorities of being intent on genocide, while for their part the Tigers were accused of preventing civilians from leaving the conflict zone. The Tamil diaspora intensified its protests and advocacy efforts, including in London. Both parties to the conflict continued to be accused of serious human rights abuses. There were allegations, which the Sri Lankan authorities denied, but which were confirmed by the UN, that the armed forces had used cluster munitions to attack the last proper hospital in LTTE-held areas. Sri Lanka has not signed the Convention on Cluster Munitions. Very few foreign journalists have been able to get close to the conflict zone, let alone into it, apart from those few who have gone on 'official tours'.

Some observers worried that a growing triumphalism on the part of the Sri Lankan Government as military victory appeared to draw near, might be accompanied by a wider intolerance towards independent critics. For example, in January the editor of the *Sunday Leader* newspaper, Lasantha Wickramatunga, was shot dead in Colombo. Prior to his death, he wrote an open letter in which he stated that, if he was assassinated, he expected that it would be by elements from within the state. The letter was published amidst a great deal of international attention.

International concern about the growing humanitarian crisis in the north grew significantly in February. US Secretary of State Hillary Clinton joined with UK Foreign Secretary David Miliband on 4 February in calling, in the short-term, for a temporary ceasefire (subsequently more generally referred to as a 'humanitarian pause') and full access to the war zone by humanitarian organisations; and, in the longer-term, for an end to all hostilities and a resumption of political negotiations to bring about a permanent settlement. This position was also that taken by other key international stakeholders such as the EU, Norway and Japan.

²⁵ On other occasions the 'safe zone' was described as a 'no-fire zone'. Neither designation was accurate.

²⁶ The Sri Lankan authorities took the decision to order most humanitarian agencies out of the Vanni region in September 2008.

²⁷ Human Rights Watch, "War on the displaced: Sri Lankan army and LTTE abuses against civilians in the Vanni", February 2009, pp. 28-41

The Sri Lankan Government largely rejected international calls for greater action to protect civilians or for a ceasefire, although it did institute a brief unilateral pause in the fighting on 12-13 April so that civilians could flee the conflict zone. In the end, fewer than 300 reportedly did so. By this time, the LTTE was hemmed into a thin, 18 square kilometre strip of coastal territory. Then, on 20 April it was reported that the Sri Lankan armed forces had successfully breached the LTTE's defensive fortifications. Civilian deaths were again reported. This was soon accompanied by a flood of an estimated 50 to 100,000 civilians from the conflict zone, suggesting that the LTTE's ability to use them as 'human shields' might be on the wane. However, anywhere between 20,000 and 100,000 civilians were believed still to be within the conflict zone.²⁸

There was growing criticism of the international community for its failure to respond adequately to the crisis in Sri Lanka. Efforts to get Sri Lanka onto the formal agenda of the UN Security Council were stymied by Russia and China, although a press statement was eventually issued.²⁹ Following the brief 'humanitarian pause' on 12-13 April, international calls for a longer one, so that the remaining civilians could escape safely, intensified.³⁰ A series of international delegations travelled to the country. For example, a EU diplomatic mission comprising UK Foreign Secretary David Miliband and his Swedish and French counterparts, Carl Bildt and Bernard Kouchner, was mandated to go to Sri Lanka on 29 April. However, Bildt, despite EU protests, was refused entry. Following Miliband and Kouchner's visit, President Rajapakse again ruled out a ceasefire, stating: "I don't need lectures from Western representatives."³¹ Despite the growing international condemnation, there were no official international moves to impose sanctions against the Sri Lankan Government, as some were calling for. However, in April 2009 the Sri Lankan Government accused the US and UK, amongst others, of putting pressure on the International Monetary Fund not to give a \$1.9 billion loan to Sri Lanka. There did appear to have been, at the very least, a delay.³²

On 26 April the LTTE declared a unilateral ceasefire, which the Government dismissed. But on the following day the Government stated that it was ending "combat operations" and would cease to use heavy weaponry which might cause civilian casualties – an announcement which some, including Sir John Holmes, the UN Undersecretary-General for Humanitarian Affairs, took as tacit admission of what had been previously denied. Reports from the frontline suggested that the intensity of the fighting was largely unchanged by these announcements and counter-announcements; there continued to be persistent unconfirmed reports that shelling was taking place, with significant civilian casualties. The Sri Lankan military continued its advance. By 8 May the size of the conflict zone was reportedly down to five square kilometres.³³ The map below gives an indication of just how small the conflict zone had become by this time.³⁴

²⁸ "Tamil rebels surrender – but the hunt for their leader goes on", *Independent*, 23 April 2009

²⁹ See: <http://www.un.org/News/Press/docs/2009/sc9659.doc.htm>

³⁰ ICG, "Crisis in Sri Lanka", press release, 20 April 2009

³¹ "Sri Lanka rejects West 'lectures'", *BBC News Online*, 30 April 2009

³² "Colombo rejects UN civilian plea", *BBC News Online*, 23 April 2009; "Sri Lanka denies IMF loan delay", *BBC News Online*, 30 April 2009

³³ HC Deb 14 May 2009 c1034

³⁴ *BBC News Online*, 13 May 2009. Available at: http://news.bbc.co.uk/1/hi/world/south_asia/8047376.stm



On 11 May there were media reports claiming that at least 378 civilians had been killed over the previous weekend by shelling and aerial bombs as the Sri Lankan army continued its operations in the conflict zone. The Sri Lankan Government disputed such claims, repeating that it was no longer using heavy weaponry, and accused the LTTE of shelling the area itself in order to gain international sympathy. A further 49 people were reportedly killed when a makeshift hospital in the conflict zone was hit by government shells on 12 May.³⁵ On 13 May satellite images were made public that appeared to confirm that there had been heavy shelling of the conflict zone by the Sri Lankan military.³⁶

After several months during which the Sri Lankan Government had claimed that military victory was days away, the coastline was finally cleared of LTTE fighters on 17 May, leaving only a tiny inland pocket of territory of about 300 square metres still in rebel hands. The Government announced that it had 'liberated' the remaining civilians from LTTE hands on the same day. An LTTE spokesperson said that it had decided to "silence our guns" in order to save lives, but insisted that this did not constitute surrender. The Sri Lankan military dismissed the statement and said that now there were no civilians remaining in the rebel-held pocket of territory, there was no reason to stop its offensive.³⁷

As the conflict entered its final days, UN officials said that the "bloodbath" about which they had warned had become "a reality".³⁸ The International Committee of the Red Cross (ICRC) described the situation as an "unimaginable humanitarian catastrophe."³⁹ The UN estimates that at least 7000 civilians have been killed since January.⁴⁰ Combatant casualties have also been high on both sides.

³⁵ "Sri Lanka war zone hospital 'hit'", *BBC News Online*, 12 May 2009

³⁶ "Sri Lanka images 'prove damage'", *BBC News Online*, 13 May 2009

³⁷ "Sri Lanka rebels 'call ceasefire'", *BBC News Online*, 18 May 2009

³⁸ "UN condemns ethnic Tamil 'bloodbath' in Sri Lanka", *Daily Telegraph*, 11 May 2009

³⁹ "Sri Lanka army 'in final stage'", *BBC News Online*, 15 May 2009

⁴⁰ "Sri Lanka rebels 'call ceasefire'", *BBC News Online*, 18 May 2009

On 18 May, the authorities claimed that six members of the LTTE's leadership, including Vellupillai Prabhakaran, had been killed in fighting.⁴¹ The last rebel-held pocket of territory was over-run on the same day. The circumstances of Prabhakaran's death remain unclear. However, by the following day, claims that he was dead appeared to be confirmed when footage of his corpse was shown on national television. The LTTE finally accepted that he was dead on 24 May. There were reports subsequently that some of the LTTE leadership had sought to surrender peacefully but that government assurances that they would be able to do so safely had not been honoured.⁴²

In a speech to Parliament on 19 May President Rajapakse formally declared the Government victorious and the conflict finally over. Extracts from his speech can be found at Appendix A.⁴³ At a Victory Day parade held on 3 June to mark the end of what some have called "Eelam War IV", the President declared that: "It is now the time to win over the hearts of the Tamil people."⁴⁴

Since the fighting ended, there have been growing calls for an independent war crimes investigation. On 18 May the EU called for an independent war crimes inquiry. The US has added its voice in support of these calls.⁴⁵ However, at a special session of the Human Rights Council on Sri Lanka which took place on 26-27 May, western attempts to include such a call in the final resolution were comfortably defeated by Sri Lanka and its allies.⁴⁶ The Sri Lankan Government has said that its own courts will investigate any allegations of war crimes. However, international discussion about how an investigation might be conducted, and who by, continues.

There also remains concern about the fate of four doctors who reported to the world's media from inside the conflict zone during the final weeks of the fighting and who may have been witness to possible war crimes, including the shelling of civilian areas. On 29 May *The Times* claimed that confidential UN imagery and documents, along with witness accounts, suggested that the civilian death toll may have been as high as 20,000 during the final three weeks of fighting. The Government rejected this claim angrily, accusing the newspaper of being duped by fake documents.⁴⁷

Major concerns have continued to be raised about the conditions being experienced by the estimated 250-300,000 IDPs in camps, which in the final days of the conflict were overwhelmed by a surge of arrivals, and the inability of international humanitarian organisations to gain access to these camps.⁴⁸ On 20 May it was reported that the ICRC had suspended its distribution of humanitarian aid to the camps due to official obstruction.⁴⁹ There have been reports of abductions of children from the camps and the 'disappearance' or murder, possibly by paramilitary groups operating within the camps,

⁴¹ "Sri Lankan rebel leader 'killed'", *BBC News Online*, 18 May 2009

⁴² "Tigers begged me to broker surrender", *Sunday Times*, 24 May 2009

⁴³ The full text is available at: <http://www.srilankaguardian.org/2009/05/address-by-president-mahinda-rajapaksa.html>

⁴⁴ "Time to win over Tamil hearts", *Hindu*, 4 June 2009

⁴⁵ "EU demands Sri Lanka war inquiry", *BBC News Online*, 18 May 2009

⁴⁶ "Colombo hails UN 'diplomatic win'", *BBC News Online*, 28 May 2009

⁴⁷ "Sri Lanka rejects deaths report", *BBC News Online*, 28 May 2009

⁴⁸ "What now for Sri Lanka's displaced?", *BBC News Online*, 15 May 2009

⁴⁹ "Sri Lanka crisis deepens as Red Cross suspends aid", *Times*, 20 May 2009

of LTTE cadres who are currently being held in them.⁵⁰ Once they have been identified, the authorities are sending LTTE cadres to separate camps where they will undergo “rehabilitation”. The Government has said that about 2,000 people have so far identified themselves as LTTE members.⁵¹ There have been accusations that the authorities are treating every civilian in the camps as a possible LTTE suspect.⁵² There have also been reports that humanitarian aid workers in the north continue to be harassed by the authorities, including through the non-extension of visas.⁵³

The Government has given conflicting signals about how long those who are currently in the camps will have to wait before they can be resettled, saying at one point that it could take up to two years, at another that the vast majority could be released within six months. One factor that could affect how quickly it happens is de-mining, although some argue that this is a much smaller problem than some in the Government are claiming.⁵⁴ On 23 May UN Secretary-General Ban Ki Moon visited the camps, reiterating calls for humanitarian organisations to be given full access to the camps and for the IDPs to be allowed freedom of movement.

The Government has established a Task Force to oversee the reconstruction of the north. It has also stated that elections to a Northern Provincial Council will be held as soon as the process of resettlement is completed.⁵⁵ There have also been tentative indications that the Government might be willing to grant powers to the Council that would go beyond those provided for under the 13th Amendment to the 1978 Constitution.⁵⁶ In addition, municipal elections in the towns of Jaffna and Vavuniya are set to be held by the end of August.⁵⁷ On 24 May the LTTE’s head of foreign relations announced that the organisation would henceforth pursue its political goals by peaceful means. It was unclear who he represented when he made this statement. The Government has rejected any role for the LTTE in future Sri Lankan politics and has called on the international community to assist it in closing down the LTTE’s global networks so that the organisation cannot be revived.⁵⁸

Some analysts worry that the Sri Lankan Government, having defeated the LTTE, has now launched a campaign to suppress all remaining dissent. On 1 June, another journalist, Poddala Jayantha, was abducted and badly beaten by a vigilante group in Colombo.⁵⁹

⁵⁰ “Tamil children ‘being abducted’”, *BBC News Online*, 20 May 2009; “Women killed and children kidnapped as Tamil Tiger remnants suffer brutal revenge”, *Guardian*, 22 May 2009

⁵¹ “Colombo to ‘rehabilitate’ rebels”, *BBC News Online*, 27 May 2009

⁵² “Sri Lanka Tamils ‘facing misery’”, *BBC News Online*, 1 June 2009

⁵³ “Aid workers purged ‘to silence criticism over Tamils’”, *Times*, 3 June 2009

⁵⁴ *Ibid*

⁵⁵ “Sri Lanka vows to resettle Tamils”, *BBC News Online*, 21 May 2009

⁵⁶ “Sri Lanka ‘in resettlement row’”, *BBC News Online*, 22 May 2009

⁵⁷ “Tamil areas to hold local polls”, *BBC News Online*, 25 May 2009

⁵⁸ “Sri Lanka rejects Tigers’ offer”, *BBC News Online*, 26 May 2009

⁵⁹ “Sri Lankan journalist assaulted”, *BBC News Online*, 1 January 2009

2 International Relations

2.1 The Tokyo Co-Chairs

The four Tokyo Co-Chairs – the European Union, United States, Norway and Japan – were named as such after they co-chaired a donor conference on Sri Lanka held in 2003 in Tokyo, at a time when optimism about the prospects for peace was relatively high. Since then, the Co-Chairs have met periodically and have sought, at points, to coordinate their actions with regard to Sri Lanka. From time to time, the Co-Chairs have issued joint statements. For example, following the decision by the Sri Lankan Government formally to withdraw from the 2002 ceasefire agreement, the Co-Chairs expressed “strong concerns” and reiterated their common view that the conflict could not be settled by military methods and required a political settlement.⁶⁰

In terms of the current humanitarian crisis in the north, the US State Department issued the following statement after a conference call between representatives of the Tokyo Co-Chairs on 25 April:

Representatives of the Tokyo Co-Chairs (U.S., European Union, Norway and Japan) spoke on Wednesday, April 22 to discuss the humanitarian situation in northern Sri Lanka. Assistant Secretary for South and Central Asian Affairs Richard Boucher participated for the United States.

Co-Chair members welcomed the reported escape of civilians from the conflict zone in northern Sri Lanka. They remained deeply concerned about the large number of civilians who are still caught in the conflict area and they condemned efforts by the Tamil Tigers to prevent civilians from leaving. Additionally, they discussed the need for the Tigers to free all civilians and for the Sri Lankan military to guarantee the civilians’ safe passage.

Ensuring the safety and security of those civilians who remain in the conflict area and respecting international humanitarian law must be the foremost priority of both the Government of Sri Lanka and the Tamil Tigers. We fully support the UN Secretary-General’s call for UN staff to be allowed into the conflict zone to facilitate relief operations and the evacuation of civilians. We call on the Government of Sri Lanka to allow UN and International Committee of the Red Cross (ICRC) access to all sites where newly arrived displaced persons are being registered and provided shelter.

We further call on the Government of Sri Lanka and the Tamil Tigers to end hostilities. We urge the Tamil Tigers to lay down arms to a neutral third party. We further urge the Government of Sri Lanka to offer amnesty to most Tamil Tigers and to devise a clear resettlement plan and to open the way for a political dialogue.

⁶⁰ Congressional Research Service, *Sri Lanka: Background and US relations*, 22 January 2008, p. 2. The full report is available at: <http://www.fas.org/sgp/crs/row/RL31707.pdf>

The Tokyo Co-Chairs are maintaining frequent contact to discuss the situation in Sri Lanka.⁶¹

While the Co-Chairs have often taken common positions, there have in the past appeared to be differences in approach between them. One example has been about how the LTTE should be treated. It seems clear that the Norwegian Government was opposed to the designation of the LTTE as a terrorist organisation by the EU in 2006. Some are now calling for a broader-based contact group, including India and the UN, to be established.⁶²

The European Union

The EU has played a significant role on Sri Lanka over the past decade. The EU strongly supported the 2002 Norwegian-brokered ceasefire agreement and, as it came under ever greater strain from 2005 onwards, regularly called for it to be upheld.

In recent years, both of the main parties to the conflict in Sri Lanka have accused the EU of 'taking sides'. In May 2006, following years of lobbying by the Sri Lankan Government, the EU, following the example of the US, Canada and India, listed the LTTE as a terrorist organisation and imposed an asset freeze and travel ban against it.⁶³ There has been vigorous debate about whether or not this damaged the peace process. The LTTE declared that, by doing this, the EU had taken sides in the conflict. EU members (mainly Danes, Swedes and Finns) working for the Sri Lankan Monitoring Mission, the body established under the 2002 agreement to monitor the ceasefire, had to leave the Mission.

Since 2006 the EU has also taken a leading role in pushing for the creation of a UN human rights monitoring mission for Sri Lanka. There have been numerous statements over the years expressing concern about alleged abuses of the human rights of the Tamil population by the authorities and the imposition of restrictions on humanitarian access.

Some observers have raised questions about Sri Lanka's continued participation in a scheme which currently operates under the EU's Generalised System of Preferences Plus. Sri Lankan participation in this scheme has benefited the Sri Lankan garment industry by exempting its imports from being taxed. However, participation in the scheme is predicated on compliance with key international environmental, labour and human rights standards.⁶⁴ The value of the scheme to Sri Lanka has been estimated at \$150 million.⁶⁵ Since October 2008 the European Commission has sought to send an investigation mission to look into alleged human rights violations by the Government.

⁶¹ US State Department press release, 25 April 2009. Available at: <http://www.state.gov/r/pa/prs/ps/2009/04/122219.htm>

⁶² ICG, "Sri Lanka's return to war: Limiting the damage", *Asia Report No. 146*, 20 February 2008, p. 22

⁶³ For the latest version (26 January 2009) of the EU's 'terrorism list' see: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:023:0037:0042:EN:PDF>

⁶⁴ "Sri Lanka in 2008", *Asian Survey*, January/February 2009

⁶⁵ "EU demands Sri Lanka war inquiry", *BBC News Online*, 18 May 2009

The Government has to date refused this mission entry.⁶⁶ This issue is discussed in more detail in Part 4.6 of the paper.

Because EU members are major shareholders in the International Monetary Fund and World Bank, the EU has considerable scope to obstruct or facilitate assistance to Sri Lanka by those multilateral bodies. It has been reported that, following a US lead, it is currently doing so in relation to a \$1.9 billion IMF development and reconstruction loan for which Sri Lanka has applied.⁶⁷ The EU is also a major donor to the Asian Development Bank.

An EU diplomatic mission comprising UK Foreign Secretary David Miliband and his Swedish and French counterparts, Carl Bildt and Bernard Kouchner, was mandated to visit Sri Lanka and did so on 29 April. However, Bildt was refused entry, a decision that provoked EU protests. A further delegation from the EU Troika visited the country on 12 May.⁶⁸

On 18 May, as the fighting drew to an end, the European Council issued a statement. In the statement, Member States came out in favour of holding an independent investigation into allegations that both the Sri Lankan Government and the LTTE had committed war crimes:

1. The EU has monitored the events of the last 48 hours and is appalled by the loss of innocent lives as a result of the conflict and by the high numbers of casualties, including children, following recent intense fighting in northern Sri Lanka.
2. As the fighting draws to an end, the EU reiterates its call on the Government of Sri Lanka urgently to proceed towards a comprehensive political process. It therefore calls on the President of Sri Lanka to outline a clear process leading to a fully inclusive political solution, based on consent, equality and the rule of law. Long-term security, post-conflict reconstruction and prosperity in Sri Lanka can only be achieved through such a process, to address the legitimate concerns of all Sri Lanka's communities. The EU expects all parties to engage without delay and stands ready to support this process.
3. The EU calls on the Government of Sri Lanka and the LTTE to take all necessary steps to prevent further loss of life, welcoming the reported escape out of the combat zone of a significant number of civilians. The EU reiterates the need for all parties to a conflict to fully respect their obligations under international humanitarian law and human rights law. The EU calls for the alleged violations of these laws to be investigated through an independent inquiry. Those accountable must be brought to justice.⁶⁹

⁶⁶ "We should boycott the callous Sri Lanka regime", *Times*, 21 May 2009. For a statement of the UK position on this issue, see: HC Deb 1 June 2009 cc74-75W. This issue is also discussed in Part 4 of the paper.

⁶⁷ "Sri Lanka denies IMF loan delay", *BBC News Online*, 30 April 2009. This issue is also discussed in Part 4 of the paper.

⁶⁸ HC Deb 14 May 2009 1037

⁶⁹ See: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/107873.pdf. For its 27 April statement, see: <http://www.fco.gov.uk/en/newsroom/latest-news/?view=News&id=16988672>

The EU also threw its weight behind efforts to convene a special session of the UN Human Rights Council on Sri Lanka.⁷⁰ At this session, which took place on 26-27 May, the EU was a strong supporter of failed efforts to mandate the Human Rights Council to conduct an independent investigation into alleged war crimes.⁷¹ The European Council expressed its disappointment in a press statement on 28 May:

The EU regrets that it was not possible for the Human Rights Council to agree on an acceptable outcome of the Special Session addressing the serious human rights violations and the humanitarian crisis in Sri Lanka. The EU (together with a number of other countries) in line with the statements given by the UN High Commissioner for Human Rights, Navanathem Pillay, as well as by a group of UN Rapporteurs at the opening of the Special Session, made all efforts to achieve a constructive outcome calling on the Government of Sri Lanka to respect the human rights of Internally Displaced Persons, to end torture, extrajudicial killings, harassment of independent journalist, lawyers, and human rights defenders, to call for an independent investigation of human rights violations and to ensure adequate follow-up during one of the coming sessions of the Human Rights Council.

We regret that the proposals presented by the EU to amend the Sri Lankan draft resolution could be neither discussed nor considered by the Council, as a “closure of debate” rule was invoked by Cuba and supported by a majority of Council Members. Such motions contradict the very spirit in which the Human Rights Council was conceived.

The European Union recalls that the General Assembly has given the Human Rights Council the task of addressing situations of violations of human rights and we remain convinced that the Council has to be able to address urgent human rights situations anywhere in the world. We therefore continue to consider the holding of this Special Session as an appropriate reaction to the situation in Sri Lanka, although the outcome itself does not, in our view, address the complexity and the seriousness of the situation on the ground. The EU will continue to support the efforts of the UN Secretary General Ban Ki-Moon, the High Commissioner for Human Rights and other UN agencies to alleviate the suffering of civilians on the ground and to work for the achievement of durable stability.⁷²

In recent years, the EU has been the largest multilateral supplier of aid to Sri Lanka, including in the context of post-Tsunami reconstruction and the current humanitarian crisis. For further details, see Part 4 of this paper.

For a brief discussion of arms exports to Sri Lanka from EU countries, see Part 3.4 of this paper.

The United States

The previous US administration of President George W. Bush endorsed the prevailing international consensus that there could be no military solution to the conflict in Sri Lanka, only a political one which protected the rights of all citizens, including those of

⁷⁰ “EU demands Sri Lanka war enquiry”, *BBC News Online*, 18 May 2009

⁷¹ “Colombo hails UN ‘diplomatic win’”, *BBC News Online*, 28 May 2009

⁷² See: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/misc/108155.pdf

minority communities. It was a strong supporter of the 2002 ceasefire agreement and of the wider peace process. However, like its predecessors, it opposed the idea of an independent Tamil state. The LTTE was always suspicious that US sympathies during the presidency of George W. Bush really lay with the Sri Lankan Government, praying in evidence the military assistance provided to the the Sri Lankan Government by the US after 2004, along with the fact that the Bush administration continued to keep the LTTE on its list of terrorist organisations, where it had been placed during the Clinton administration in 1997. The main parties to the conflict are in a process of making their assessment of how far the new US administration of President Barack Obama might chart a new course for US policy on Sri Lanka.

With regard to the LTTE's designation as a terrorist organisation, successive US administrations have argued that the US could consider removing the LTTE from its list once it had convincingly proven through its actions that it was genuinely committed to peace.⁷³

The previous US administration undoubtedly had some sympathy with the view that the struggle against the LTTE should be viewed as part of a wider 'war on terror'. This is less likely be the approach taken by the Obama administration. However, the Bush administration also made its military assistance to the Sri Lankan Government conditional upon its human rights performance, and claimed that none of the assistance provided would enhance the offensive capacity of the Sri Lankan armed forces. The Bush administration was "troubled" by the decision of the Sri Lankan Government in January 2008 to terminate the ceasefire agreement, which was accompanied by an escalation in the fighting. Since then, the bulk of further military assistance has been directly linked to action by the Sri Lankan Government to strengthen the protection of human rights in the country:

An amendment to the *Consolidated Appropriations Act 2008* halted Foreign Military Financing funding, the issuance of defense export licenses, and the transfer of military equipment or technology to Sri Lanka unless the Secretary of State certifies to Congress that the Sri Lankan Government has undertaken a series of actions relating to human rights protection. The provision does not apply to assistance for maritime and air surveillance and communications, which has continued.⁷⁴ It seems likely that the new Obama administration will continue this approach.

The new US Secretary of State Hilary Clinton has joined with UK Foreign Secretary David Miliband during 2009 in calling, in the short-term, for a temporary ceasefire (later supplemented by a call for a 'humanitarian pause' by the Sri Lankan Government) and full access to the war zone by humanitarian organisations; and, in the longer-term, for an end to all hostilities and a resumption of political negotiations to bring about a permanent settlement.

The US is Sri Lanka's most important trade partner and has considerable scope, as the largest shareholder in the International Monetary Fund and World Bank, to obstruct or facilitate assistance to Sri Lanka by these multilateral bodies. It has been reported that the Obama administration has encouraged the 'delay' of a \$1.9 billion IMF loan for which

⁷³ Congressional Research Service, *Sri Lanka: Background and US relations*, 22 January 2008, p. 27

⁷⁴ Ibid

Sri Lanka has applied for purposes of development and reconstruction.⁷⁵ However, now that the fighting is over, it appears likely to be approved in the near future.⁷⁶

The US is also a major donor to the Asian Development Bank, which is likely to be an important supporter of future development and reconstruction programmes in the north and east.

On 12 May US and UK Governments issued a further joint statement on the situation in Sri Lanka:

During their meeting today, Secretary Clinton and U.K. Foreign Secretary Miliband expressed their profound concern about the humanitarian crisis in northern Sri Lanka caused by the ongoing hostilities. They expressed alarm at the large number of reported civilian casualties over the past several days in the designated 'safe' zone.

Secretary Clinton and Foreign Secretary Miliband call on all sides to end hostilities immediately and allow for the safe evacuation of the tens of thousands of civilians trapped within the safe zone. The Liberation Tigers of Tamil Eelam must lay down their arms and allow civilians free passage out of the conflict zone. The government of Sri Lanka must abide by its commitment of April 27 to end major combat operations and the use of heavy weapons.

Secretary Clinton and Foreign Secretary Miliband express their appreciation for the continued efforts of the United Nations and their staff on the ground in Sri Lanka. They call on the government of Sri Lanka and the Tamil Tigers to allow a UN humanitarian team to visit the conflict zone to facilitate the safe evacuation of civilians. They urge both sides to allow food and medical assistance to reach those trapped by fighting, cooperate with the ICRC to facilitate the evacuation of urgent medical cases, ensure the safety of aid and medical workers, and permit humanitarian access to all sites where displaced persons are being registered or being provided shelter. Secretary Clinton and Foreign Secretary Miliband call for a political solution that reconciles all Sri Lankans, and establishes a meaningful role for Tamil and other minorities in national political life.⁷⁷

On 13 May President Obama again called for a ceasefire on humanitarian grounds.⁷⁸ On 19 May, following the end of fighting, the State Department issued the following statement:

The United States welcomes the cessation of fighting in Sri Lanka and the apparent conclusion to its long-running conflict. This 26-year-old conflict has cost tens of thousands of Sinhalese and Tamil lives, uprooted countless Sri Lankans from their homes, left thousands maimed or wounded, and has brutally divided the nation.

⁷⁵ "Sri Lanka denies IMF loan delay", *BBC News Online*, 30 April 2009

⁷⁶ "Sri Lanka stirs an economy racked by war", *Wall Street Journal*, 30 May 2009. This issue is also discussed in Part 4.2 of the paper.

⁷⁷ See: <http://www.fco.gov.uk/en/newsroom/latest-news/?view=PressS&id=17650013>

⁷⁸ See: <http://www.america.gov/st/peacesec-english/2009/May/20090513170421dmslahrellek0.423443.html?CP.rss=true>

The United States remains deeply concerned for the welfare of the hundreds of thousands of internally displaced persons (IDPs) uprooted by the recent fighting. We especially recognize the tremendous loss of life and hardship endured by civilians in northern Sri Lanka during the past weeks and months, and are relieved that this loss of life has ended. We urge the Government to allow humanitarian access to the camps and to work hand in hand with the UN, ICRC, and non-government organizations to ensure all IDPs are accorded rights and care meeting the highest international standards. We are prepared to work with the Government to provide for the basic needs of all of its citizens, and abide by its commitment to return the majority of IDPs to their homes by the end of this year.

To truly defeat terrorism, the Government of Sri Lanka needs to begin to heal the wounds of the conflict and work toward building a democratic, prosperous, tolerant and united Sri Lanka and work toward justice and reconciliation for both sides. A lasting peace in Sri Lanka depends on Sinhalese, Tamils and all other Sri Lankans working together to achieve new power sharing arrangements that safeguard and promote the rights of all Sri Lankans.⁷⁹

Following UN and EU-led calls for an independent inquiry into whether either party to the conflict in Sri Lanka has committed war crimes, the US administration expressed its support for the proposal through its Ambassador in Colombo, Robert Blake.⁸⁰ The US also has some potential scope for exerting pressure on the Sri Lankan Government by virtue of the fact that several senior figures have links with the country and could be subject to US law. Most notably, Defence Secretary Gotabhaya Rajapakse, brother of the President, is a US citizen. Another brother, Basil Rajapakse, and Army Chief of Staff Sarath Fonseka, both hold US green cards.⁸¹ An American lawyer, Bruce Fein, representing a group called Tamils against Genocide, has filed a report with the US Attorney General's office which, the group hopes, will lead to the Justice Department laying charges of genocide, war crimes and torture against Gotabhaya Rajapakse and Sarath Fonseka. If this was to happen, Fein believes that Sri Lanka would be under a legal obligation to extradite the two men to the US under the 1948 Genocide Convention.⁸²

In early May, following earlier donations of food aid worth \$21.9 million via the World Food Programme, the US pledged an additional \$6 million in non-food aid assistance to IDPs in the north of Sri Lanka.⁸³

For a brief discussion of US policy on arms exports to Sri Lanka, see Part 3.2 of this paper.

Norway

Norway played the leading role in brokering the 2002 ceasefire agreement and co-ordinated the Sri Lanka Monitoring Mission established to monitor the ceasefire, which

⁷⁹ See: <http://www.state.gov/r/pa/prs/ps/2009/05/123651.htm>

⁸⁰ "UN presses to enter Sri Lankan war zone", *Washington Post*, 21 May 2009

⁸¹ ICG, "Sri Lanka's return to war: Limiting the damage", *Asia Report No. 146*, 20 February 2008, p. 21

⁸² "Fresh reports, imagery contradict Sri Lanka on civilian no-fire zone", *Washington Post*, 30 May 2009

⁸³ "US Government provides additional \$6 million in short-term relief aid to IDPs in northern Sri Lanka", Sri Lankan Ministry of Defence, Public Security, Law and Order website. Available at: http://www.defence.lk/new.asp?fname=20090512_11

was staffed predominantly by Norwegians and other Scandinavians. Norway, as a country whose claims to neutrality and impartiality are deemed to carry credibility, has a strong track record in such roles. Its special envoy, Jon Hanssen-Bauer, has undertaken the bulk of Norway's diplomatic work with regard to Sri Lanka.

In August 2006, Hanssen-Bauer said that the adding of the LTTE to the EU list of terrorist organisations, thereby subjecting it to an asset freeze and travel ban, had hurt the peace process.⁸⁴ However, by this time both the Sri Lankan Government and the LTTE were indicating that they had lost faith in Norway as the 'lead broker', with both suggesting from very different vantage points that it could no longer be considered neutral or impartial.⁸⁵

Since the official death of the ceasefire agreement in January 2008, Norway's role has significantly diminished, although it remains involved with international efforts to end the fighting and ensure the provision of humanitarian aid to civilians caught up in it. However, other countries may have to fill a future 'lead brokering' role. The Sri Lankan Government has said that it sees no future role for Norway in this regard. There have been calls for the US, EU and India to work together to establish a broader-based 'contact group'.⁸⁶

In a statement released on 19 May, after the fighting had come to an end, Norwegian ministers stated:

The Sri Lankan government forces have declared victory over the Tamil Tigers. Now the peace must be won and help provided to the civilian victims.

"Our thoughts are with all those who have lost their relatives and loved ones in the war. We must now join forces to help the victims. People in refugee camps must be allowed to return to their homes as soon as possible," said Foreign Minister Jonas Gahr Støre.

The situation in Sri Lanka is still unclear. Thousands of civilians have been killed and wounded. About 250 000 people have fled their homes and are entirely dependent on emergency aid and medical treatment.

"In order to secure the peace, it is essential to find political solutions. The Sri Lankan Government must show magnanimity towards the Tamil population, give it self-governance and build an inclusive state. All Sri Lankans – Sinhalese, Tamils and Muslims – must feel assured that they have the same rights," said Minister of the Environment and International Development Erik Solheim.

"I expect the Sri Lankan authorities to ensure that conditions in the refugee camps are improved rapidly to comply with international standards. This is also in line with what the UN has called for," said Mr Støre.

⁸⁴ "EU ban on LTTE hurt peace efforts – Hanssen-Bauer", *Lankanewspapers.com*, 21 August 2006. Available at: <http://www.lankanewspapers.com/news/2006/8/8208.html>; and:

"Norway blind on LTTE atrocities", *BBC Sinhala.com*, 8 September 2009. Available at: http://www.bbc.co.uk/sinhala/news/story/2006/09/060908_bauer_dailynews.shtml

⁸⁵ Congressional Research Service, *Sri Lanka: Background and US relations*, 22 January 2008, p. 11

⁸⁶ ICG, "Sri Lanka's return to war: Limiting the damage", *Asia Report No. 146*, 20 February 2008, p. 22

“The registration of refugees, missing persons and prisoners of war must follow international standards. Next of kin must be given information, and families must be reunited. The authorities must grant international organisations access to the camps, to prisoners of war and to all parts of northern Sri Lanka. The International Committee of the Red Cross and the UN must monitor the situation. I expect the Sri Lankan authorities to ensure the safety of all victims and prisoners of war. The media must also be granted access,” Mr Solheim concluded.⁸⁷

The Norwegian Government was one of the first to support the proposal that an independent investigation should be conducted into allegations that both the Sri Lankan Government and the LTTE had committed war crimes.⁸⁸ Norway remains an important bilateral aid donor to Sri Lanka.

Japan

Until recently, when it appears to have been superseded by China, Japan was Sri Lanka’s biggest bilateral aid donor. It played a significant part in supporting the post-2002 peace process. It supports a political settlement based on the principle of devolution.⁸⁹ However, it is reluctant to be directly critical of the Sri Lankan Government. A newly independent Sri Lanka argued strongly against punitive reparations against Japan by the international community after World War II, in the process relinquishing its own claim, something which Japan was, and remains, grateful for.⁹⁰ The fact that the two countries share a strong Buddhist heritage also shapes Japanese feelings towards Sri Lanka.

At the June 2003 donor conference in Tokyo, the then Japanese Government pledged nearly 25% of the \$4.5 billion total.⁹¹ Following the decision in January 2008 of the Sri Lankan Government to formally terminate the 2002 ceasefire agreement, Japan stated that it would be reviewing its aid programme to Sri Lanka. However, no action followed. As the current humanitarian crisis has intensified, Japan has joined with other members of the international community in calling for civilians to be adequately protected and providing humanitarian assistance. Its Special Representative to Sri Lanka, Yasushi Akashi, visited Sri Lanka at the end of April. In early May a further \$4 million was made available by the Japanese government for humanitarian needs.⁹²

Nonetheless, some observers argue that Japan could and should do much more than it has been doing. In May 2009, the ICG, Human Rights Watch, Amnesty International and the Global Centre for the Responsibility to Protect wrote to the Prime Minister, Taro Aso, calling on the Japanese Government to be more pro-active, including pushing for Sri Lanka to be placed on the formal agenda of the UN Security Council.⁹³

⁸⁷ See: <http://www.regjeringen.no/en/dep/ud/press/News/2009/sri-lanka-needs-to-win-the-peace.html?id=562768>

⁸⁸ See: http://www.regjeringen.no/en/dep/ud/press/News/2009/srilanka_active.html?id=561271

⁸⁹ “Japan-Sri Lanka summit meeting”, Press release, Japan Ministry of Foreign Affairs, 10 December 2007

⁹⁰ “Outline of Japanese ODA to Sri Lanka”, Japanese Ministry of Foreign Affairs, September 2005. Available at: http://www.mofa.go.jp/policy/oda/region/sw_asia/srilanka_o.pdf

⁹¹ Congressional Research Service, *Sri Lanka: Background and US relations*, 22 January 2008, p. 15

⁹² “Emergency grant aid to Sri Lanka for internally displace persons”, Japanese Ministry of Foreign Affairs, 1 May 2009. Available at: http://www.mofa.go.jp/announce/announce/2009/5/1191454_1134.html

⁹³ ICG, “Japan: Back UN action on Sri Lanka”, Press Release, 11 May 2009. Available at: <http://www.crisisgroup.org/home/index.cfm?id=6096&l=1&m=1>

Japan has not come out in favour of the proposal that an independent investigation should be held into allegations that both the Sri Lankan Government and the LTTE committed war crimes. When the Sri Lankan Government and its allies succeeded in getting a resolution passed which made no mention of such an investigation at the Human Rights Council's special session on Sri Lanka on 26-27 May, Japan abstained, rather than opposing the resolution.⁹⁴

On 19 May, following the end of the fighting, the Japanese Minister of Foreign Affairs, Hirofumi Nakasone, issued the following statement:

Japan welcomes the end to the military conflict between government troops and the Liberation Tigers of Tamil Eelam (LTTE), an armed anti-government group, in the Democratic Socialist Republic of Sri Lanka. Japan expresses its sympathy for the many precious lives lost over twenty-five years of civil war.

Japan hopes that the Government of Sri Lanka will follow the proper legal procedures in its dealings with LTTE personnel who laid down their arms and surrendered. Assistance to and resettlement of a large number of internally-displaced persons are of great importance and political processes for national reconciliation needs to make swift progress. Japan hopes that the Government of Sri Lanka will continue its efforts to address these challenges.

Japan will also continue to support the Sri Lankan government in its efforts towards national reconciliation.⁹⁵

2.2 India

The ICG describes India as “the most important of Sri Lanka’s foreign supporters”.⁹⁶ Yet, despite the surface cordiality, there is always a degree of mutual ambivalence. Sinhalese nationalists view India as a powerful neighbour with a large Tamil potential ‘fifth column’ on its territory whose instinct to dominate Sri Lanka must be resisted. The Indian political class worries, not without past justification, about the capacity of events on the island to destabilise Tamil Nadu just across the narrow stretch of water that is the Palk Strait, which has an estimated population of 60 million Tamils, and national politics more generally. For 20 years after independence, there was a strong secessionist movement in Tamil Nadu. The position of successive Indian governments has been that there can be no military solution to the conflict in Sri Lanka and that a political settlement, based on autonomy for Tamil majority areas in the north and east, must be sought. But India has always been lukewarm about an autonomy deal that goes much beyond the type of federal arrangements that exist within its own borders. By contrast, many of Sri Lanka’s Tamils have always wanted to go well beyond the ‘Indian model’.

India has limited its direct engagement in the conflict in Sri Lanka since its disastrous attempt to broker and enforce peace following the 1987 Accord. The Accord offered a degree of autonomy for Tamil majority areas in the north and east, but not independence. As part of the Accord an Indian Peacekeeping Force (IPKF) was sent to the island to end the hostilities and supervise the surrender of arms by the Tamil militants while diplomats attempted to negotiate a durable ceasefire. Instead, another

⁹⁴ See: <http://www.cnsnews.com/public/content/article.aspx?RsrcID=48731>

⁹⁵ See: http://www.mofa.go.jp/announce/announce/2009/5/1192009_1134.html

⁹⁶ ICG, “Sri Lanka’s return to war: Limiting the damage”, *Asia Report No. 146*, 20 February 2008, p. 20

conflict broke out, this time between the peacekeepers and the Tamil Tigers. For a brief period, the Sri Lankan security establishment appeared to be giving support to the LTTE campaign against the IPKF. The IPKF finally withdrew in 1990, having suffered an estimated 1,200 losses.⁹⁷ In 1991, the LTTE assassinated Rajiv Gandhi, the former Prime Minister of India, who had originally authorised the sending to Sri Lanka of the IPKF, an act which many believe was a grave tactical miscalculation. Certainly, since then, the Indian Government, which prior to 1987 had at points displayed considerable sympathy for its cause, has been hostile to the LTTE. It banned the organisation in 1992. In the years that followed, many Indians continued to call for the extradition of implicated LTTE leaders, including Prabhakaran, to India to stand trial for the assassination.

A general election was held in India during April and May 2009. This may have partly prompted the previous Indian Government's decision in April to send a high-level official Indian delegation to Colombo. Following the visit, the delegation added its voice to those calling for a prolonged 'pause'. The previous Indian Government also said that, if the LTTE were to declare that it was willing to lay down its arms, India would engage in further dialogue with the Sri Lankan Government about possible modalities for political autonomy in the north and east of the country. It is worth noting that the Congress-led Indian Government played a significant role in persuading its Sri Lankan counterpart to launch the APRC process in 2006.

During the election campaign, the opposition Bharatiya Janata Party (BJP) called upon the Sri Lankan Government to engage in talks with the LTTE without any preconditions. Many of Tamil Nadu's politicians expressed strong concern during the campaign about the plight of their fellow Tamils in Sri Lanka. However, many of the more dramatic pledges of solidarity, which included, at their most extreme, a call for another military intervention, are unlikely ever to translate into reality.⁹⁸ The Congress Party and its allies have now been returned to power at both the national level and within Tamil Nadu.⁹⁹ This suggests continuity in terms of India's policy towards Sri Lanka, although a strengthened mandate may encourage a more ambitious and active agenda, particularly if the LTTE really has been taken out of the equation.¹⁰⁰ However, there is also an outside possibility that LTTE remnants or sympathisers may resort to targeting Indian political and military figures for assassination once again if India backs what they view as inadequate future autonomy arrangements for the north and east. There are about 100,000 Sri Lankan Tamil refugees in Tamil Nadu and an estimated 14 LTTE activists in Indian prisons.¹⁰¹ There have been reports that, during the final weeks of the fighting, up to 400 LTTE militants may have retreated to India pretending to be refugees. The Indian authorities, like their Sri Lankan counterpart, operate a screening system for refugees on arrival.¹⁰²

Following the end of the fighting, Indian Foreign Minister Pranab Mukherjee reiterated his country's long-standing call for "effective devolution of power". It was also announced that India would be sending 25 tonnes of medical aid to Sri Lanka and assist in demining efforts in the north. Indian officials were reported to be looking at the speech that

⁹⁷ Congressional Research Service, *Sri Lanka: Background and US relations*, 22 January 2008, p. 12

⁹⁸ B. Raman, "Electoral crocodile tears for Sri Lankan Tamils", *TransCurrents*, 11 May 2009. Available at: http://transcurrents.com/tc/2009/05/electoral_crocodile_tears_for.html

⁹⁹ "DMK-Cong proves pollsters wrong", *Times of India*, 18 May 2009

¹⁰⁰ "'Sri Lanka factor' in Tamil Nadu poll", *BBC News Online*, 11 May 2009

¹⁰¹ "Eelam embers in TN camps worry police", *Times of India*, 29 May 2009

¹⁰² "LTTE men may have slipped into India", *Times of India*, 1 June 2009

President Rajapakse made on 19 May to the Sri Lankan Parliament for indications of his intentions.¹⁰³ Indian foreign ministry officials visited Colombo on 20 May and were reported to have indicated that India wanted to play an active role in building peace, something that the Sri Lankan Government has officially welcomed.¹⁰⁴ The Indian officials also called for Tamil IDPs in the north to be resettled as soon as possible.¹⁰⁵ The new Indian Government has not supported the calls for an independent investigation to be held into allegations that both the Sri Lankan Government and the LTTE committed war crimes. Critics like Human Rights Watch have claimed that India “could have saved many lives if it had taken a proactive position – and it would not have affected the outcome of the war.”¹⁰⁶

For a brief discussion of Indian military co-operation with, and assistance to, Sri Lanka see Part 3.2 of this paper.

2.3 China

China is now believed to be the biggest military and aid donor to Sri Lanka, giving a total of nearly \$1 billion in 2008. For further details of its military support, see Part 3.2 of this paper.

There is also growing co-operation on large infrastructure projects – most notably, a new port in President Rajapakse’s birthplace, Hambantota, which analysts claim will eventually become a base for the Chinese navy, and a coal power plant in Norochcholai.¹⁰⁷ The Chinese Government disputes the claims made about Hambantota.¹⁰⁸ Wider Chinese investment in the country has increased too.

These growing ties have translated into highly effective diplomatic cover for Sri Lanka at the UN, not least in the Security Council, where China has obstructed Western efforts over recent months to place the country formally on its agenda.¹⁰⁹ The Chinese Government has also strongly opposed the calls for an independent investigation to be held into allegations that both the Sri Lankan Government and the LTTE committed war crimes.

In May China announced that it was providing \$1 million in humanitarian aid for IDPs in Sri Lanka.¹¹⁰

¹⁰³ “India seeks devolution of powers to Lankan Tamils”, *Times of India*, 20 May 2009

¹⁰⁴ “India set to counter China’s influence in India”, *Times of India*, 20 May 2009

¹⁰⁵ “Post-war Colombo eases Delhi’s concerns”, *Straits Times*, 22 May 2009

¹⁰⁶ “India ‘complicit’ in killing of 20,000 civilians in Sri Lanka”, *Daily Telegraph*, 1 June 2009

¹⁰⁷ “Chinese billions in Sri Lanka fund battle against Tamil Tigers”, *The Times*, 2 May 2009

¹⁰⁸ “China tells London Times Hambantota is a normal commercial project”, Sri Lankan Ministry of Defence, Public Security, Law and Order website, 12 May 2009. Available at: http://www.defence.lk/new.asp?fname=20090512_14

¹⁰⁹ ICG, “Sri Lanka’s return to war: Limiting the damage”, *Asia Report No. 146*, 20 February 2008, p. 21

¹¹⁰ “China donates US \$1 million as emergency relief assistance for IDPs”, Sri Lankan Ministry of Defence, Public Security, Law and Order website, 12 May 2009. Available at: <http://www.defence.lk/new.asp?fname=20090512-06>

2.4 Pakistan

Pakistan has also developed stronger relations with Sri Lanka over the last decade, with co-operation focusing on the military and intelligence spheres. For further details of the military assistance it has provided, see Part 3.2 of this paper.

This growing relationship, which has been encouraged by China, is viewed with a certain anxiety by India. Some observers argue that, from the point of view of the Sri Lankan Government, the main advantage of Pakistani military support is that it reduces Indian bargaining power and thereby increases its own freedom of manoeuvre. However, by the same token, it is asserted, the Sri Lankan Government would probably prefer to get more military support from India and therefore would not want to alienate it by obtaining too much from Pakistan. This probably places certain limits on how far Sri Lanka can go towards deepening its ties with Pakistan. However, an alternative minority view has also been put forward, which is that the Indian Government has been, and remains, in reality quite happy for Pakistan to take much of the strain, given India's strong opposition to the LTTE and Tamil secessionist agendas, and given the fact that it is constrained by sentiment in Tamil Nadu.¹¹¹

Pakistan does not intervene much in the internal politics of Sri Lanka. However, from time to time, it has sought in a low-key way to support the claims of Sri Lanka's Muslims.

The Government of Pakistan has not supported the calls for an independent investigation to be held into allegations that both the Sri Lankan Government and the LTTE committed war crimes.

2.5 The UK

In recent months, having been viewed for many decades as a trusted international ally, relations between the UK and Sri Lankan Governments have deteriorated considerably. However, for all the current turbulence in those relations, the UK was hostile to the LTTE and, if the current humanitarian crisis is resolved to its satisfaction, is likely to support future autonomy initiatives, provided that they are sufficiently inclusive and reflect democratic principles.

The downward turn in relations really began when Foreign Secretary David Miliband joined with US Secretary of State Hillary Clinton on 4 February in calling, at a moment when the Sri Lankan Government believed itself to be on the verge of a military victory over the LTTE, for a temporary ceasefire and full access to the war zone by humanitarian organisations. Angered by this intervention, in the same month the Sri Lankan Government rejected the nomination of Des Browne as the Prime Minister's Special Envoy to Sri Lanka, stating that it had not been consulted.

As UK Government concerns grew about the humanitarian crisis in the north and reports increased of serious human rights abuses against civilians by the Sri Lankan military in the course of their operations, Miliband joined his French counterpart, Bernard Kouchner, in an EU-mandated high-level mission to the country on 29 April. Following their visit, President Rajapakse again ruled out a ceasefire, stating: "I don't need lectures

¹¹¹ "Indian, Pakistan and the Sri Lanka ethnic conflict", *Tamil Tribune*, June 2006. Available at: <http://www.geocities.com/TamilTribune/06/0602.html>

from Western representatives.”¹¹² Mr Miliband made a statement to the House on 30 April, immediately following his return from Sri Lanka.¹¹³

There are no official statistics on the number of Tamils living in the UK. Estimates of the Tamil population range from 150,000 to 300,000. The British Tamils Forum says that over 250,000 Tamils live in the UK. The majority of the Tamil community lives in London, with the most popular boroughs being Brent, Ealing, Newham, Harrow, Merton and Croydon.¹¹⁴

Protests by the UK-based Tamil community began to have an increased impact on the British political scene during 2009. This contributed to a marked increase in the number of debates on Sri Lanka held in the House of Commons. The most recent debates took place on 29 April and 14 May. Both debates saw considerable criticism of the international community for failing to respond adequately to the crisis. Some Members expressed a clear conviction that genocide was being committed.¹¹⁵ The UK Government has stated that it supports an early investigation into whether war crimes have been committed by the parties to the conflict in the north in recent months. This position has been strongly endorsed by the Conservatives and Liberal Democrats.¹¹⁶

On 12 May the Foreign Secretary and US Secretary of State Clinton issued another joint statement. The full text of that statement can be found above.¹¹⁷

The most recent statement by the Foreign Secretary was made to the House on 19 May: Below is the full text:

I would like to inform the House about the latest situation in Sri Lanka.

On 19 May, the Sri Lankan President formally announced that on 18 May military forces had retaken all the territory once held by the LTTE and that they had captured or killed the senior leadership of that organisation. Many Sri Lankans of all communities, Sinhalese, Tamil and Muslim, will be relieved that the long and brutal conflict may at last be over. Sri Lanka has before it an historic opportunity to resolve the underlying causes of the conflict and ensure a lasting peace. We must continue to work with Sri Lanka's Government and all its communities to ensure that this opportunity is taken and that it leads to a sustainable end to the conflict.

Our concern has never been whether it was right to defeat the LTTE. The issue has been the price in lives and the future in terms of reconciliation. We may never know exact numbers but thousands of innocent civilians have died, hundreds of thousands made homeless and confined to camps, caught up in a system which continues to restrict access to the international humanitarian agencies. For many, many people, the misery continues.

Our primary concern remains the immediate humanitarian crisis and the long-term political and economic peace and stability of Sri Lanka. We have continued to

¹¹² “Sri Lanka rejects West ‘lectures’”, *BBC News Online*, 30 April 2009

¹¹³ HC Deb 30 April 2009 cc1048-61

¹¹⁴ See: <http://www.tamilsforum.com>

¹¹⁵ HC Deb 29 April cc932-75; HC Deb 14 May cc1034-1058

¹¹⁶ HC Deb 14 May 2009 c1034

¹¹⁷ See: <http://www.fco.gov.uk/en/newsroom/latest-news/?view=PressS&id=17650013>

work with international partners in the EU, UN, and G8 to urge the Government of Sri Lanka to do all that it could to protect their citizens, minimise the risk of casualties and allow the UN and other international agencies access to the conflict area to oversee the possible surrender of the LTTE and the evacuation of the civilians. We also called on the LTTE to lay down their weapons and release the civilians. Tragically, these calls did not prevent the loss of many lives.

I welcome the assurance given to me by Foreign Minister Bogollogama yesterday that the UN and NGOs will now be able to enter the former conflict zone to provide whatever support is still needed. I would like to pay tribute to the courage of the staff of the ICRC and others who continued to try and deliver food, water and medical supplies into the conflict zone at enormous risk to themselves. Undoubtedly, their bravery in the face of great danger saved the death toll from being higher.

Although the territorial conflict seems to be over, the grave humanitarian crisis continues to unfold. Some 250,000 civilians who have fled the fighting are either being processed by the Government of Sri Lanka to ensure that they are not escaping LTTE members, or are being held in camps.

The Government does not have the resources to cope, but it has not yet offered international aid agencies unrestricted access to the camps. This risks exacerbating the humanitarian crisis and fuelling the resentment of the Internally Displaced People (IDPs). We urge the Government of Sri Lanka to allow full and unhindered access to the camps where the IDPs remain in urgent need of shelter, food, water, and medicine. The Government of Sri Lanka has also already committed to resettle 80% of IDPs before the end of this year. This will be a difficult task.

We and others in the international community stand ready to assist the Government of Sri Lanka to meet these humanitarian challenges. The Department for International Development has recently announced an additional £5 million of humanitarian funding for Sri Lanka, bringing our total contribution to the humanitarian relief effort to £12.5 million since September 2008. We will channel this funding through the UN and other humanitarian agencies.

We urge the Government of Sri Lanka to use the opportunity of the visits by the UN Secretary General's Chief of Staff Vijay Nambiar and the UN Secretary General himself later this week, to recognise that the UN has a central role to play, both in the delivery of humanitarian aid and in encouraging the process of political reconciliation that must be an integral part of rebuilding Sri Lanka's civil society.

Lasting peace can only come when all communities in Sri Lanka believe that they are accepted and valued members of society. We recognise that the process of political reconciliation will not be easy. There are many entrenched attitudes and resentments. Sri Lankan people from all communities, working on the basis of mutual respect and equality, need to agree the way forward.

On 18 May my Rt Hon Friend the Prime Minister urged President Rajapakse to be magnanimous in victory. I repeated the message to the Sri Lankan Foreign Minister the same day, saying that whatever process emerged, it needed to be

inclusive and based on equality. We welcome the President's statement to the Sri Lankan Parliament on 19 May that he will embark on an inclusive political process involving all communities on the basis of equality and absence of fear.

I endorse the conclusions reached at the European Council on 18 May calling for alleged violations of international humanitarian and human rights law to be investigated through an independent inquiry and for those accountable to be brought to justice. This could play an important role in the post-conflict reconciliation process.

The continuing focus of this Government's activity over the coming days and weeks, will be to work with international partners in encouraging the Sri Lankan Government to devote as much energy to winning the peace as it did to winning the war.¹¹⁸

As the above statement confirms, the UK Government has been a strong supporter of calls for an independent investigation into allegations that both the Sri Lankan Government and the LTTE committed war crimes. It supported the unsuccessful EU-led efforts to pass a resolution at the 26-27 May special session of the Human Rights Council on Sri Lanka that would have authorised the Council to establish such an investigation.¹¹⁹

At the beginning of May, the Sri Lankan Government half-relented over its rejection of the role of Des Browne as the Prime Minister's Special Representative to Sri Lanka, allowing him to visit the country as part of an all party group of British parliamentarians. The group kept a low profile during its short visit.¹²⁰ However, at the end of the visit, a statement was issued.¹²¹

On 18 May, amidst celebrations in Colombo of the military victory of the Sri Lankan Government, there was also a demonstration outside the British High Commission.¹²² UK arms exports to Sri Lanka did not become a significant political issue within Britain until early June. For further discussion of this issue, see Part 3.4 of the paper.

The UK has been a significant provider of bilateral humanitarian assistance to Sri Lanka since late 2008. Between October 2008 and April 2009, three tranches of humanitarian assistance, each of £2.5 million, were announced.¹²³ On 17 May a further tranche of £5 million was announced, bringing the total pledged to date to £12.5 million. None of this money is being channelled through the Sri Lankan Government.¹²⁴ UK aid to Sri Lanka is also discussed in Part 4 of the paper.

¹¹⁸ HC Deb 19 May 2009 cc73-75WS. Full text available at:

¹¹⁹ For a UK Government statement on whether genocide was committed by the Sri Lankan Government in the course of its military operations, see: HC Deb 1 June 2009 c230W

¹²⁰ "UK MPs meet Sri Lankan leadership", *BBC News Online*, 4 May 2009

¹²¹ See: <http://www.fco.gov.uk/en/newsroom/latest-news/?view=PressS&id=17365934>

¹²² "Sri Lankan rebel leader 'killed'", *BBC News Online*, 18 May 2009

¹²³ See: <http://www.dfid.gov.uk/news/files/pressreleases/foster-sri-lanka.asp>

¹²⁴ "DFID announces further aid for Sri Lanka", Press release, 17 May 2009. Available at: <http://www.dfid.gov.uk/Media-Room/News-Stories/2009/DFID-announces-further-aid-for-Sri-Lanka/>. See also HC Deb 21 May 2009 c86-87WS

Both of the main opposition parties have been active on Sri Lanka. The Conservative Party have called for future assistance to the war-ravaged north to be channelled through an internationally managed and independent fund.¹²⁵ The Liberal Democrats have called on the UK Government to make representations to its Chinese counterpart to do more to promote a united international position on the situation in Sri Lanka.¹²⁶

2.6 The United Nations

The conflict in Sri Lanka has not yet been put on the formal agenda of the UN Security Council as a country situation. While in general there was little appetite for doing so until late 2008, in recent months it is Russia and China that have blocked more concerted efforts by other members of the Security Council. The apparent inaction of the Security Council has been the subject of heavy criticism by those who believe it should have played a much more active role than it has.

However, the mounting humanitarian crisis in the north eventually led the Security Council to issue a press statement on Sri Lanka on 13 May:

The members of the Security Council express grave concern over the worsening humanitarian crisis in north-east Sri Lanka, in particular the reports of hundreds of civilian casualties in recent days, and call for urgent action by all parties to ensure the safety of civilians.

The members of the Security Council strongly condemn the Liberation Tigers of Tamil Eelam (LTTE) for its acts of terrorism over many years, and for its continued use of civilians as human shields, and acknowledge the legitimate right of the Government of Sri Lanka to combat terrorism.

The members of the Security Council demand that the LTTE lay down its arms and allow the tens of thousands of civilians still in the conflict zone to leave.

The members of the Security Council express deep concern at the reports of continued use of heavy calibre weapons in areas with high concentrations of civilians, and expect the Government of Sri Lanka to fulfil its commitment in this regard.

The members of the Security Council demand that all parties respect their obligations under international humanitarian law.

The members of the Security Council call on the Government of Sri Lanka to take the further necessary steps to facilitate the evacuation of the trapped civilians and the urgent delivery of humanitarian assistance to them.

The members of the Security Council take note of the steps taken by the Government of Sri Lanka to address the humanitarian situation of displaced persons and call on the Government of Sri Lanka to ensure the security of those displaced by the conflict and to cooperate with the United Nations, the International Committee of the Red Cross (ICRC), and other international

¹²⁵ HC Deb 19 May c1338W

¹²⁶ HC Deb 19 May c1340

humanitarian organizations in providing humanitarian relief and access to them as soon as they leave the conflict zone.

The members of the Security Council reiterate support for the personal involvement of the UN Secretary General and urge the Government of Sri Lanka to extend full cooperation to the United Nations in order to resolve the humanitarian crisis.

The members of the Security Council, mindful of the necessity to find a long-term solution without the threat of violence, underline that the needs of all communities in Sri Lanka have to be addressed.¹²⁷

While it fell short of the legally binding Security Council resolution that many had been calling for, the issuing of the press statement was widely interpreted as a setback for the Sri Lankan Government and a signal that it could not rely on Russian or Chinese protection irrespective of its actions.¹²⁸

Nonetheless, the only context in which Sri Lanka has been on the Security Council's formal agenda to date is under its thematic concerns – for example, on children and armed conflict under Resolution 1612 (2005). Both parties to the conflict have been accused for many years of abducting children and forcibly recruiting them as soldiers, although the LTTE has been responsible for the majority of such crimes.¹²⁹

The UN Secretary-General, Ban ki-Moon has issued several statements expressing his concern about the situation in Sri Lanka. The most recent was on 11 May:

The Secretary-General is appalled at the killing of hundreds of civilians in Sri Lanka over the weekend. Thousands of Sri Lankans have already died in the past several months due to the conflict, and more still remain in grave danger.

The Secretary-General has repeatedly called upon the parties to the conflict to stop using heavy-calibre weaponry, including mortars, in the areas with high civilian concentrations. The Secretary-General is deeply concerned by the continued use of heavy weapons in this situation. The reckless disrespect shown by the Liberation Tigers of Tamil Eelam (LTTE) for the safety of civilians has led to thousands of people remaining trapped in the area.

The Secretary-General once again calls on both sides, in the strongest terms possible, to adhere to their obligations under international humanitarian law. The LTTE must immediately allow the remaining civilians in the conflict zone to leave. He reminds the parties that the world is watching events in Sri Lanka closely, and will not accept further violations of international law.

The Secretary-General urges the Government of Sri Lanka to explore all possible options to bring the conflict to an end without further bloodshed and to make

¹²⁷ See: <http://www.un.org/News/Press/docs/2009/sc9659.doc.htm>

¹²⁸ "UN 'grave concern' over Sri Lanka", *BBC News Online*, 14 May 2009

¹²⁹ See: http://www.unicef.org/infobycountry/files/Sri_Lanka_DU_7Mar07.pdf

public the terms under which that can be achieved without further loss of civilian life, and for the LTTE to give sober and positive consideration of those terms.¹³⁰

On 19 May it was announced that the Secretary-General would be visiting Sri Lanka on 22-23 May. On 23 May he visited the camps, reiterating calls for humanitarian organisations to be given full access to the camps and for the IDPs to have freedom of movement. He argued that the Sri Lankan Government would be unable to cope with the humanitarian needs of the IDPs by itself and warned: "If issues of reconciliation and social inclusion are not dealt with, history could repeat itself. There is a danger of social disruption and even renewed violence."¹³¹ At the end of his visit, the Sri Lankan Government released a "joint statement" by Ban ki-Moon and President Rajapakse.¹³² Following press reports that confidential UN documents suggested that as many as 20,000 civilians may have been killed during the final three weeks of fighting, on 1 June Ban ki-Moon rejected claims that the UN was withholding crucial information on the issue but reiterated his view that the death toll had been "unacceptably high".¹³³

There has also been some activity on Sri Lanka within UN human rights mechanisms. Since late 2007, international human rights groups and their local allies have been lobbying for a UN human rights monitoring mission to be established in Sri Lanka, supported by the then UN High Commissioner for Human Rights, Louise Arbour and her successor, Navi Pillay. These calls have been consistently rejected by the Sri Lankan Government but remain 'on the table' internationally, at least in theory.

In 2008 Sri Lanka took part in the Universal Periodic Review mechanism of the Human Rights Council.¹³⁴ In the same year it failed in its bid for a second term on the Human Rights Council.¹³⁵ Efforts at the recent 10th session of the HRC in March 2009 to win agreement to hold a special session on Sri Lanka were unsuccessful, despite support from some European countries.¹³⁶ However, attempts to secure such a session continued and a special session eventually took place on 26-27 May. The Sri Lankan Government marshalled support from China, Russia, India, Pakistan and other countries to prevent a critical resolution being passed. Despite the efforts of a range of western governments, there was no call in the resolution that was eventually passed for an international war crimes investigation like the one it had mandated earlier in the year with regard to the conflict in Gaza. Nor was there a call for the Sri Lankan Government to give humanitarian aid organisations unimpeded access to the over 250,000 IDPs being held in camps.¹³⁷

¹³⁰ See: <http://www.un.org/News/Press/docs/2009/sgsm12235.doc.htm>

¹³¹ "History could repeat, UN chief warns Sri Lanka", *The Age*, 25 May 2009

¹³² Full text available at: http://www.defence.lk/new.asp?fname=20090524_02. See also: <http://www.un.org/apps/news/story.asp?NewsID=30904&Cr=sri+lanka&Cr1=>

¹³³ See: <http://www.un.org/apps/news/story.asp?NewsID=30984&Cr=sri+lanka&Cr1=>

¹³⁴ For the full documentation relating to its participation in the Universal Periodic Review, see: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/lksession2.aspx>

¹³⁵ See: <http://www.hrw.org/legacy/english/docs/2008/05/21/slanka18912.htm>

¹³⁶ See: <http://www.omct.org/index.php?id=APP&lang=eng&actualPageNumber=1&articleSet=Lettres%20ouvertes&articleId=8517&PHPSESSID=1caf135cb5bc271dc30e573c8569ceaf>

¹³⁷ "Colombo hails UN 'diplomatic win'", *BBC News Online*, 28 May 2009. For the full text of the resolution that was passed, see: <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/11/docs/L1.Rev.2.doc>

Walter Kaelin, the UN Special Rapporteur on Internally Displaced Persons, made a visit to Sri Lanka in early April at the invitation of the Government. Both he and Navi Pillay, the current UN High Commissioner for Human Rights, have issued public statements expressing great concern about the plight of civilians caught up in the conflict, as has the UN Secretary-General's special advisor on genocide prevention, Francis Deng.¹³⁸ Finally, the UN Deputy Secretary-General for Humanitarian Affairs, Sir John Holmes has issued numerous statements about the humanitarian crisis and also visited Sri Lanka in late April.¹³⁹ Both Kaelin and Holmes also gave private briefings to the Security Council.

2.7 The Commonwealth

To the frustration of many, the Commonwealth has not played a particularly active role on Sri Lanka as the current crisis has deepened.¹⁴⁰

From time to time, it has issued public statements. For example, it welcomed the two-day 'humanitarian pause' introduced by the Sri Lankan Government on 12-13 April and reiterated its belief in the need for a political solution.¹⁴¹ However, the influence of the Sri Lankan Government, backed up by other 'southern States' within the Commonwealth, has ensured that the conflict in Sri Lanka has never been put formally on the organisation's agenda. The Commonwealth Ministerial Action Group, which takes its terms of reference from the Harare Declaration, could in theory decide to put Sri Lanka on its formal agenda. Its terms of reference have been interpreted to mean that it should include on its agenda only situations where democracy has been overthrown by unconstitutional means or where there has been a refusal to follow the rule of law and democracy. Critics of the Commonwealth argue that Sri Lanka fits the second criterion and that, in any case, action is imperative on moral and humanitarian grounds.¹⁴²

The Commonwealth Heads of State/Government Meeting in 2011 is due to take place in Sri Lanka. There have been calls for its location to be changed.

According to Gillian Merron, the UK Minister of State for Foreign and Commonwealth Affairs who attended the most recent meeting of CMAG in April, she "took the opportunity to raise the UK Government's concerns about the situation in Sri Lanka", despite the fact that it was not on the formal agenda.¹⁴³

The Secretary-General, Kamalesh Sharma, issued a statement on Sri Lanka on 15 May:

Commonwealth Secretary-General Kamalesh Sharma has reiterated his deep concern at the escalating humanitarian crisis in Sri Lanka as a result of the ongoing military conflict. He urged all sides to abide by the principles of international humanitarian law and, as the highest priority, to urgently ensure the safety of civilians trapped in the violent conflict. Further, he called for international humanitarian agencies to be granted access by the Sri Lankan government to

¹³⁸ It is important to note that the special advisor did not claim that genocide against the Tamil population was taking place in the north.

See: <http://www.un.org/apps/news/story.asp?NewsID=30810&Cr=Sri+lanka&Cr1>

¹³⁹ See: http://www.un.org/News/briefings/docs/2009/090429_Holmes.doc.htm

¹⁴⁰ See: <http://www.hrw.org/en/news/2009/04/14/sri-lanka-commonwealth-should-act-crisis>

¹⁴¹ See: <http://www.thecommonwealth.org/news/190151/140409srilankastatement.htm>

¹⁴² See: <http://www.hrw.org/en/news/2009/04/14/sri-lanka-commonwealth-should-act-crisis>

¹⁴³ HC Deb 29 April 2009 c946

provide relief to the civilians currently in dire need in the conflict zone, as well as to those in the Internally Displaced Persons camps. The safety of those in camps is also paramount.

“The extreme civilian suffering cannot be justified in any context”, Mr Sharma said.

The Secretary-General said he was deeply distressed by the worsening situation in Sri Lanka, including the recent reports of shelling of hospitals. He called for the plight of civilians caught in the crossfire to be addressed immediately and effectively. “I call on all concerned to respect the rights of civilians and allow the tens of thousands of trapped civilians to evacuate to safety,” said Mr Sharma.

“The LTTE must immediately stop the deplorable use of civilians as human shields, allow them to move to safety and lay down their arms.”

“The Sri Lankan Government should maintain its stated commitment not to engage in combat operations involving heavy weaponry in the conflict zone.”

Mr Sharma reaffirmed the Commonwealth’s firm belief that a durable peace in Sri Lanka can only be built on respect for the rights of civilians and reconciliation between all affected communities on a sustainable basis.¹⁴⁴

3 The Sri Lankan Military: An overview

Since 2006 the Sri Lankan military has undergone a major transformation in terms both of its size and its capabilities. After two decades of mixed fortunes, this has contributed greatly to its ability to inflict an apparently decisive military defeat on the LTTE. This part of the paper provides an overview of the Sri Lankan military today and what its transformation has involved.

3.1 Structure of Decision Making

Under the Sri Lankan constitution the President is the Commander in Chief of the Armed Forces and has the sole authority to declare war and peace. Under the President, the formal chain of command includes the Prime Minister, the Minister of Defense, and the individual Service Chiefs. The Ministry of Defense is the highest level of military command and is responsible for executing defence policy. Operations are co-ordinated by the Joint Operations Command.

3.2 Military Capabilities

Strategic threats to the country are largely defined in terms of internal security, with insurgency by non-state actors considered the main threat to the nation’s future. From an external perspective, rivalry among the dominant global powers within the Indian Ocean, in particular India and China, is considered a much longer term threat, although its precise contours remain difficult to discern for the moment.

¹⁴⁴ See: <http://www.thecommonwealth.org/press/31555/34582/199776/150509srilankastatement.htm>

Manpower and Assets¹⁴⁵

Sri Lankan military capabilities are configured according to the overriding priority of internal security. Of 150,900 active Service personnel 78% are ground forces (117,900) while naval and air forces comprise 15,000 and 18,000 personnel respectively. In addition Sri Lanka has approximately 5,500 reserve forces which are divided more equitably between the three services (Army: 1,100; Navy: 2,400 and Air Force: 2,000 personnel).

The Army is largely structured upon the same principles as the British Army and consists of three armoured regiments, three armoured reconnaissance regiments, 33 infantry brigades, field artillery and air mobile forces, a Special Forces brigade and a Commando brigade. Forces are equipped with largely Soviet era, Russian and Chinese assets including main battle tanks, armoured infantry vehicles, artillery, and anti-tank and air defence systems. The Army also has one Seeker unmanned aerial vehicle, which is South African in origin. The majority of ground forces are deployed in the north and east of the country.

In contrast, air and naval forces are considerably smaller in size. The Navy consists largely of patrol and coastal combatants and amphibious landing craft and does not have any principal surface combatants or force projection capability. Forces are configured entirely for littoral protection. The Air Force has two squadrons of fighter/forward ground attack fast jet aircraft, which is thought to consist of 22 combat capable aircraft of largely Russian (MiG 27-M), Chinese (F-7) and Israeli (C-2 and C-7) origin; one squadron of transport aircraft, including a US-sourced C130K and three helicopter squadrons, one of which is an attack helicopter squadron with Russian Mi-24V and Mi-35P helicopters. The Air Force also possesses three Israeli-sourced UAVs (Searcher and Scout). The utilisation of the Air Force's squadron of Mig-27M aircraft against LTTE airstrips and underground complexes, the co-ordination with India of naval patrolling by Sri Lanka's extensive naval patrol fleet in order to cut the LTTE's supply of arms from Southeast Asia and counter the LTTE's fast naval attack units and suicide craft, and the deployment of the relatively recently acquired Israeli UAVs are regarded by many as important factors in creating the preconditions for the military victory of the Sri Lankan Government over the LTTE.¹⁴⁶

Sri Lanka's paramilitary forces are also sizeable, totalling 91,600 personnel including 30,400 reserves. Of those personnel 13,000 are Home Guard, 15,000 are National Guard, while 3,000 form a Special Task Force focused specifically on anti-guerrilla operations.

In comparison the LTTE were estimated by the IISS in early 2009 to have a force strength of approximately 5-6,000 personnel, equipped with mortars, artillery rockets, a few light aircraft (the Zlin 143 of Czech origin), US-sourced helicopters (the R44) and improvised naval attack craft, low-observable craft, semi-submersible craft and small transport vessels. However, the majority of that manpower and those capabilities are now believed to have been decimated since the beginning of 2009, prompting analysts to argue that any resurgence by the LTTE in the future will be accompanied by the

¹⁴⁵ Most statistics and assets information is taken from the International Institute for Strategic Studies, *Military Balance 2009*.

¹⁴⁶ See "The Tamil Tigers' last stand", *Strategic Comments*, March 2009 and an interview with Vice Admiral Wasantha Karannagoda, Commander of the Sri Lankan Navy in *Jane's Defence Weekly*, 22 April 2009

adoption of more traditional methods of counter insurgency and guerrilla warfare as opposed to conventional war-fighting.

Contributions to UN peacekeeping

Although the majority of Sri Lankan forces are deployed internally, Sri Lanka has also been a consistent contributor to UN peacekeeping operations around the world. As of 30 April 2009 1038 Sri Lankan forces were deployed on UN operations in the Democratic Republic of Congo, Liberia, Western Sahara, Sudan and Timor Leste. The majority of those forces, 958 personnel, were however deployed in Haiti as part of the UN stabilisation mission in the country, a commitment that has been maintained since 2004. At present Sri Lanka is the 23rd largest contributor to UN peacekeeping operations, ahead of the US and the UK, among others.¹⁴⁷

Major arms suppliers to Sri Lanka

Over the last few years the Sri Lankan military has substantially modernised its capabilities with the help of a range of countries that have been willing to sell equipment and services to it.¹⁴⁸ Although viewed from the Sri Lankan perspective as setting the military groundwork for decisive operations against the LTTE, rising levels of military assistance can also be partly understood in the context of ongoing regional power rivalries between China, Pakistan and India, including their attempts to exert influence in the Indian Ocean region.

China has been the biggest arms supplier to Sri Lanka since the 1990s, allegedly filling the gaps left by others in recent years. In 2007 a secret deal was agreed worth a reported \$37.6 million for the supply of Chinese ammunition and ordnance to the Sri Lankan military. China reportedly donated six F7 fighter aircraft in 2008.¹⁴⁹ Having dealt with China's North Industries Corporation until recently, the Sri Lankan Government is believed now to be co-operating with the Beijing-based Poly Technologies, which has been described as a "front company" for China's military industrial complex". Defence Minister Gotabaya Rajapakse also heads the Lanka Logistics and Technologies Company, which is the official partner of Poly Technologies. Another Chinese company apparently assisted in the provision of radar systems to better combat the LTTE's rudimentary airforce, which has now apparently been destroyed.¹⁵⁰ Some believe that the increase in levels of Chinese military assistance was a decisive factor in ending the military stalemate that had prevailed until 2008.¹⁵¹

In order to meet some of Sri Lanka's recent military requirements Russia is reported to have recently agreed the terms of a loan to Sri Lanka in order to allow the country to purchase an unspecified number of Russian transport helicopters, possibly the Mi-17,

¹⁴⁷ Monthly summaries of troop and police contributions to UN operations are provided by the United Nations and made available online at: <http://www.un.org/Depts/dpko/dpko/contributors/>

¹⁴⁸ For a brief discussion of UK and EU arms exports to Sri Lanka, see Part 3.4 of this paper.

¹⁴⁹ "China a major player in Sri Lanka war", *Hindustan Times*, 2 May 2009

¹⁵⁰ "Sri Lanka turns to Pakistan, China for military needs", *India News Online*, 11 June 2007. Available at: <http://news.indiamart.com/news-analysis/sri-lanka-turns-to-p-15837.html>

¹⁵¹ "Chinese billions in Sri Lanka fund battle against Tamil Tigers", *The Times*, 2 May 2009

and other weaponry.¹⁵² Sri Lanka is also understood to be in talks with Russia over the possible procurement of five MiG-29 aircraft in a deal worth approximately US \$75m.¹⁵³

Ukraine and Israel are also significant exporters of arms to Sri Lanka. For example, in 2007 Ukraine is believed to have sold four MiG-27s to Sri Lanka at a cost of \$9.8m, As stated above, Israel has supplied three UAVs in recent years.

In recent years, Pakistan is reported to have supplied offensive military equipment such as tanks, multi-barrel rocket launchers, rocket shells and mortars, as well as radio sets.¹⁵⁴ Pakistan has become an important source of reliable small arms and ammunition to the Sri Lankan military. In December 2007 Pakistan was reported to have donated a number of unspecified military technologies to the country and aid worth more than US \$80m with which to purchase military hardware. In January 2009 Sri Lanka and Pakistan also agreed to pursue enhanced defence co-operation across “all fields”, including military training, exercises, intelligence sharing and reportedly, further sales of military equipment.¹⁵⁵

The previous Indian Government, led by the Congress Party, refused to sign a Defence Co-operation Agreement which had been drafted with its Sri Lankan counterpart, in part because it needed the support of Tamil Nadu’s politicians as part of the governing coalition. Although there have been no officially-sanctioned sales of offensive military equipment to the Sri Lankan armed forces for some time, India has supplied fast attack craft, military radars, logistical equipment and servicing, spares, shared intelligence and provided training.¹⁵⁶ As already discussed, a recent increase in naval cooperation between the two countries is believed to have played an important role in restricting LTTE arms supplies via Tamil Nadu.¹⁵⁷ Over recent years, India has become increasingly nervous about the growing levels of military co-operation between Sri Lanka, China and Pakistan, which some Indian commentators believe has happened because India has failed to give Sri Lanka the military equipment it wants.¹⁵⁸

The US has been a significant exporter to the Sri Lankan military over the years, although the volumes are tiny when considered against total US arms sales. There was a marked increase in 2007, when equipment and services worth about \$21.5 million was sold. Much of the equipment purchased was intended to strengthen communications and command and control capability, both of which are important enablers for military operations.¹⁵⁹ In March 2008 the US announced the suspension of all export licences for military equipment and services to Sri Lanka, with the exception of some licences for

¹⁵² “Sri Lanka orders Russian helicopters in preparation for post-conflict era”, *Jane’s Defence Industry*, 18 May 2009

¹⁵³ Ibid

¹⁵⁴ “Sri Lanka’s SOS to Pakistan for urgent arms supplies”, *Indo-Asian News Service*, 2 April 2009. Available at: http://www.thaindian.com/newsportal/uncategorized/sri-lankas-sos-to-pakistan-for-urgent-arms-supplies_10033531.html

¹⁵⁵ “Pakistan vows to support Sri Lanka ‘in all fields’ of defence”, *Jane’s Defence Industry*, 20 January 2009

¹⁵⁶ ICG, “Sri Lanka’s return to war: Limiting the damage”, *Asia Report No. 146*, 20 February 2008, pp. 20

¹⁵⁷ “India, Pak rivals but they trained, helped us fight the Tigers”, *Indian Express*, 29 April 2009

¹⁵⁸ “Sri Lanka looks to Pakistan for military hardware”, *Boloji.com*, 3 February 2007. Available at: <http://www.boloji.com/plainspeak/067.htm>.

¹⁵⁹ For more detailed information on US arms sales to Sri Lanka, see: http://www.pmdtc.state.gov/reports/655_intro.html and: <http://www.dsca.osd.mil/programs/biz-ops/factsbook/FactsBook07.pdf>

technical data or equipment for maritime and air surveillance communications purposes. This limited embargo was imposed in response to concerns about human rights violations and is intended to remain in force until certain reforms are introduced, including the suspension of military personnel who have allegedly violated human rights, the provision of access to humanitarian organisations and journalists and consent for the establishment of a UN office to monitor human rights issues. For the foreseeable future those restrictions are considered likely to remain in place, although their impact has been regarded as insignificant, given Sri Lanka's burgeoning military relationships with other countries.

Finally, Iran's contribution may be on the increase. It has reportedly agreed to sell missile systems for the Sri Lankan air force, navy patrol boats and a small arms ammunition plant in an arms deal reported to be worth up to \$140.9m.¹⁶⁰

Among Sri Lanka's immediate procurement priorities for the future are fast attack craft and escort vessels, fighter aircraft, helicopters, missiles and other munitions, radars and spare parts for the air force's C-130 transport aircraft.¹⁶¹ Whether any of these priorities will be reviewed now that the LTTE has apparently been militarily defeated remains to be seen. The sustainability and wisdom of such an ambitious procurement programme, given the current global economic crisis, has been questioned by some commentators.

3.3 Defence budget

The Sri Lankan defence budget has risen significantly in the last few years from Lankan Rupees (LKR) 139bn in 2007 to LKR166bn in 2008; while in December 2008 the Sri Lankan parliament approved an unprecedented defence budget for 2009 of LKR177.1bn (US \$1.6bn), a rise of 6.4% on the previous year. Intended to assist "the armed forces' continuing offensive against the LTTE", LKR84.9bn of those funds for 2009 have been earmarked for the army, LKR20.5bn for the air force and LKR27.5bn for the navy. The remainder of those funds have been earmarked for the Sri Lankan police force. Across all three services approximately LKR15bn has been set aside for procurement.¹⁶²

The rate of increase in expenditure looks impressive. Yet, as many commentators have pointed out, further rises in the budget will be necessary if further modernisation is to be achieved, given that the impact of national inflation in Sri Lanka, which currently equates to about 20%, has reduced some of the impact of declared increases in defence expenditure to date.

3.4 Military relations with the UK and EU

From a military perspective relations between the UK and Sri Lanka are historically well established. Just prior to the granting of independence in 1948 the UK and Ceylon signed a Defence Agreement in November 1947 which set out a commitment by the two governments to:

give to each other such military assistance for the security of their territories, for defence against external aggression and for the protection of essential

¹⁶⁰ "While condemning Sri Lanka violence, EU still sells arms to government", *EUobserver.com*, 19 May 2009. Available at: <http://euobserver.com/13/28155?print=1>

¹⁶¹ "Sri Lanka navy gets \$250 million for 2009", *Jane's Navy International*, 5 December 2008

¹⁶² *Ibid*

communications as it may be in their mutual interest to provide. The Government of the United Kingdom may base such naval and air forces and maintain such land forces in Ceylon as may be required for these purposes, and as may be mutually agreed.¹⁶³

Apart from safeguarding British strategic interests the agreement also allowed British military advisers a significant role in developing the structure and composition of the post-independence military, a role which lasted until the mid-1950s and the end of the tenure of the first two Commanders of the Ceylon Army who were British Brigadiers: the Earl of Caithness and Sir Francis Smith Reid. The structure of the Sri Lankan military, and in particular the army, is thus based heavily upon the British Armed Forces, along with many of its customs and regulations. Despite its existence the treaty has never been invoked by either Government.

As a member of the Commonwealth Sri Lankan nationals are able to enlist in the British Armed Forces and as of 1 January 2009 there were ten Sri Lankan citizens serving in the British Army.¹⁶⁴ Eight members of the Sri Lankan armed forces have also been trained at the Royal Military Academy at Sandhurst between 1997 and 2008.¹⁶⁵

Arms Exports

Unlike the US, the UK and EU have not imposed any kind of embargo on the sale of military equipment to Sri Lanka. However, all export licences are assessed against the EU Consolidated Arms Export Licensing Criteria, which are now legally binding. Criterion two prohibits the export of items that may be used for internal repression or to countries where serious violations of human rights have been established; while criterion three prohibits the exports of goods that could provoke or prolong conflict in the country of destination.

In answer to a Parliamentary Question in February 2009 the FCO set out its current position on arms exports to Sri Lanka:

All applications for export licences to Sri Lanka are assessed on a case by case basis against the National and EU Arms Export Licensing Criteria, taking into account the circumstances at the time. The Government believe that a robust and transparent UK licensing regime is the best way to control the UK's strategic exports to all destinations. It is our view that the current situation in Sri Lanka would not be improved by the introduction of an embargo on defence equipment.

Since the abrogation of the ceasefire in January 2008 the UK has not issued any licences, either for lethal goods or for other military goods that we judge would prolong or aggravate the internal conflict in Sri Lanka.¹⁶⁶

During 2008 23 British export licences for items on the military list were granted for Sri Lanka, totalling approximately £4.1m and covering items such as sonar detection equipment, thermal imaging equipment, body armour and military communications

¹⁶³ United Nations Treaty Series No.1148. A copy of this treaty is available online at: http://untreaty.un.org/unts/1_60000/2/38/00003874.pdf

¹⁶⁴ HC Deb 11 May 2009, c606-8W

¹⁶⁵ HC Deb 29 February 2008, c2016-20W

¹⁶⁶ HC Deb 27 February 2009, c1207W

equipment. During that same period six licences for goods on the military list were refused, including for submachine guns and aircraft radar under criteria two and three. During 2007 21 export licences were approved with a value of £1m.¹⁶⁷

In its July 2008 report into arms exports, the Select Committee on Arms Export Controls expressed concern that the EU Code of Conduct was being applied inconsistently in relation to Sri Lanka by different EU Member States, after Slovakia reportedly exported 10,000 122mm rockets to the Sri Lankan government in April 2008.¹⁶⁸

A November 2008 EU report on arms exports named Bulgaria, the Czech Republic, Slovakia, the UK, France, Italy, Lithuania, the Netherlands and Poland as EU countries which had sold arms to Sri Lanka since the election of President Mahinda Rajapakse in November 2005. The total value of the export licences issued by EU countries in 2007 was €4.09m.¹⁶⁹

In June 2009 it was reported that some MPs believed that the UK Government, along with its EU counterparts, should have reviewed arms sales to Sri Lanka as early as 2006, at which time the ceasefire agreement was already unravelling, rather than waiting until January 2008, when the agreement was formally terminated by the Sri Lankan Government. Malcolm Bruce MP, Chair of the International Development Committee, a member of the Select Committee on Arms Export Controls, and a member of the All Party Group that visited Sri Lanka in May 2009, was quoted as saying of UK arms sales since 2006: "With hindsight, Britain's sales did violate the EU Code of Conduct."¹⁷⁰

4 Aid & development in Sri Lanka

4.1 Main economic indicators

Sri Lanka had the 79th largest economy in the world in 2008, but the 115th largest on a per capita basis, based on International Monetary Fund (IMF) data for around 180 countries. Further headline economic indicators are shown in the table below.

Sri Lanka is classified as a 'lower middle income' by the World Bank, as its Gross National Income (GNI) per capita surpassed the \$936 threshold to reach \$1,540 a year in 2007.¹⁷¹ Other countries in the region in the same income group include India and China, although Pakistan is classed as 'low income'. In 2002, 22.7% of the population lived below the national poverty line, compared with 25% in 1996 and 20% in 1991.¹⁷² Recent reports suggest this may have fallen to 15.2% by 2006/07.¹⁷³

¹⁶⁷ Copies of the Strategic Exports Annual reports are available [online](#).

¹⁶⁸ See: Committee on Arms Export Controls, *Scrutiny of Arms Export Control*, HC 254, Session 2007-08

¹⁶⁹ "While condemning Sri Lanka violence, EU still sells arms to government", *EUobserver.com*, 19 May 2009. Available at: <http://euobserver.com/13/28155?print=1>. For the full text of the November 2008 EU report, see: <http://www.sipri.org/contents/armstrad/EU>

¹⁷⁰ "Britain sold weapons to Sri Lanka despite human rights abuse fears", *Times*, 2 June 2009

¹⁷¹ This category includes countries with GNI per capita between \$936 and \$3,705 a year (using World Bank 2007 GNI per capita rankings)

¹⁷² World Bank [World Development Indicators \(WDI\) Database](#) (public access version)

¹⁷³ UNDP, [Sri Lanka: MDG Progress page](#); See also Sri Lankan Government (Department of Census and Statistics, Ministry of Finance and Planning), [Poverty in Sri Lanka: Based on Household Income & Expenditure Survey 2006/07](#) and [summary statistics](#).

Table 1**Selected Economic Indicators: Sri Lanka**

		2001	2002	2003	2004	2005	2006	2007	2008
Gross Domestic Product (GDP)	(\$ billions, current prices)	16.3	17.1	18.9	20.7	24.4	28.3	32.3	39.6 (a)
GDP, constant prices	(annual % change)	-1.5	4.0	5.9	5.4	6.2	7.7	6.8	6.0
GDP per capita, current prices	(\$)	869	900	982	1,063	1,244	1,430	1,623	1,972
Inflation, consumer prices	(annual % change)	14.2	9.6	9.0	9.0	11.0	10.0	15.8	22.6
Current account balance	(\$ billions)	-0.2	-0.2	-0.1	-0.6	-0.6	-1.5	-1.4	-3.7
Current account balance	(% of GDP)	-1.1	-1.4	-0.4	-3.1	-2.5	-5.3	-4.3	-9.4

Note: (a) GDP per capita data estimates for 2008
Sources: IMF, *World Economic Outlook* database, April 2009

Sri Lanka saw strong economic growth averaging 5.1% between 2001 and 2008 (or 6% from 2002-2008, if the contraction in 2001 is excluded), with the country's economy increasing in size by almost 150% since 2001. The IMF forecasts that growth will fall to 2.2% in 2009 then 3.6% in 2010 before returning to 5.0% in 2011 (see table 2 below). GDP per capita was just under \$2,000 in 2008, but the IMF expects this to fall in 2009 and 2010 due to the global economic crisis, before returning to \$2,000 in 2012.

Inflation has increased from around 10% in 2006 to reach 22.6% in 2008. The IMF expects inflation to fall to 6.1% in 2009. Sri Lanka's current account has been in deficit throughout the period, peaking at 9.4% of GDP (\$3.7 billion) in 2008, with the deficit forecast to fall back to 2.7% of GDP in 2009, then 0.8% in 2010.

Table 2**Sri Lanka: IMF GDP, inflation & current account balance forecasts**

		2009	2010	2011	2012	2013	2014
GDP, constant prices	(annual % change)	2.2	3.6	5.0	5.5	5.5	5.5
GDP per capita, current prices	(\$)	1,903	1,776	1,895	2,022	2,165	2,319
Inflation, consumer prices	(annual % change)	6.1	12.6	10.8	9.1	7.8	7.0
Current account balance	(% of GDP)	-2.7	-0.8	-1.9	-2.3	-2.0	1.4

Sources: IMF, *World Economic Outlook* database, April 2009

The Economist Intelligence Unit (EIU) is slightly more optimistic in its projections than the IMF. It forecasts real GDP growth of 2.5% in 2009 then 5.7% in 2010, and notes that: "Shrinking external demand will be partly offset by the positive impact that improving security will have on the domestic economy."¹⁷⁴ The EIU is also more optimistic on the current account, expecting a deficit of 2% of GDP in 2009.

4.2 Sri Lanka in the global economic crisis

These forecasts show that the global economic crisis is expected to dramatically reduce economic growth in Sri Lanka from around 6% to just below 2% in 2009, although it is expected to return to 5.5% from 2012 onwards. A March 2009 IMF Survey article noted that Sri Lanka was considered as one of a few 'frontier markets' which before the crisis "had begun to get access to international financial markets to help finance their

¹⁷⁴ Economist Intelligence Unit, *Sri Lanka: Country Forecast*, 26 May 2009

budgets.” Sri Lanka was “hit” as markets “essentially shut down”, with “spreads on its international borrowing rise to essentially prohibitive levels” while it had seen “foreign investors exiting from their domestic bond markets.”¹⁷⁵

In a bid to maintain high growth rates, the Sri Lankan Government announced a 16 billion rupee (\$141 million) stimulus package in December 2008, the equivalent of 0.3% of the country’s GDP. The package:

includes cuts in energy prices and incentives for exporters. Exporters in certain sectors (tea, apparel, leather, rubber, among others) who maintain 2008 revenues and do not retrench workers will get a 5% incentive payment on their revenues. Reductions ranging from 5% to 15% in the expenses of Government officials were announced to save resources for the package.¹⁷⁶

However, the global economic crisis continues heavily to affect Sri Lanka. As the country co-ordinator for the Asian Development Bank noted in March 2009:

The economic situation is likely to worsen this year as effects of the crisis are felt through the main transmission mechanisms of trade, remittances, tourism, and external borrowing. Latest data suggest that an external demand slowdown in tea and apparel, which comprise bulk of Sri Lanka’s exports, is looming and the external demand shrinkage of apparel importers in the G7 is more likely to affect Sri Lanka compared to its neighbors.¹⁷⁷

While remittances were ‘holding up’, reduced Middle East economic activity was expected to lead to reduced demand for Sri Lankan workers, which will inevitably have an effect on remittance levels.¹⁷⁸

Sri Lanka’s foreign exchange reserves have been drained by the crisis. The EIU noted that “shortages of foreign exchange will dominate policy concerns in the early part of the forecast period and may result in liberalising reforms.”¹⁷⁹ By the end of March, reserves were around \$1.3 billion,¹⁸⁰ only enough for around a month’s worth of imports. A widely used benchmark is for a country to have sufficient reserves for three to four months’ worth of imports.

The reserves situation has led Sri Lanka to seek an International Monetary Fund (IMF) support package, estimated at around \$1.9 billion, focused on “rebuilding reserves, reducing the budget deficit and bringing about balance of payment sustainability.”¹⁸¹ The Asian Development Bank noted that an agreement “would provide support to reserves and have other positive effects such as of improving investor confidence and support for

¹⁷⁵ “[Poor Countries Need Extra Help to Get Through Global Crisis](#)”, *IMF Survey Online*, 5 March 2009

¹⁷⁶ UN Economic and Social Commission for Asia and the Pacific, [Economic and social survey of Asia and the Pacific 2009: addressing triple threats to development](#), 2009, p. 135

¹⁷⁷ ADB Special Session on the Global Financial Crisis, Colombo, Sri Lanka, [Opening Remarks by Richard Vokes](#) (Country Director, Sri Lanka Resident Mission), Asian Development Bank, 23 March 2009

¹⁷⁸ *Ibid*

¹⁷⁹ Economist Intelligence Unit, [Sri Lanka: Economic Data](#), 26 May 2009

¹⁸⁰ “Sri Lanka spurs its economy: Central-bank chief takes steps to boost growth as war ends”, *Wall Street Journal Asia*, 1 June 2009

¹⁸¹ “[Transcript of a Press Briefing by David Hawley, Senior Advisor](#)”, IMF External Relations Department, 12 March 2009

the exchange rate.”¹⁸² However, despite initially having been expected in April, a package has yet to be agreed.

In mid-May the *Financial Times* suggested that US Secretary of State, Hillary Clinton, had “threatened to block a crucial International Monetary Fund loan to Sri Lanka over the island’s intensifying conflict.”¹⁸³ It noted that IMF assistance “is usually allocated strictly according to economic criteria” and cited the IMF’s Managing Director, Dominique Strauss-Kahn, as being “non-committal” when asked about Sri Lanka, saying that the country was “a bit of a special situation”.¹⁸⁴ A 19 May *Times* article suggested that the IMF would “probably grant” the loan “because withholding funds would be counter-productive now that the war is over.”¹⁸⁵

An IMF transcript from 21 May suggested talks were at “an advanced stage”, and that it was expected that a programme would be presented to the IMF’s Executive Board for approval “in the coming weeks.”¹⁸⁶ It is expected that the loan would be a stand-by arrangement, rather than either an emergency shock or an Emergency Post Conflict Assistance loan.¹⁸⁷

The absence of an IMF deal, with reserves falling “to a critical low of less than six weeks of imports”, and amid concerns over Sri Lanka’s budget deficit of 8% of GDP in 2008, led the credit rating agency Standard & Poor to change its outlook for the country’s currency to B negative (from stable).¹⁸⁸ This could be a step towards downgrading of the county’s debt rating.¹⁸⁹

However, a peace dividend may result from the end of the internal conflict. On 1 June, the *Wall Street Journal (Asia)* noted that at the end of the conflict, \$100 million of government bonds had been purchased in five days.¹⁹⁰ It also cited Citigroup advice recommending Sri Lankan treasury bonds “on prospects that peace will improve political stability, reduce defence spending and spur foreign-capital inflows.”¹⁹¹

4.3 The Millennium Development Goals in Sri Lanka

The Millennium Declaration, agreed at the UN Millennium Summit in September 2000, includes targets aimed at reducing world poverty and improving lives by 2015. These aims were subsequently translated into a set of eight goals (the Millennium Development Goals, or MDGs) with over 40 indicators used to assess progress. July 2007 marked the half-way point of progress towards the 2015 deadline for meeting the MDGs.

¹⁸² Asian Development Bank, *Asian Development Outlook 2009: Rebalancing Asia’s Growth: Sri Lanka chapter*, March 2009

¹⁸³ “US threatens to block IMF aid to Sri Lanka”, *Financial Times*, 16 May 2009

¹⁸⁴ Ibid

¹⁸⁵ “Guerrilla tactics: how army turned the tables to win an ‘unwinnable’ war”, *The Times*, 19 May 2009

¹⁸⁶ “[Transcript of a Press Briefing by Caroline Atkinson, Director, External Relations](#)”, *IMF Transcript*, 21 May 2009

¹⁸⁷ Ibid

¹⁸⁸ “S&P Downgrades Sri Lankan Debt Outlook to Negative”, *Global Insight Daily Analysis (via Factiva)*, 22 May 2009

¹⁸⁹ Ibid

¹⁹⁰ “Sri Lanka spurs its economy: Central-bank chief takes steps to boost growth as war ends”, *Wall Street Journal Asia*, 1 June 2009

¹⁹¹ *ibid*

A UN Development Programme (UNDP) webpage on Sri Lanka's progress, based on national reporting, assesses that the country is "on track" to meet the goals concerning extreme poverty and hunger (MDG1), universal primary education (MDG2), reducing child mortality (MDG4), improving maternal health (MDG5), and combating HIV/Aids, malaria and other diseases (MDG6).¹⁹² On two of the remaining MDGs, the goals concerning gender equality (MDG3) and environmental sustainability (MDG7), it is stated on the UNDP webpage that they are "possible to achieve if some changes are made". On the remaining goal, developing a global partnership for development, it is stated that there is "insufficient information" to make a judgement. The table below summarises the progress made towards some of the MDG indicator targets by Sri Lanka. Because of data limitations not all MDGs, and not all indicators towards other MDGs, are shown.¹⁹³

Table 3

Sri Lanka: Progress towards Millennium Development Goals (MDGs)

GOAL 1: Eradicate extreme poverty and hunger	
Proportion of population below \$1 per day	No progress/regressing
GOAL 3: Promote gender equality and empower women	
Ratio of girls to boys in primary education	Early achiever
Ratio of girls to boys in secondary education	Early achiever
GOAL 4: Reduce child mortality	
Under-five mortality rate	Early achiever
Infant mortality rate	Early achiever
GOAL 6: Combat HIV/AIDS, malaria and other diseases	
HIV prevalence	On track
Tuberculosis: prevalence rate	Early achiever
Tuberculosis: death rate	Early achiever
GOAL 7: Ensure environmental sustainability	
Proportion of land covered by forest	No progress/regressing
Ratio of area protected to maintain biological diversity to surface area	Early achiever
Carbon dioxide emissions per capita and	No progress/regressing
Consumption of ozone depleting CFCs (OPD tons)	Early achiever
Proportion of population with access to an improved water source, urban	On track
Proportion of population with access to an improved water source, rural	On track
Proportion of population with access to an improved sanitation, urban	Early achiever
Proportion of population with access to an improved sanitation, rural	Early achiever

Source: ADB, Millennium Development Goals: Progress in Asia and the Pacific, 2007

<http://www.adb.org/Documents/Reports/MDG-Update-2007/MDG-Update-2007.pdf>

Early achiever - Has already met the target

On target - Target is expected to be met by 2015 if prevailing trends continue

Slow progress - Target is expected to be met, but after 2015

No progress/regressing - Slipping backwards or stagnating

¹⁹² UNDP, [Sri Lanka: MDG Progress page](#). A [World Bank analysis](#) is also available (select Sri Lanka from the drop down box).

¹⁹³ Based on Asian Development Bank, *Millennium Development Goals: Progress in Asia and the Pacific, 2007*, (Oct 2007), table on p33. The 2008 report, *A future within reach: Regional partnerships for the Millennium Development Goals in Asia and the Pacific*, is also available but has no updated country-level analyses.

The UNDP highlights household survey results suggesting that poverty had been reduced to 15.2% in 2006/07 from 22.7% in 2002, and “very close to the target of 13.1% set for the year 2015”, although significant regional disparities are noted.¹⁹⁴ Sri Lanka is also seen as “a success story” on maternal health (MDG5), through a “network of maternal services which work together with childcare services and government mid-wives”: the maternal mortality ratio fell from 0.92 per 1000 live births in 1990 to 0.47 in 2001, and the country is on target to meet the goal of 0.36 by 2015.¹⁹⁵

The UK Department for International Development (DFID) also highlights that on universal primary education (MDG2), 96.7% of children were enrolled in primary school (2004), while on gender equality (MDG3) equal numbers of boys and girls were in primary school (2005), but in the Sri Lanka parliament only 5.8% of its seats were held by women (2008).¹⁹⁶ It also notes that less than 0.1% of 15-49 year olds were living with HIV/AIDS (2007, MDG6), that 82% had access to safe, clean water and 86% to safe sanitation (2006, MDG 7).¹⁹⁷

A Sri Lankan Government assessment of MDG progress notes that it has “already reached” its goal on three of 31 indicators, is “most likely to reach” the goals for 18 indicators, “shows potential to reach” goals on four indicators, but is “unlikely to reach” the targets on the following six indicators:¹⁹⁸

- Share of poorest quintile (20%) in national consumption;
- Proportion of population below minimum level of dietary energy consumption;
- Share of women in wage employment in the non-agricultural sector;
- Proportion of seats held by women in national parliament;
- Carbon dioxide emissions per capita (metric tons); and
- Proportion of population using solid fuels.

4.4 UK aid

DFID’s [Sri Lanka page](#) states that its country programme was closed in March 2007, with the country now classified as ‘middle income’ by the World Bank. The table below gives the latest statistics on UK aid to Sri Lanka since 2003.¹⁹⁹

¹⁹⁴ UNDP, [Sri Lanka: MDG Progress page](#); See also Sri Lankan Government (Department of Census and Statistics, Ministry of Finance and Planning), [Poverty in Sri Lanka: Based on Household Income & Expenditure Survey 2006/07](#) and [summary statistics](#).

¹⁹⁵ UNDP, [Sri Lanka: MDG Progress page](#); See also Sri Lankan Government (Department of Census and Statistics, Ministry of Finance and Planning), [Poverty in Sri Lanka: Based on Household Income & Expenditure Survey 2006/07](#) and [summary statistics](#).

¹⁹⁶ DFID, [Sri Lanka: Key facts page](#). A [World Bank Sri Lanka MDG progress report](#) is also available.

¹⁹⁷ Ibid

¹⁹⁸ Sri Lankan Government (Department of Census & Statistics), [MDG Indicators of Sri Lanka: A mid Term Review 2008](#), summary on p10 and detailed assessment on pp8-9 (with latest data for each indicator), also includes regional assessments. See also Sri Lanka’s [MDG indicator webpage](#).

¹⁹⁹ For definitions of categories, see DFID, [Statistics on International Development 2007/08](#), [glossary](#)

Table 4**UK bilateral aid to Sri Lanka**

£000s

	Financial aid (a)	Technical Cooperation	Other Bilateral Aid (b)	Humanitarian Assistance	DFID Debt Relief	Total DFID Bilateral Programme	Total Bilateral Gross Public Expenditure (GPEX) (c)	UK Imputed Multilateral Shares (d)
2003/04	6.7	767.5	7,208.2	117.0	0.0	8,099.4	9,544.4	9,674.0
2004/05	6.3	329.0	5,972.5	250.0	0.0	6,557.9	7,216.9	9,183.0
2005/06	5.9	123.2	2,219.9	5,055.1	3,376.0	10,780.1	11,450.1	12,072.0
2006/07	5.4	35.2	2,954.6	1,334.5	1,580.0	5,909.6	8,671.6	10,091.0
2007/08	3.9	0.0	225.7	1,818.8	-231.7	1,816.7	3,707.6	6,290.0

Notes: (a) all 'Other aid', i.e. non-budget support aid; (b) includes voluntary organisations, multilateral agency special appeals, small grants, etc. (c) includes expenditure by other Government departments

Source: DFID, Statistics on International Development 2007/08, Table 14.3, <http://www.dfid.gov.uk/pubs/files/sid2008/tables-index.asp> and (b) imputed multilateral share for 2007/08 from HC Deb 23 Feb 2009 c270W

Total DFID bilateral programme aid to Sri Lanka peaked at £10.8 million in 2005/06, and has since fallen to £1.8 million (reflecting the closure of the Department's programme). This was almost entirely accounted for by humanitarian assistance. Total bilateral expenditure on Sri Lanka, which includes spending by non-DFID government departments, has fallen by over two-thirds, from £11.5 million in 2005/06 to £3.7 million. At the same time, The Government's estimate of the UK's share of multilateral assistance, which cannot be classified by country or sector, has also fallen, by around half from £12.1 million in 2005/06 to £6.3 million in 2007/08.²⁰⁰

Most DFID aid in Sri Lanka is now "distributed via other organisations", although DFID, the Foreign and Commonwealth Office and the Ministry of Defence continue to have a presence, working on peace-building and preventing conflict.²⁰¹ DFID states that the main challenges in Sri Lanka are:

- **Conflict resolution:** DFID has contributed £1.5 million to the joint DFID/FCO/MoD Peace Building Strategy, seconded staff to the High Commission (Colombo) to work in this area, contributed to the DFID/FCO/MoD Conflict Prevention Pool, and given £2.6 million for de-mining, £6.3 million to a UNICEF project, £2 million to civil society organisations, £3.5 million to Oxfam, and £3.3 million to Save the Children in Sri Lanka.
- **Poverty reduction:** DFID described the humanitarian situation as "acute", with 800,000 internally displaced persons. DFID gave £2.5 million in humanitarian assistance in October 2008 as the civil war escalated,²⁰² then announced a further

²⁰⁰ These imputations are based on the breakdown of Overseas Development Assistance reported by multilateral organisations to estimate the proportions spent in specific countries and sectors.

²⁰¹ "DFID: Working to reduce poverty in Sri Lanka: Major Challenges", DFID website (accessed 12 May 2009)

²⁰² £750,000 (via the Red Cross), £500,000 (UN High Commission for Refugees) for internally displaced persons, £250,000 (International Organisation of Migration) for humanitarian convoys, £250,000 (World Food Programme) and £750,000 for "rapid response including the setting up of the UN-managed Sri Lanka Emergency Response Fund.", see also "UK pledges humanitarian support for Sri Lanka", DFID news release, 14 October 2008

£2.5 million in humanitarian aid in January 2009.²⁰³ On 27 April 2009 DFID announced a further £2.5 million of humanitarian aid for displaced persons.²⁰⁴ DFID Minister, Michael Foster MP, said that this “will be allocated in the coming weeks. It is also vital that the displaced people are able to return to their homes at the earliest possible opportunity.”²⁰⁵ International Development Minister Gareth Thomas MP stated in a 12 May written answer that £1.96 million of the total of £7.5 million committed so far “remains on hand to respond rapidly to needs on the ground”.²⁰⁶ On 17 May, a further £5 million of DFID funding was announced to “go towards providing life saving humanitarian assistance such as emergency shelter, water, sanitation and medical care” then “to support displaced people to make a dignified and safe return to their homes.” This brought total humanitarian funding by DFID since October 2008 to £12.5 million.²⁰⁷

- **Reconstruction following the Boxing Day 2004 tsunami:** DFID gave £7 million direct assistance immediately, around £8.7 million to relief activities in Sri Lanka, and committed £45 million over ten years to cover the country’s World Bank debts (with the savings spent by the Sri Lankan government on reconstruction and poverty reduction). The debt relief programme was suspended in May 2007, after human rights problems stemming from the resumption of the conflict between the Government and the Tamil Tigers in 2006 did not improve after a six month period. These funds were then “re-programmed for humanitarian relief.”

In a written statement on the humanitarian situation on 21 May, DFID Minister Michael Foster said the priority was “to get assistance to those that need it now”, that “the humanitarian situation on the ground remains our priority and that we are fully focused on averting a humanitarian crisis.” The Minister also highlighted:

specific concerns which need to be addressed before humanitarian agencies can provide the support needed. Visa restrictions are still being imposed on agencies, including those with surgical teams on stand by to assist the thousands of war wounded who await life saving treatment. Practical restrictions are also still being imposed on entry to the camps and on the supply of basic relief items like water and sanitation equipment. We encourage the Government of Sri Lanka to do everything possible to allow humanitarian agencies to operate effectively on the ground.²⁰⁸

The Minister also referred to the recent approval of £500,000 for the International Organisation of Migration “to establish, equip and staff 10 emergency mobile health clinics in the camps in Vavunya, Mannar and Jaffna”, adding:

All DFID funding is provided directly to impartial international agencies such as the International Organisation for Migration and United Nations High Commissioner for Refugees. None of the UK’s assistance is provided directly to

²⁰³ “UK doubles humanitarian aid for Sri Lanka”, *DFID news release*, 30 January 2009

²⁰⁴ “New UK support for victims of Sri Lankan conflict”, *DFID news release*, 27 April 2009

²⁰⁵ Ibid

²⁰⁶ HC Deb 12 May 2009 c662W

²⁰⁷ “DFID announces further aid for Sri Lanka”, *DFID news release*, 17 May 2009

²⁰⁸ HC Deb 21 May 2009 cc86-7WS

the Government of Sri Lanka. DFID will continue to support the international agencies in their work.²⁰⁹

4.5 International & EC aid

The table below shows Organisation for Economic Co-operation and Development (OECD) data for total net Overseas Development Assistance (ODA) disbursements to Sri Lanka for the period 2001 to 2007 by selected donors:

Table 5

Total ODA to Sri Lanka by donor (selected), 2001-2007

\$ millions in real terms (2007 prices)

	2001	2002	2003	2004	2005	2006	2007	rank (2007) (a)
France	1.3	-4.1	-1.7	5.5	9.6	-0.8	6.5	15
Germany	50.7	11.9	20.6	32.5	84.8	71.0	21.3	8
Spain	0.7	4.2	8.1	14.7	10
Sweden	30.7	23.4	17.1	26.3	59.8	23.1	23.1	7
UK	24.5	11.7	12.6	19.8	16.0	7.7	11.5	12
EU DAC Total	135.6	73.9	78.7	115.8	324.0	188.8	117.6	
EC	12.3	20.2	19.9	17.4	18.5	27.4	66.1	1
EU DAC + EC Total	147.9	94.1	98.6	133.2	342.5	216.2	183.8	
Norway	29.7	37.9	43.5	41.7	79.9	41.5	44.1	3
United States	-11.3	-12.7	-9.6	-3.7	62.7	30.0	33.5	4
Japan	177.2	119.4	162.7	159.9	287.4	198.7	44.2	2
Korea	16.4	15.6	22.7	6.7	36.9	23.5	33.3	5
Canada	4.7	6.0	8.6	7.2	54.4	16.7	30.7	6
Australia	8.1	7.9	9.6	24.4	51.6	26.4	17.6	9
All Donors Total	425.0	458.8	803.8	547.8	1244.0	843.4	601.1	
UK % of total	5.8%	2.5%	1.6%	3.6%	1.3%	0.9%	1.9%	
UK % of DAC EU	18.1%	15.8%	16.0%	17.1%	4.9%	4.1%	9.8%	

Source: OECD, *Development Assistance Committee (DAC) Database*, table 2a

Note: Net disbursements in real terms using 2007 prices; (a) European Commission ranks highest

Total net ODA to Sri Lanka increased from \$425 million in 2001 to \$601 million in 2007 (in 2007 prices), a real terms increase of 41%. However, this compares with a recent peak of \$1.2 billion in 2005, which was almost double the level of disbursements in 2007.

EU Member States on the Development Assistance Committee (DAC) and the European Commission combined contributed over 30% (\$184 million) of the \$601 million total net ODA disbursements to Sri Lanka in 2007. The European Commission was the largest single donor in 2007, contributing 11% of the total and 36% of all aid from the EU, although it previously ranked only 6th in 2006 (with \$27 million). The second largest donor was Japan, followed by Norway, the US, Korea and Canada (all non-EU). The

²⁰⁹ HC Deb 21 May 2009 cc86-7WS

largest individual DAC EU Member State donor was Sweden (\$23.1 million). The UK was the 12th largest donor in 2007, with \$11.5 million net ODA disbursed, a 50% increase real terms increase on 2006 (when the UK disbursed \$7.7 million).

The European Commission has stated that €112 million will be given to Sri Lanka under the EU's Development Cooperation Instrument over the period 2007-2013, "with a focus on supporting the peace process and poverty reduction in the North and East."²¹⁰

The European Commission gave €19 million in humanitarian aid to Sri Lanka in 2008,²¹¹ including €2 million announced in December 2008 for internally displaced persons,²¹² and gave a further €3 million to the International Committee of the Red Cross in March 2009.²¹³

For up-to-date information on the on the humanitarian relief situation in Sri Lanka, including the latest from NGOs and international organisations operating there, see the [ReliefWeb pages on Sri Lanka](#).²¹⁴ The UN Office for the Coordination of Humanitarian Affairs (OCHA) Sri Lanka site can be found at www.humanitarianinfo.org/srilanka_hpsl.

4.6 Loss of EU trade preferences?

The EU has granted Sri Lanka additional trade preferences under its Generalised System of Preferences (GSP). The GSP offers unilateral reductions in import tariffs to a large number of developing countries. It also includes additional preferences, known as a 'special incentive arrangement for sustainable development and good governance', to a group of 16 countries that have ratified and implemented a series of international conventions and agreements, known as 'GSP plus'.²¹⁵

Amid growing concerns about human rights abuses, in October 2008 the European Commission announced it would investigate Sri Lanka for non-implementation of agreements upon which GSP plus is dependent. Specifically, concerns were expressed that Sri Lanka's UN treaty obligations under the International Covenant on Civil and Political Rights, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child were not "being effectively implemented".²¹⁶ The Sri Lankan Government has to date refused a European Commission investigation mission entry to the country.

The investigation called for submissions by 18 February 2009. However, no further information is available from the European Commission Directorate General Trade website. In a written answer on 1 June 2009, Michael Foster said:

²¹⁰ EC External Relations [Sri Lanka page](#)

²¹¹ European Commission, *Humanitarian Aid: Budget Report 2008*, 2009, [annex table I.A](#)

²¹² "[European Commission condemns killing of aid worker – and announces additional aid package](#)", *European Commission press release* IP/08/1895, 5 December 2008

²¹³ "[Louis Michel announces additional support of in view of the unfolding humanitarian catastrophe in Sri Lanka](#)", *European Commission press release* IP/09/444, 19 March 2009

²¹⁴ <http://www.reliefweb.int/rw/dbc.nsf/doc104?OpenForm&rc=3&cc=lka>

²¹⁵ For more detail on the EU's GSP, see the House of Commons Library Standard Note, "EU trade preferences for developing countries: the GSP & 'Everything But Arms'" ([SN/EP/3369](#))

²¹⁶ "[EU Generalised System of Preferences: Commission initiates investigation on the effective implementation of certain human rights conventions in Sri Lanka](#)", European Commission release (undated), see also "[Current developments in Sri Lanka and the question of future trade preferences granted by the European Union to Sri Lanka](#)", *European Commission release*, 10 July 2008

Along with other member states the United Kingdom continues to support the EU Commission's decision to initiate an investigation into Sri Lanka's effective implementation of the GSP+ conventions. We continue to press the Commission for a speedy conclusion.²¹⁷

An HM Revenue & Customs note states:

[...] while the investigations are ongoing the countries continue to receive preferential access, but depending on the findings of the investigations they could be temporarily withdrawn from the GSP+ arrangements sometime in 2010, which will mean that only standard GSP rates of duty will be available for their goods.²¹⁸

A Price Waterhouse Cooper note states that, should GSP plus be withdrawn:

[...] then eligible goods will be subject to the normal rate of GSP; they will not, as has been reported elsewhere, lose GSP entirely. Meanwhile, we understand that the GSP+ investigation into Sri Lanka is likely to take the full permitted timeframe. If this is the case and if the outcome was the withdrawal of GSP+ this would take effect in mid-2010. But it is too early to predict the outcome.²¹⁹

A 2009 study from the European Parliament Policy Department on business and human rights states that the results of the Sri Lanka GSP investigation, and a similar investigation regarding El Salvador, "will hopefully provide useful indicators of possible progress".²²⁰

5 Future prospects

5.1 Military victory – reality or mirage?

The vast majority of experts – not to mention many of the foreign governments engaged with developments in Sri Lanka – long argued that the very idea of a total military victory by the Sri Lankan military was a chimera.²²¹ Most analysis was predicated upon a presumption that the LTTE would retain significant bargaining power – the main question was how much it would have. The dominant perspective may, on this occasion, turn out to have been wrong. The death of the autocratic LTTE leader Vellupillai Prabhakaran, around whom there was a well-established 'cult of personality', and most, if not all, of its other leaders, could prove to be a mortal blow to the organisation. Nonetheless, despite the current confident declarations by the Sri Lankan Government, views on whether it has completely destroyed the LTTE as a military force continue to differ.

²¹⁷ HC Deb 1 June 2009 c75W

²¹⁸ "Tariff Preference: Urgent update on the GSP plus benefits", *HMRC note* JCCC CIP (08) 90

²¹⁹ PWC, *European Customs & Trade Communiqué*, Jan 2009, p4

²²⁰ DG External Policies Policy Department, Study: "Business & Human Rights In EU External Relations: Making The EU a Leader at Home & Internationally", April 2009, para 71

²²¹ Typical was Gareth Evans' assessment in 2007 that "it is highly unlikely that the Tigers can be defeated militarily." This author has on several occasions taken a similar view. See Gareth Evans, "The limits of state sovereignty: The Responsibility to Protect in the 21st Century", Eighth Neelam Tiruchelvam Memorial Lecture, Colombo, 29 July 2007. Available at:

<http://www.crisisgroup.org/home/index.cfm?id=4967>

For a more recent assessment along the same lines, see "The conflict in Sri Lanka: A cornered Tiger is still deadly", *Stratfor Security Weekly*, 6 May 2009. Available at: <http://www.stratfor.com>

If the LTTE's military defeat has not extended to the complete destruction of the organisation, armed fragments could resurface in time, perhaps under new names to circumvent international bans, and return to a combination of terrorism and guerrilla warfare, which is how the insurgency began in the early 1980s. There are claims that this has already been happening in the east, following its defeat there in 2007, although the debacle that has now occurred in the north could conceivably disrupt this trend. It also remains to be seen whether there is any residual LTTE capacity to deploy suicide bombers in the capital, Colombo.

Paradoxically, the LTTE's support within the Sri Lankan Tamil diaspora, which numbers 600,000-800,000, may well have been strengthened by recent events, and the level of funds available for armed opposition to the Sri Lankan Government, which had been declining, could increase again in future.²²² It remains to be seen if the tithe system run by the LTTE across large parts of the Tamil diaspora will continue to function, but it may well. Indeed, some observers close to the Sri Lankan Government are warning that the defeat of the LTTE within the country could mean that, if it remains intact in some form, it will now intensify its military and political efforts within the international arena. Those who take this view argue that the Sri Lankan Government should prepare urgently for this next phase of the conflict.²²³ However, there is also the possibility of fragmentation and demoralisation within the Tamil diaspora, once the anger and adrenalin generated by the current crisis dissipates.

In summary, the jury remains out as to how far the LTTE has completely imploded, whether it might be revived and, if so, in what form. However, the vast majority of independent observers agree that, while the extreme Tamil nationalism espoused by the LTTE was in many ways as exclusivist and chauvinist as that expressed by Sinhalese 'ultra-nationalists', the grievances which helped to create it remain fundamentally unaddressed. Some of those who hold this view warn that there is a real danger that, while highly successful for now, the recent campaign by the Sri Lankan military could lay the seeds for the next generation of Tamil militants, whether under the flag of the LTTE or through new armed groups that are yet to emerge. Some of those militants may now decide to disavow military methods, but others will not. All this raises the possibility that progress on reconstruction and political reform for the north and east could turn out to be slow and halting, or even fail.

It is clear that future initiatives in the sphere of political and constitutional reform will not formally involve a role for the LTTE as an organisation. The Government has said as much. The LTTE's apparent military defeat could expand the space for a wider range of Tamil political voices, which in turn could greatly assist reform efforts. But many observers insist that a political settlement is highly unlikely to be durable, unpalatable though this may be for many supporters of the Sri Lankan Government, unless it involves those have been sympathetic to – or, indeed, part of – the LTTE.

One analyst wrote in 2007:

²²² For an interesting discussion of this issue, see: N. Rajasingham, "The Tamil diaspora: Solidarities and realities", *OpenDemocracy.net*, 17 April 2009. Available at: <http://www.opendemocracy.net/article/the-tamil-diaspora-solidarities-and-realities>

²²³ D. Jayatilleka, "Fighting the globalised Tiger", Sri Lankan Ministry of Defence, Public Security, Law and Order website, 11 May 2009. Available at: http://www.defence.lk/new.asp?fname=20090511_02

To win the war overall it must do more than merely regain the monopoly of force it has so unequivocally lost; it must also gain sufficient legitimacy and trust among the Tamil population to be seen as liberators, and the government is clearly much further from this goal than any other. There has yet to be any discernible redress to the state crisis of legitimacy that gave rise to the conflict in the first place.²²⁴

5.2 Will genuine political and constitutional reform happen?

Any prospect of an independent Tamil state, Tamil Eelam, appears to have disappeared. The LTTE has been eclipsed as a conventional military force and most, if not all, of its leadership appears to have been eliminated. For these reasons, some analysts argue that this moment represents a golden opportunity for meaningful political and constitutional reform in Sri Lanka. However, as already demonstrated, numerous previous opportunities have been missed. One commentator, writing in 1984 about the ruling Sinhalese elite of the time, stated:

Because of the reasons I mentioned earlier, the factional infighting, and also the inability to accommodate dissent, the inability to be flexible, and because it is perceived that any devolution of power would be construed as a sign of weakness – it is impossible for the regime to come up with a reform component of a counter-insurgency strategy.²²⁵

Only time will tell whether, 25 years on, these words remain prescient or whether they can be consigned to history in the years ahead.

The Sri Lankan Government has certainly indicated some awareness of the continuing need for political and constitutional reform to address the grievances that have underpinned the 25-year conflict. It has pledged that, now that military victory has been secured, it will turn its attention to establishing genuine political autonomy in the north and east. President Rajapakse has declared that: “It is now the time to win over the hearts of the Tamil people.”²²⁶

At first sight President Rajapakse seems to be in a position of considerable strength and, with the LTTE marginalised if not completely eliminated, may be in a position to persuade Sinhalese hardliners that a genuine autonomy deal need no longer be a ‘trojan horse’ for Tamil separatism. But the Sinhalese nationalists on whom Rajapakse relies for his political base continue to reject the very legitimacy of Tamil nationalism and proposals for genuine autonomy. His freedom of manoeuvre is less than it seems.

In the short-term, the Government – in which the position of the President’s party, the Sri Lanka Freedom Party (SLFP) – is decidedly shaky, will need to win an election in 2010 at the latest, although there is talk of the date being brought forward into 2009. Key allies, the People’s Liberation Army (JVP) and National Heritage Party (JHU), an influential party of nationalist Buddhist monks, still oppose meaningful autonomy for the north and east. There is much evidence to suggest that a minimalist approach is Rajapakse’s preference in any case. He makes decisions with the support of a small

²²⁴ C. Smith, “The Eelam endgame?”, *International Affairs*, 83, 1, 2007, p. 84

²²⁵ D. Jayatileka, “The ethnic conflict and the crisis in the south”, in Committee for Rational Development, *Sri Lanka: The ethnic conflict* (New Delhi, 1984), p. 233

²²⁶ “Time to win over Tamil hearts”, *Hindu*, 4 June 2009

coterie in which relatives and military figures are influential. He appears to have marginalised more moderate voices within the SLFP. His style of government has been characterised as highly ‘personalised’ and autocratic.²²⁷

Many commentators argue that the prospects for progress on genuine autonomy for the north and east will be greatly enhanced if there is a parallel process of re-democratisation for Sri Lanka as a whole. For example, critics will be looking to see whether President Rajapakse finally honours the 2001 17th Amendment to the Constitution, which he has successfully by-passed since taking office in November 2005. The 17th Amendment provides for the establishment of independent commissions, appointed by a Constitutional Council, with the power to appoint, transfer, promote and discipline senior public officials. Previously, these powers had rested with the president. Despite domestic and international criticism, Rajapakse has refused to allow the appointment of new members of the Constitutional Council and so has prevented the establishment or operation of the commissions. His past track-record suggests that he will be reluctant to change course, particularly if the security situation fails to stabilise to his satisfaction. Indeed, a certain level of insecurity, whether real or perceived, may provide a useful alibi for a lack of political or constitutional reform and the continued suppression of dissent. Some analysts worry that the Sri Lankan Government, having defeated the LTTE, has been emboldened and has launched a campaign to suppress all remaining dissent, including on wider issues such as official corruption. On 1 June, another journalist was abducted and badly beaten by a vigilante group.²²⁸

In sum, there are fears that electoral and political exigencies may perpetuate a limited approach to political and constitutional reform by Rajapakse. However, it is within the bounds of possibility that, if he can be persuaded that it is in his interest to do so, Rajapakse might seek to break with his current allies – for example, by forging an alliance with the United National Party (UNP), although that party has been internally divided recently and its popular support in decline. In addition, given the level of mutual antipathy between the UNP and the SLFP, there will be many in both parties who will fight such a move.

Much of the debate on autonomy centres, as it has done for over twenty years, on whether the 1987 13th Amendment to the Constitution – which, subject to popular approval by referendum, provides for the creation of an autonomous, single North-Eastern Province in Sri Lanka – will finally be fully implemented. However, numerous analysts have argued that the 13th Amendment is an inherently flawed basis for a credible and durable deal on autonomy, agreed only reluctantly by the government of the time. Certainly, many on the Tamil side, including the Tamil National Alliance (TNA), whose foes claim is the ‘political wing’ of the LTTE, argue that there is a pressing need to go beyond the 13th Amendment in important respects.²²⁹ Rohan Edrisinha, writing in 1998, summarised what he saw as the weaknesses of the 13th Amendment:

²²⁷ ICG, “Sri Lanka: Sinhala nationalism and the elusive southern consensus”, *Asia Report No. 141*, November 2007, p. 21

²²⁸ “Sri Lankan journalist assaulted”, *BBC News Online*, 1 January 2009

²²⁹ R. Edrisinha, “Trying times: Constitutional attempts to resolve armed conflict in Sri Lanka”, Conciliation Resources, August 1998. Available at: <http://www.c-r.org/our-work/accord/sri-lanka/trying-times.php>. See also R. Nair, “Winning the peace in Sri Lanka”, *TransCurrents*, 15 May 2009. Available at: http://transcurrents.com/tc/2009/05/winning_the_peace_in_sri_lanka.html. See also: “TNA rejects 13th Amendment, says it’s outdated”, *Tamilnational.com*, 22 May 2009

- The exact division of power between the centre and the provinces is not made clear
- The powers of provincial councils can be controlled, reduced or abolished by the central government acting unilaterally
- There is no subject over which a provincial council can claim to exercise exclusive competence or jurisdiction²³⁰

He added:

The 13th amendment and Provincial Councils Act of 1987 established the north and east as one province, subject to ratification by referendum when circumstances permitted. As this referendum has not yet taken place, the constitutional status of the east remains obscure. While successive parliamentary committees since 1987 have sought to clear up the confusion, the only clarity thus far achieved is that all Tamil parties, not just the LTTE, are totally opposed to any northeast 'demerger'.²³¹

It seems clear that many Tamils will remain estranged from the provincial structure of government unless, at a minimum, another interim joint North-East Provincial Council – like the one which operated for a while after 1987 – is established, with a referendum to be held in future over whether the two regions should be permanently merged. Many analysts have argued about the degree to which the LTTE-controlled areas of the north and east since the late 1990s constituted a credible “emerging state formation”.²³² Although education and health institutions of the Sri Lankan state often continued to operate in these areas, a significant proportion of the Tamil population has experienced a significant degree of ‘self-governance’, albeit of a highly repressive variety, within a political structure, ‘Tamil Eelam’, which explicitly linked the north and east together ideologically. It is possible that this experience may have further strengthened expectations that the north and east should be considered a single region.

However, Sinhalese nationalists and Sri Lankan Muslims, at least one-third of whom live in the north and east, would very likely oppose a joint North-East Provincial Council, interim or not, just as they did previously. In addition, the recent emergence of an Eastern Provincial Council dominated by anti-LTTE Tamil politicians has divided Tamil sentiment on the issue. The Government may seek to play on this development. Certainly, it has so far given no indication that it is prepared to move towards a new joint North-East Provincial Council.

In some eyes, one positive indicator of government commitment to genuine autonomy arrangements would be a broadening of the All Party Representative Committee (APRC), which was established in 2006 to come up with new proposals on autonomy that might potentially go beyond the 1987 13th Amendment. Specifically, there have been calls for the involvement of the TNA and UNP, neither of which has been involved in its

²³⁰ Edrisinha, “Trying times”

²³¹ Edrisinha, “Trying times”

²³² See: K. Stokke, “Building the Tamil Eelam state: Emerging state institutions and forms of governance in LTTE-controlled areas in Sri Lanka”, *Third World Quarterly*, Vol. 27, No. 6, 2006; M. Muttukrishna Sarvananathan, “In pursuit of a mythical state of Tamil Eelam: A rejoinder to Kristian Stokke”, *Third World Quarterly*, Vol. 28, No. 6, 2007

substantive deliberations.²³³ Although the APRC has been dismissed as a failure by some analysts, others point to a leaked December 2006 ‘majority report’ which included a range of ambitious proposals for devolution, power sharing and the protection of minority rights.²³⁴ However, the ambition of these proposals provoked considerably weaker counter-proposals from the Government itself during 2007, involving the re-assertion of Sri Lanka as a ‘unitary state’. According to observers, this issue is a “deal breaker for all Tamil parties, even those aligned with the Government”.²³⁵ Muslim leaders have also consistently rejected this formulation. Over the last 18 months, although it has not yet produced its final report, the APRC has been sidelined. Many now consider it irredeemably discredited.²³⁶

The autonomy arrangements that operate in other countries could, as some argue, help to frame a solution to Sri Lanka’s problem. Switzerland, to which Sri Lanka has (rather implausibly) been compared in the past, and Canada are two countries that have been often cited.²³⁷ However, the experience of other countries may have limited value, given that the very concept of federalism is so disliked by many Sinhalese politicians. The US Ambassador to Sri Lanka, Robert Blake, and other international figures argued in 2007 that a new, less provocative, lexicon is required, perhaps with the term ‘federalism’ disavowed in exchange for a repudiation of the idea of Sri Lanka as a ‘unitary state’, which most Tamils reject equally forcefully.²³⁸

The International Crisis Group asserted in 2007:

The aim of all those committed to effective constitutional reform should be to offer the president a real choice: move away from the unitary state concept or abandon any claim to be pursuing a political solution. A non-unitary state is the only viable basis for resolving the conflict politically. Nothing less has a chance of strengthening the hand of the non-LTTE parties and opening up a new, broader political agenda endorsed by Muslim, Tamil, and Sinhala parties for reform of the state. Rajapaksa must be challenged to choose between a political solution and a Sinhala nationalist attachment to the unitary state. It is simply not possible to have both.²³⁹

However, it added that peace is also unlikely to be achievable until some of the grievances underpinning Sinhalese nationalism are more explicitly addressed:

There is considerable truth in the Sinhala nationalist critique of the 2002 ceasefire agreement, the peace process and LTTE violations. A new peace process must directly and convincingly address Sinhalese fears and sense of insecurity. To be

²³³ An attempt between the SLFP and UNP in 2006-07 to reach a consensus on the way forward for the peace process quickly foundered.

²³⁴ ICG, “Sri Lanka: Sinhala nationalism and the elusive southern consensus”, *Asia Report No. 141*, November 2007, p. 24

²³⁵ *Ibid.*, p. 25

²³⁶ See also R. Edrisinha, “The APRC process: From hope to despair”, *Groundviews*, 3 February 2008. Available at: <http://www.groundviews.org/2008/02/03/the-aprc-process-from-hope-to-despair/>

²³⁷ See T. Schaffer and Nisala Rodrigo, “Sri Lanka: Finding the start of a long road”, *South Asia Monitor*, Centre for Strategic and International Studies, January 2003

²³⁸ ICG, “Sri Lanka: Sinhala nationalism and the elusive southern consensus”, *Asia Report No. 141*, November 2007, p. 26

²³⁹ *Ibid.*, p. 27

sustainable, the next attempt at peace also needs to be conceptualised and presented as part of a larger project of state reform and good governance from which all communities benefit, not merely a deal in which the Sinhalese trade territory for an end of war and terror.²⁴⁰

It is worth noting that, since 2007, when the LTTE was defeated there, the Sri Lankan Government has had a relatively free hand to move forward with devolution and development in the east. There has been some progress. There is an “Eastern Reawakening” development and reconstruction programme whose cost is estimated at \$1.8 billion over four years. Most donors have gradually come on board, particularly following the holding of elections to the Eastern Provincial Council in May 2008. Resettlement of the internally displaced has also proceeded rapidly. But levels of insecurity have risen again since mid-2008, not least because of clashes between different factions of the TMVP, which were all formerly in the LTTE, and delays in implementing programmes of demobilisation and reintegration of their ex-fighters. Colonel Karuna’s faction has now joined up with the SLFP and Karuna has been made the Minister of National Integration and Reconciliation in the Government. The only thing on which the different TMVP factions appear to agree is that both have the right to engage (as the LTTE did) in “extortion, theft and fraud”.²⁴¹ As already noted, LTTE attacks have also continued in the region. Its presence in the east has not been totally eliminated, although the impact of the organisation’s apparent recent demise in the north remains to be seen.

Relations between Tamils and Muslims in the east remain characterised by profound mistrust, despite the fact that the ruling group is a TMVP-Muslim coalition led by Chief Minister Pillayan, a former LTTE child soldier and an estranged ex-deputy to Colonel Karuna. A recent study of how post-Tsunami humanitarian aid has been delivered in one eastern district, Ampara, argues that it “led to a widening of the ethnic divide, increasing inequalities and chaos, and thereby making the poor and marginalised communities even poorer and more marginalised”²⁴² Overall, the biggest losers were coastal Muslim communities.²⁴³ There are a small number of Muslim armed groups in the east, but while there have been and remain fears among some analysts that Sri Lanka’s Muslims might in future be tempted to move towards armed struggle based on a radical Islamist ideology, there are few signs of that happening.²⁴⁴

There has not yet been any real devolution to the Eastern Provincial Council along the lines provided for by the 13th Amendment. Calls by some Muslims for their own autonomous areas in the east are not viewed positively by the present Government.²⁴⁵ Powers over land and taxation continue to reside with the central government, which provides all of the Council’s funding. A ‘centralised’ mindset continues to dominate in practice.

²⁴⁰ ICG, “Sri Lanka: Sinhala nationalism and the elusive southern consensus”, *Asia Report No. 141*, November 2007, p. 28

²⁴¹ ICG, “Development assistance and conflict in Sri Lanka: Lessons from the Eastern Province”, *Asia Report No. 165*, 16 April 2009, pp. 15-17

²⁴² M.W. Amarasiri de Silva, “Ethnicity, politics and inequality: Post-Tsunami humanitarian aid delivery in Ampara District, Sri Lanka”, *Disasters*, 33(2), 2009, pp. 253-54

²⁴³ Ibid

²⁴⁴ ICG, “Sri Lanka’s Muslims: Caught in the crossfire”, *Asia Report No. 134*, 29 May 2007

²⁴⁵ Ibid

To sum up, the extent of internal divisions within the east between Sinhalese, Tamils and Muslims could prevent genuine autonomy moves for some time to come, which in turn may further strengthen the cause of those Tamils who have always argued that Sinhalese-dominated central governments and their Tamil ‘stooges’ simply cannot be trusted to deliver on their promises.²⁴⁶

The International Crisis Group has argued that:

The east today has all the ingredients for continued insurgency and counter-insurgency: a virtually powerless provincial council, a divided TMVP, insecure Muslims, alienated and restless Tamils, growing divisions within ethnic communities and political parties, and continued violent repression of dissent.²⁴⁷

What are the prospects for a wholly or largely ‘post-LTTE north’, should it emerge? The more ethnically homogenous nature of the local population – Tamils make up the vast majority – might in theory assist development and reconstruction efforts and help to create a more cohesive Provincial Council. The Sri Lankan Government has said that it wants to hold municipal and provincial elections in the north as soon as possible. The TNA and other Tamil parties that have remained engaged with peaceful politics, such as the TULF, could, if allowed to operate freely, perform well in future elections to a Northern Provincial Council. However, the Government may be tempted to sponsor its own favoured candidates, such as Douglas Devananda of the Eelam People’s Democratic Party, an ex-LTTE member who is currently Minister of Social Services, and give them an unfair electoral advantage. Critics argue that it has already happened in the east with the TMVP. Accordingly, it has been argued that rushed elections could do more harm than good.

The ICG has claimed that:

The Northern Province, devastated by years of war and economic marginalisation, will need even more reconstruction assistance than has the east. Yet the provision of humanitarian aid and reconstruction by itself are not enough. This is the central lesson from the east. The problems the people of the north and the east have been enduring for decades are ultimately political in nature. They require a careful, democratic and inclusive political response [...] Provincial or parliamentary elections that take place while the north is under de facto military occupation, many voters are still in military-controlled camps for the displaced, and pro-government political parties are allowed to compete while retaining their armed cadres, cannot be considered democratic.²⁴⁸

5.3 What role for the international community?

What will be the role of the international community in supporting possible future negotiations on political and constitutional reform and in funding the reconstruction of the north and east? With regard to future negotiations on political and constitutional reform, President Rajapakse has pointedly spoken about his preference for ‘home-grown’

²⁴⁶ ICG, “Development assistance and conflict in Sri Lanka: Lessons from the Eastern Province”, Asia Report No. 165, 16 April 2009, pp. 1-6

²⁴⁷ Ibid., p. 6

²⁴⁸ Ibid., pp. 28-29

solutions. Relations with several western governments, including the UK, have undoubtedly been damaged in the short-term. If the EU and others continue to call for an independent war crimes investigation, these relations are unlikely to improve quickly. This may create even more opportunities for China, which is now reportedly Sri Lanka's largest donor, and other countries less concerned with human rights. On 3 June President Rajapakse thanked Asian, African and Arab allies for their support in defeating the LTTE.²⁴⁹

Having been accused by both of the main parties to the conflict of favouring the other in the years following the 2002 ceasefire agreement that it helped to broker, Norway is highly unlikely to be invited to play a lead-brokering role again, despite the fact that it has valuable experience which could be drawn upon. The new Indian Government could play an important role in promoting revived autonomy moves, although a residual nervousness remains – not surprising, given how the last major Indian intervention in Sri Lankan politics ended – that may limit its involvement. In the unlikely event that they are asked, the US and EU remain willing to engage constructively with a political and constitutional reform agenda, although it remains open to question how much political capital the new US administration will be willing to expend on Sri Lanka. Japan's stance is likely to remain largely passive.

Relations between the US and EU and the Sri Lankan Government, while relatively poor at present, are not necessarily broken beyond repair. There were no overt moves by either to impose new sanctions against the Sri Lankan Government, as some were calling for. There was talk that the Sri Lankan Government's conduct might lead to a review of its participation in the EU scheme known as the 'Generalised System of Preferences Plus', which has significantly benefited the Sri Lankan garment industry. Eligibility to take part is supposed to be dependent on Sri Lanka's human rights performance.²⁵⁰ The Sri Lankan Government has been refusing entry to a European Commission mission to look into the issue since October 2008. It is unclear how far the EU will push on this issue over the coming year.

The Sri Lankan Government also accused the US and UK, amongst others, of putting pressure on the International Monetary Fund (IMF) during April and May not to give a \$1.9 billion loan to Sri Lanka to help the country ride the current economic downturn. There did appear to be a delay.²⁵¹ However, with the conflict now officially over, those in favour of approving the loan are likely to prevail. Negotiations over the terms of the loan are reportedly at an "advanced stage."²⁵² While IMF loans are not usually accompanied by political conditionality, it is much more customary for them to contain requirements with regard to fiscal accountability. It will be interesting to see if the loan, when it is granted, contains conditionality provisions on this count. Levels of official corruption in Sri Lanka are high and rising. Transparency International ranks Sri Lanka at 92nd out of 180 countries in its 2008 Corruption Perceptions Index.²⁵³

²⁴⁹ "Sri Lanka president thanks allies", *BBC News Online*, 3 June 2009

²⁵⁰ "Sri Lanka in 2008", *Asian Survey*, January/February 2009

²⁵¹ "Colombo rejects UN civilian plea", *BBC News Online*, 23 April 2009; "Sri Lanka denies IMF loan delay", *BBC News Online*, 30 April 2009

²⁵² "Sri Lanka stirs an economy racked by war", *Wall Street Journal*, 30 May 2009

²⁵³ See: http://www.transparency.org/policy_research/surveys_indices/cpi/2008

Some observers suggest it may be time to establish a UN-mandated 'contact group' to strengthen the effectiveness of international efforts. But much will depend on how much trust the various parties to negotiations on political and constitutional reform retain in the impartiality and 'good offices' of the international actors involved. Partly for this reason, more informal internationally-sponsored conflict resolution initiatives that focus on non-governmental actors and draw on the international networks of 'elder statesmen and women' that exist today, often referred to as 'Track 2 initiatives', could have a role to play in the short- to medium-term.²⁵⁴

Most observers agree that, unlike the negotiations which were conducted following the 2002 ceasefire agreement, future negotiations, under whatever auspices, must fully include *all* Sri Lanka's groups, including the multiple voices that exist within each of the communities, if they are to have a chance of success; civil society should also be represented.²⁵⁵ In general terms, this is also the position taken by many of the governments engaged with Sri Lanka's future. However, the international community may be tempted to acquiesce in efforts by the Sri Lankan Government in practice to limit the inclusiveness of future negotiations, for example by marginalising the TNA because of its links with LTTE.²⁵⁶ This would echo past and present dilemmas encountered elsewhere – for example, with regard to Sinn Fein in Northern Ireland and Hamas in the Palestinian Occupied Territories. Many analysts would argue that such groups ultimately have to be brought into negotiating processes if there is to be a successful outcome. Some observers argue that the TNA has never been simply a cipher for the LTTE and that, with encouragement, it has an important role to play in future negotiations.

International donors, including the US and EU, will continue to make substantial contributions in terms of humanitarian aid. The Sri Lankan Government is highly unlikely to reject them, although it will seek to shape the terms on which such aid is given. In addition, however unsatisfactory or problematic the situation on the ground turns out to be, the odds must be that most donors will be drawn over time into playing a significant role in funding development and reconstruction programmes in the north and east. It has already begun to happen in the east, despite mounting concerns about corruption at provincial level.

With the Sri Lankan economy slowing down considerably over the past year, large-scale contributions will be needed for reconstruction, although it is striking that, immediately after the fighting ended, there was a significant inflow of foreign capital and the stock market rose significantly. If this can be sustained, Sri Lanka's economy, including its independent capacity to fund its own reconstruction and development, may recover more rapidly than some have predicted.

Some pessimists argue that a large-scale donor contribution to reconstruction and development is far from guaranteed, given Sri Lanka's relative strategic unimportance. One analyst has written:

²⁵⁴ Related issues of truth, justice and reconciliation, and the possible role of global institutions such as the UN Security Council and the International Criminal Court in promoting them, are discussed briefly in the next section of the paper.

²⁵⁵ ICG, "Sri Lanka's Muslims: Caught in the crossfire", *Asia Report No. 134*, 29 May 2007

²⁵⁶ The Tamil National Alliance won 22 parliamentary seats in the 2004 general election.

Unfortunately, given the country's relatively unimportant strategic location and its inability to contribute to satisfying the world hunger for mineral, oil or gas requirements, the chances of its receiving significant aid packages to rebuild the country are minimal.²⁵⁷

However, this seems to ignore the growing importance of Sri Lanka in a strategic environment where powers such as China, India, the US and indeed, Iran are all increasingly jostling for influence. In terms of Chinese assistance, this has already reaped rewards for Sri Lanka that few had previously anticipated. Iran is reported to have pledged \$1.9 billion in development assistance.²⁵⁸

The same analyst has also argued that, while the Sri Lankan Government may not be able to generate enough financial resources to compensate for any short-fall in donor support, the country does have high levels of "human capital" upon which to draw, including within the Tamil community, with its links to a large diaspora.²⁵⁹ This could partly compensate for any shortfalls in donor assistance, but will only do so if there is a truly inclusive and credible peace process that promises genuine autonomy in the north and east and a return to democracy and respect for human rights and the rule of law across the island as a whole.²⁶⁰

5.4 Other issues and challenges

Two crucial issues which have major potential to destabilise both regions are land disputes and post-conflict resettlement (for example, Muslims wishing to return to the north). In January 2008 over 300,000 people were estimated to have been in a state of "protracted displacement" in Sri Lanka for over two decades.²⁶¹ The current humanitarian crisis involves an estimated 250,000-300,000 IDPs, most of them located in the 'welfare villages' – better described as internment camps – that have been established. Recent official promises to resettle the IDPs within six months are highly ambitious and some argue that this kind of timetable is unrealistic. At the same time, as already mentioned, there remains an abiding fear among many Tamils that the Government will now promote Sinhalese settlement in the north and east, including through 'land grabbing' and violence, with some of it being done in the name of economic development.²⁶²

Another potential threat to a durable peace in the coming period could be the sheer size of the Sri Lankan army today. The Government could in time be faced with the task of demobilising and reintegrating substantial numbers of Sinhalese soldiers who have absorbed a highly mistrustful view of the Tamil minority. The dangers inherent in this could be compounded if Sri Lanka's economic slowdown persists. This could increase the risk that new Sinhalese militias, armed political groups and/or criminal gangs might emerge. Alternatively, given the potential risks associated with demobilisation and

²⁵⁷ A. Misra, "Rain on a parched land: Reconstructing a post-conflict Sri Lanka", *International Peacekeeping*, Vol. 11, No. 2, Summer 2004, p. 284

²⁵⁸ "Sri Lanka stirs an economy racked by war", *Wall Street Journal*, 30 May 2009

²⁵⁹ A. Misra, "Rain on a parched land: Reconstructing a post-conflict Sri Lanka", *International Peacekeeping*, Vol. 11, No. 2, Summer 2004, pp. 284-5

²⁶⁰ For a critical account of Sri Lanka's human rights record that predates the last weeks of the military campaign against the LTTE, see: A. Shah, "Colombo's secret war on terror", *Far Eastern Economic Review*, March 2009, pp. 38-42

²⁶¹ Congressional Research Service, *Sri Lanka: Background and US relations*, 22 January 2008, p. 35

²⁶² "Sri Lanka tagged with 'cleansing'", *National Post*, 26 May 2009

reintegration, there is also a danger that members of the governing elite might actively prefer to maintain a 'permanent emergency' within the country in order to justify a large army and high levels of military spending.²⁶³

A range of experts have also argued that intra-Sinhalese tensions of the kind that produced two JVP-led, youth-based insurrections have long been present in Sri Lanka and remain today. Such tensions, it is claimed, remind us that, while the conflict in Sri Lanka has usually been interpreted along ethnic or 'communal' lines, there are other factors that need to be acknowledged, some of which cut across those lines. One of these factors, some allege, are what they call "contradictions in the post-independence development process".²⁶⁴ Specifically, several advocates of this viewpoint have asserted that the economic and trade policies pursued by Sri Lanka since the 1950s have facilitated "the social exclusion of the emerging new generation – the youth, brought up in a welfare democracy – in the development process, creating a fertile ground for the breeding of political conflict.". Ethnicity, in this context, is believed to have acted predominantly as a "mobilisation device", rather than as a root cause of conflict *per se*.²⁶⁵

Others state that the main problem has been "a lack of compatibility between economic policies and political strategy", in that there has been a failure on the part of successive Sri Lankan governments to realise that the economic policies that they were pursuing would not succeed in constructing a sense of nationhood which transcended ethnicity.²⁶⁶ This view usually forms part of wider critiques of economic 'neo-liberalism'. If there is some truth in these arguments, they raise important questions about what policies might be required in future to address the "economic roots of political conflict" in Sri Lanka, and whether the current nostrums advocated by the incumbent Government and the donor community are likely to be successful in doing so.²⁶⁷

Sri Lanka will also continue to be faced in the future by challenges of justice and reconciliation arising from the grave human rights abuses that have been committed by all armed groups in the course of the conflict, as documented over the years by international human rights groups and UN bodies, which have long declared that impunity reigns increasingly unchallenged in the country.²⁶⁸ When the Sri Lankan Government formally terminated the 2002 ceasefire agreement in January 2008, the previous UN High Commissioner for Human Rights, Louise Arbour, warned that violations of human rights and humanitarian law could entail individual criminal responsibility under international criminal law, including by those in positions of command.²⁶⁹ She and her successor, Navi Pillay, have had cause to repeat this warning on several occasions since.

The LTTE and significant parts of the Tamil diaspora have alleged that the Sri Lankan Government is bent on genocide against the Tamils. Such claims received more

²⁶³ K. Perera, "The myth(s) about post-LTTE democracy and post-conflict solution", *TransCurrents*, 3 April 2009. Available at: http://transcurrents.com/tc/2009/04/post_342.html

²⁶⁴ S. Abeyratne, "Economic roots of political conflict: The case of Sri Lanka", *The World Economy*, Vol. 27, No. 8, August 2004, p. 1296. Available at: <http://rspas.anu.edu.au/papers/asarc/sirimal.pdf>

²⁶⁵ *Ibid*

²⁶⁶ V. Nithyanandam, "Ethnic politics and third world development: Some lessons from Sri Lanka's experience", *Third World Quarterly*, Vol. 21, No. 2, 2000, pp. 283-285

²⁶⁷ *Ibid*

²⁶⁸ ICG, "Sri Lanka's return to war: Limiting the damage", *Asia Report No. 146*, 20 February 2008, pp. 13-14

²⁶⁹ *Ibid*

publicity as the fighting intensified during early 2009, although it is important to note that no governments or international human rights groups endorsed them.²⁷⁰ Sri Lanka acceded to the Genocide Convention in 1950 and ratified the Geneva Conventions in 1959. However, it has not signed or ratified the 2002 Rome Statute, which established the International Criminal Court.

The Sri Lankan Government has said that its own courts will look into any war crimes allegations, although it has already stated that it believes such allegations to be unfounded.²⁷¹ It seems highly unlikely, given the past record of the Government and the judiciary, that there will be a credible domestic judicial investigation into allegations that genocide, war crimes and crimes against humanity have been committed in the course of the conflict, with the possible exception of the former LTTE cadres now in custody. However, in that event an international investigation of some kind remains possible. The US and EU have now endorsed the idea. The Security Council or the Human Rights Council could initiate such an investigation. However, Sri Lanka probably has enough allies on both bodies to prevent such an outcome. An attempt to get the Human Rights Council to endorse an international investigation failed at the end of May.

For its part, the ICC could take up the issue either through referral by the Security Council (extremely unlikely) or under the independent authority of the Prosecutor. The latter would be highly controversial. The Prosecutor has not yet used this power and Sri Lanka is not a State Party to the Rome Statute. However, there have been calls by advocates of the Tamil cause for him to take up the issue of war crimes committed by four senior officials.²⁷² He has not yet officially responded.²⁷³ Efforts to establish some kind of international war crimes investigation look set to continue, but the odds are strongly against a role for the ICC.

The Sri Lankan Government may conceivably propose some kind of non-punitive domestic truth and reconciliation process as a way of deflecting international pressure. This is likely to lack much credibility. However, there may well be more credible attempts, arising out of local or international civil society, to build 'unofficial' accountability processes. Some might even involve the Tamil diaspora. But those participating in such initiatives could find themselves vulnerable to harassment and attack. Sympathetic foreign donors could play an important role in providing practical and moral support for such 'unofficial' initiatives.

With regard to accountability for human rights abuses, human rights groups have also raised the concerns of minority groups other than the Tamils, arguing that these too need to be properly addressed. The International Crisis Group is amongst those calling for the establishment of a commission of inquiry to investigate the violent expulsions of Muslims from the north in 1990, responsibility for which has generally been attributed to

²⁷⁰ See, for example, Sri Lanka rebels decry 'genocide' before UN address, *Reuters*, 25 September 2007

²⁷¹ "History could repeat, UN chief warns Sri Lanka", *The Age*, 25 May 2009

²⁷² "Ocampo urged to investigate Sri Lanka's war crimes", *TamilNet*, 4 May 2009

²⁷³ For a discussion of the powers and performance of the ICC, see House of Commons Library Standard Note SN/IA/5042, "The International Criminal Court: Current cases and contemporary debates"

the LTTE.²⁷⁴ The prominent role of the LTTE in the expulsions may make this an accountability issue about which the Government is willing to take action.²⁷⁵

Finally, it is worth noting that Sri Lanka's 25-year long internal conflict has not, unlike other countries, involved the collapse of central state authority or the complete abandonment of democracy, although human rights groups argue that the rule of law has virtually ceased to operate and other key freedoms such as freedom of expression have been under heavy attack by the current Sri Lankan Government.²⁷⁶ On this basis, it can be argued that, provided its triumphant leadership can be persuaded to opt for genuinely inclusive and enlightened policy options over the period ahead, then the prospects for a durable peace should be better "compared to some other war-torn states such as Afghanistan, Sierra Leone or Somalia."²⁷⁷

²⁷⁴ ICG, "Sri Lanka's Muslims: Caught in the crossfire", *Asia Report No. 134*, 29 May 2007

²⁷⁵ It is striking that, unlike other recent crises – for example, Burma following the Cyclone Nargis in 2008 – there has been less invocation since the beginning of 2009 of the concept of the 'Responsibility to Protect' with regard to Sri Lanka. This is despite the fact that in 2007, one of its original sponsors, Gareth Evans, said that it is "hard to argue that Sri Lanka is anything but an R2P situation". See Gareth Evans, "The limits of state sovereignty: The Responsibility to Protect in the 21st Century", Eighth Neelam Tiruchelvam Memorial Lecture, Colombo, 29 July 2007. Available at: <http://www.crisisgroup.org/home/index.cfm?id=4967>

²⁷⁶ For example, see Sri Lankan writer and human rights activist Basil Fernando's blog on these issues at: <http://srilanka-lawlessness.com>.

²⁷⁷ A. Misra, "Rain on a parched land: Reconstructing a post-conflict Sri Lanka", *International Peacekeeping*, Vol. 11, No. 2, Summer 2004, p. 283

Appendix A Extracts from speech by the President of Sri Lanka, Mahinda Rajapakse, to Parliament, 19 May 2009

[Source: <http://www.srilankaguardian.org/2009/05/address-by-president-mahinda-rajapaksa.html>]

I address this session of Parliament on the historic occasion when the hopes and expectations of the Sinhala, Tamil, Muslim, Burgher, Malay and all people of our country for several decades, to see a Sri Lanka that is free of murderous terrorism, have been realized.

Friends, (In Tamil) This is our country This is our motherland We should live in this country as children of one mother No differences of race, caste and religion should prevail here Over the last thirty years, the LTTE has killed many people Sinhalese, Tamil and Muslims - many have been killed The war against the LTTE is not a war against Tamil people Our aim was to liberate our Tamil people from the clutches of the LTTE Our heroic forces have sacrificed their lives to protect Tamil civilians The victory we have gained by defeating LTTE is the victory of this nation, and the victory of all people living in this country. Protecting the Tamil speaking people of this country is my responsibility That is my duty. All the people of this country should live in safety without fear and suspicion. All should live with equal rights That is my aim. Let us all get together and build up this nation (Tamil ends)

As you already know our Motherland has been completely freed from the clutches of separatist terrorism. From now on it is only the laws enacted by this sovereign Parliament that will be in force in every inch of Sri Lanka. [...] It is necessary to recall at this time the statements in the historic Mahinda Chinthana policy statement that was placed before the people three years ago. "The freedom of our country is supreme. I will not permit any separatism. I will also not permit anyone to destroy democracy in our country ...I will respect all ethnic and religious identities, refrain from using force against anyone and build a new society that protects individuals and social freedoms" This is the objective of the Mahinda Chinthana.

It is necessary on this historic occasion to inquire as to how it was possible to obtain the proud victory we have achieved today by defeating the world's most ruthless terrorist organization. We are a country with a long history in which we saw the reign of 182 kings who ruled with pride and honour for a period that extended more than 2,500 years. This is a country where kings such as Dutugemunu, Valagamba, Dhatusena and Vijayabahu defeated enemy invasions and ensured our freedom. As much as Mother Lanka fought against invaders such as Datiya, Pitiya, Palayamara, Siva and Elara in the past, we have the experience of having fought the Portuguese, Dutch and British who established empires in the world. As much as the great kings such as Mayadunne, Rajasingha I and Vimaladharmasuriya, it is necessary to also recall the great heroes such as Keppetipola and Puran Appu who fought with such valour against imperialism.

In looking at this unconquerable history there is a common factor we can see. It is the inability of any external enemy to subdue this country as long as those to whom this is the motherland stand united. That is the truth. Another common factor we can see is the inability to establish any savage or dictatorial regime on this land. In the history of my motherland, the people have always risen undefeated against any arbitrary, savage or brutal rule. [...] By the last Presidential Election terrorists had gone much further than

anyone had believed possible. As a massive international organization, they had established an unmatched power that no other organization in the world enjoyed. They had acquired ships, aircraft, submarines, and the most advanced weaponry in the world. They controlled city administrations, international frauds and scams, banks, web sites and radio stations, and had also issued currency. There is no one yet able to fully measure their assets. The world had so far not seen such a powerful and large organization. The biggest danger was that the north and east of this country were brought together and gifted through a deed of peace to this destructive terrorist organization.

As result, in 2005 what we took over was a country with grave challenges. Not only in the jungles of Thoppigala or the Vanni, the shadow of terrorism was also cast on all political activity in the country. You are aware that the Norochcholai Power project was due to be established several decades before this. But the construction of this power plant was delayed thinking of the fear that the location of this power project would some day come under the control of the terrorists. These are bitter truths to the nation. My Motherland has had to face even more bitter realities.

The terrorists worked continuously to mark the area that should belong to them on the map of Sri Lanka and establish the Eelam state. But the terrorists had created a situation under which there was fear even to respect the principle of the unitary state that has been established in our Constitution. Even the powerful countries of the world showed fear before the terrorists; some countries were shaken and went on their knees in the face of terror.

Our people began to face a defeatist mentality, whether we could face up to a problem that many countries in the world did not seem able to face. Terrorism is like a venomous serpent that draws the most dangerous qualities from politics, economics, science and all subjects in the world. What terrorism draws from politics is racism. It builds an economy through drug trafficking. What it draws from technology is the manufacture of explosives. The defeat in Sri Lanka of the world's most ruthless terrorist organization in the world that is made up of all these deadly qualities can be considered second to none.

Therefore, we did not attempt to respond to the terrorists in their own language. When the terrorists were calling for war, we responded with a humanitarian operation. Our troops went to this operation carrying a gun in one hand, the Human Rights Charter in the other, hostages on their shoulders, and the love of their children in their hearts. That was an incomparable chapter in the history of war. It is truly a miracle to go to a battlefield where civilians have been turned into human bombs, and carry on the battle without shedding the blood of civilians. It is a great skill to face up to the heaviest monsoon rains and major floods and not retreat a single step. It needs the ability of a Vishvakarma to defeat battle tanks and artillery with small arms.

There was no school of war in the world that could face up to the savage military strategies used by the terrorists of the LTTE. The world had not seen military sciences able to face a combination of land mines, claymore mines, small suicide vessels, light aircraft that can evade radar, and suicide killer jackets. Through thirty years the Security Forces of Sri Lanka were compelled to find ways and means to face up to all this. By the end of its successful march the Security Forces of Sri Lanka had become the most disciplined and capable military in the world. Our security forces were able to defeat the

most ruthless terrorists in the world due to their strict discipline, commitment, and creative use of military strategy.

[...] It is the LTTE that has put the Tamil community to their lowest position in history. Those who raised their voices for the protection of the terrorists, and all those who helped the terrorists should now fall at the feet of these Tamil mothers and seek their pardon. Those who live abroad and supported the terrorists with funds, if they have any love for their own people, should not help terrorism again.

The day is not far when the hearts and feelings of the mothers and daughters who have today been rendered helpless became the collective conscience of the Tamil people. Their hearts are now with us who were liberated from the slavery they had been forced into. Facing up to and winning this challenge is like building a strong bridge over Eelam. What was seen in the past days at Pudumathalan area should forever remain seared in the minds of the Tamil people.

The defeat of the LTTE and the breakdown of their armed strength will never be the defeat of the Tamil people of this country. What have the Tamil people inherited from the gun that was used to assassinate Alfred Duraiyappah to the armed tanks used to attack the innocent Tamil people who were fleeing Pudumathalan, and all other weapons of the LTTE? What was the LTTE able to win for the Tamil people from the force of its arms? The complete defeat of the LTTE is an even greater victory for the Tamil people.

[...] At this victorious moment, it is necessary for us to state with great responsibility, that we do not accept a military solution as the final solution. Similarly, when we see the sad faces of the people who have been fleeing from the Puthumathalan area, we can realize that a document offered on a tray as a political solution could also not be the final solution. Therefore, the responsibility that we accept after freeing the Tamil people from the LTTE is a responsibility that no government in the history of Sri Lanka has accepted.

When we accept the responsibility for the people who have been liberated, we receive many proposals from various countries and institutions. They ask us to look after our own Tamil people well. All the people in the country from Dondra Head to Point Pedro are our own people. The Government saw to it that we did not shirk our responsibilities even to the people who were under the yoke of the LTTE. In brief, the terrorist leader who was killed yesterday, until that time had his meals with the food and drink that the Government supplied.

We are a country with unique precedents. According to the tradition established by kings such as Dutugemunu, we should respect even the enemy that has surrendered or been killed in combat. That is a quality of greatness that is found not only with the Government, but also with the people of this country. This is a country with a people who when thousands lost their homes and were made destitute from the Tsunami, took care of all those people, not letting even a single victim go hungry by even one meal. We who are schooled in the Buddhist tradition of loving kindness and compassion, and nurtured in the Hindu, Islam and Christian traditions, do not need to be taught how we should treat and care for the innocent and helpless. We shall resettle all those who have been freed from being hostages in very welcome surroundings. People who have not had electricity and not seen modern roads will be resettled in environments complete with all facilities. I ask you to compare the living conditions of the people in the East three years ago with what it is today.

Although we engaged in a massive struggle to defeat terrorism, we did not make that a cause to delay development and welfare services. We launched development projects throughout the country that had been ignored for 30 years. We created new employment. They were not confined to the South. While carrying out massive humanitarian operations in the North, the Vanni and the East, we were also engaged in development work in those areas.

At no time since independence have the development work now being done in the East and Mannar been undertaken. A Presidential Task Force has already been appointed to expedite development work in the Vanni and the North. As much as we defeated deadly terrorism and freed the innocent people held by terror, we are committed to carry out accelerated development in the areas that were under terrorism, within the next three years. While bringing the lives of the people within a democratic political structure, the Government will also provide education and health facilities, and launch the Northern Spring by providing the infrastructure such as irrigation, highways, electricity and such facilities necessary for the agriculture, fisheries and tourism sectors.

We have now removed terrorism, the biggest obstacle that the private sector in our country faced in participating in the Northern Spring. Therefore, the environment has now been created to carry out their investments and engage in business. I especially call on our business community to make a commitment to invest in the North and East of our country. What we need is not advice; but the cooperation to bring a better life to these people. I believe that the world community will also extend that cooperation to us.

I call on all who have left our motherland due to terrorism, especially the Tamil people, to return. I made this request when addressing an Independence commemoration event on an earlier occasion, too. Similarly, I call on our engineers, doctors, accountants and other professionals living in various countries abroad, to return to your motherland and contribute to its development.

It is necessary that we give to these people the freedoms that are the right of people in all others parts of our country. Similarly, it is necessary that the political solutions they need should be brought to closer to them faster than any country or government in the world would bring. However, it cannot be an imported solution. We do not have the time to be experimenting with the solutions suggested by other countries. Therefore, it is necessary that we find a solution that is our very own, of our own nation. It should be a solution acceptable to all sections of the people. We expect cooperation for it from the international community and not obstruction. Should the international community doubt our capability to find such a solution, when we have successfully overcome a challenge that the world was unable to achieve? No. We can achieve this. I believe that the solution that we who respect and valued the qualities of Mettha (loving kindness) Karuna (Compassion) Muditha (Rejoicing in others' joy) and Upeksha (Equanimity) based on the philosophy of Buddhism can present, can bring both relief and an example to the world. Similarly, I seek the support of all political parties for that solution.

We have removed the word minorities from our vocabulary three years ago. No longer are the Tamils, Muslims, Burghers, Malays and any others minorities. There are only two peoples in this country. One is the people that love this country. The other comprises the small groups that have no love for the land of their birth. Those who do not love the country are now a lesser group.

This small group questions as to whose victory this is. Our answer to that is that this is not a victory by President Mahinda Rajapaksa alone. The people are gathering around the National Flag. What we have done is to make the people of this country line up behind the National Flag. Therefore, this victory belongs to the people so lined up behind the National Flag. It belongs to the mothers, fathers and wives who gave their children and husbands to the armed forces; to the people who thought not of their stomachs but of their country. The blood shed by those people have enriched the soil of our land.

Remember this country was saved by the blood, eyes, limbs, flesh and lives of our young people. Thousands of our youth faced shells on their heads, land mines at their feet, bullets in their hearts and sacrificed their lives to protect this land. We cannot allow such a land to be grabbed by thieves, fraudsters, and the corrupt. This land cannot be betrayed or allowed to be sold. We should pay tribute to the children of the motherland who protected it with such sacrifice, by ensuring peace, development and good governance in this country.

[...] There is no era before this when the international community has paid as much attention to my motherland as in the present times. When we went to the front against terrorism with a firm determination, many foreign states made many requests of us. But although we were able to listen to all these requests, we were not able to implement all of them. That is because I was bound to make real the expectations offered by me and carry out the mandate given to me in 2005. This was also because I considered the freedom and sovereignty of my motherland as being of more value than my life. Yet, I must state that the Sri Lankan nation will always remember the help given to our country by many countries. We will not forget that such assistance was given on behalf of world democracy. Ending terrorism in Sri Lanka means a victory for democracy in the world. Sri Lanka has now given a beginning to the ending of terrorism in the world.

All this time what we had to tell the world was about our great, heroic and glorious history. But today we have brought about such greatness and heroism to present day Sri Lanka. Till now we gained strength to rise as a nation from the past built by our heroic ancestors. Today, as much as we have added a new pride and honour to that past, we have created an era of new strength for the future of our nation. In the future when our nation has to engage in a glorious and invincible struggle the achievements of this era will be recalled.

[...] As we have been victorious in the battle to defeat terrorism, we should also take to the required successful end the struggle to build our land. It is necessary for us to take the required clear decisions for this. We must now be ready to direct our motherland to that new era of national revival. I must specially mention here that this great battle for national revival will be waged with the aim of raising the lives of the Tamil people who live in the North and East of our land, too. In the past several decades those people did not have the right to a meaningful life. They were denied the right to life, the right to freedom, the right to development. I shall give all of that to those people. I accept that responsibility. [...] I value my motherland first, second and third. This should be so to you and to the entire nation. It is only our beloved motherland that we should all cherish and value.

Appendix B Extract from Human Rights Watch report on the “International Law on Conduct of Hostilities”

[“War on the displaced: Sri Lankan army and LTTE abuses against civilians in the Vanni”, February 2009, pp. 21-23. Available at: <http://www.hrw.org/en/node/80901>]

International humanitarian law (the laws of war) imposes upon parties to an armed conflict legal obligations to reduce unnecessary suffering and protect civilians and other non-combatants.[43] All armed forces involved in a conflict, including non-state armed groups such as the LTTE, must abide by international humanitarian law.[44] Individuals who deliberately or recklessly violate international humanitarian law can be prosecuted in domestic or international courts for war crimes.[45]

International humanitarian law limits permissible means and methods of warfare by parties to an armed conflict and requires them to respect and protect civilians and captured combatants.[46] The fundamental tenets of this law are "civilian immunity" and "distinction." [47] These tenets impose a duty at all times during the conflict to distinguish between combatants and civilians, and to target only combatants.[48] Also protected are civilian objects, which are defined as anything not considered a military objective.[49] Prohibited are direct attacks against civilian objects, such as homes, places of worship, hospitals, and schools, unless they are being used for military purposes.[50]

Humanitarian law prohibits deliberate attacks against civilians and indiscriminate attacks. Indiscriminate attacks are of a nature to strike military objectives and civilians or civilian objects without distinction. Examples of indiscriminate attacks are those that are not directed at a specific military objective or that use weapons that cannot be directed at a specific military objective. Prohibited indiscriminate attacks include area bombardment, which are attacks by artillery or other means that treat as a single military objective a number of clearly separated and distinct military objectives located in an area containing a concentration of civilians and civilian objects.[51] Also prohibited are attacks that violate the principle of proportionality: attacks that are expected to cause incidental loss of civilian life or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated from the attack.[52]

Humanitarian law requires that the parties to a conflict take constant care during military operations to spare the civilian population and to "take all feasible precautions" to avoid or minimize the incidental loss of civilian life and damage to civilian objects.[53] These precautions include doing everything feasible to verify that the objects of attack are military objectives and not civilians or civilian objects[54] and giving "effective advance warning" of attacks when circumstances permit.[55] They must also avoid locating military objectives near densely populated areas[56] and endeavor to remove a civilian population from the vicinity of military objectives.[57] This obligation is considered especially relevant "where military objectives can not feasibly be separated from densely populated areas," [58] such as is the case in the current fighting in the Vanni.

The presence of civilians in the vicinity of the fighting places obligations on warring parties to take steps to minimize harm to civilians. Belligerents are prohibited from using civilians to shield military objectives or operations from attack; "shielding" refers to purposefully using the presence of civilians to render military forces or areas immune from attack.[59]

Humanitarian law also requires the humane treatment of civilians and captured combatants. It prohibits violence to life and person, particularly murder, mutilation, cruel treatment, and torture.^[60] It is also unlawful to commit rape and other sexual violence; targeted killings of civilians who are not directly participating in the armed conflict; and engage in pillage and looting.

Individuals who commit serious violations of international humanitarian law deliberately or recklessly are responsible for war crimes.^[61] These include deliberate, indiscriminate, and disproportionate attacks on civilians, hostage taking, and use of human shields. Commanders and civilian leaders may be prosecuted for war crimes as a matter of command responsibility when they knew or should have known about the commission of war crimes and took insufficient measures to prevent them or punish those responsible.^[62]

Notes

^[43] International humanitarian law on the conduct of hostilities is set out in the Hague Regulations of 1907 and the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted June 8, 1977, 1125 U.N.T.S. 3, entered into force December 7, 1978. Protocol I, which provides the most detailed and current codification of the conduct of hostilities during international armed conflicts, is not directly applicable to the conflict. The Second Additional Protocol of 1977 to the Geneva Conventions (Protocol II) on non-international armed conflicts is also not directly applicable because Sri Lanka is not a party to the protocol. The legal analysis applied in this report frequently references norms enshrined in Protocols I and II, but as an important codification of customary law rather than as a treaty obligation. Customary humanitarian law as it relates to the fundamental principles concerning conduct of hostilities is now recognized as largely the same whether it is applied to an international or a non-international armed conflict.

^[44] See generally the discussion of the applicability of international humanitarian law to non-state armed groups in ICRC, *Customary International Humanitarian Law*, pp. 497-98.

^[45] *Ibid.*, Rule 158.

^[46] The legal analysis applied in this report frequently references norms enshrined in Protocols I and II, but as an important codification of customary law rather than as a treaty obligation.

^[47] Protocol I, Articles 48, 51(2), and 52(2).

^[48] *Ibid.*, Article 48 states, "Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

^[49] *Ibid.*, Article 52(1). Military objectives are combatants and those objects that "by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage." *Ibid.*, Article 52(2).

[50] ICRC, *Customary International Humanitarian Law*, Rule 8, citing military manuals and official statements.

[51] Protocol I, Article 51(4). Similarly, if a combatant launches an attack without attempting to aim properly at a military target, or in such a way as to hit civilians without regard to the likely extent of death or injury, it would amount to an indiscriminate attack. *Ibid.*, Article 51(5)(a).

[52] *Ibid.*, Article 51(5)(b). The expected danger to the civilian population and civilian objects depends on various factors, including their location (possibly within or near a military objective), the accuracy of the weapons used (depending on the trajectory, the range, environmental factors, the ammunition used, etc.), and the technical skill of the combatants (which can lead to random launching of weapons when combatants lack the ability to aim effectively at the intended target). ICRC, *Commentary on the Additional Protocols*, p. 684.

[53] Protocol I, Article 57. In its authoritative commentary on Protocol I, the ICRC explains that the requirement to take "all feasible precautions" means, among other things, that the person launching an attack is required to take the steps needed to identify the target as a legitimate military objective "in good time to spare the population as far as possible." ICRC, *Commentary on the Additional Protocols*, p. 682.

[54] If there are doubts about whether a potential target is of a civilian or military character, it "shall be presumed" to be civilian. Protocol I, Article 52(3). The warring parties must do everything feasible to cancel or suspend an attack if it becomes apparent that the target is not a military objective. *Ibid.*, Article 57(2).

[55] *Ibid.*

[56] *Ibid.*, Article 58(b).

[57] *Ibid.*, Article 58(a).

[58] ICRC, *Customary International Humanitarian Law*, p. 76.

[59] *Ibid.*, Article 51(7).

[60] Article 3, common to all four Geneva Conventions of 1949, which is binding on all parties to a non-international armed conflict.

[61] Individuals may also be held criminally liable for attempting to commit a war crime, as well as assisting in, facilitating, aiding, or abetting a war crime. Responsibility may also fall on persons planning or instigating the commission of a war crime. ICRC, *Customary International Humanitarian Law*, p. 554.

[62] *Ibid.*, Rule 153.

Appendix C Text of the Genocide Convention (1951)

[Source: Office of the High Commissioner for Human Rights. Available at: http://www.unhchr.ch/html/menu3/b/p_genoci.htm]

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article 1

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article 2

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 3

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article 4

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article 5

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article 6

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article 7

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article 8

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article 9

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article 10

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article 11

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any nonmember State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 12

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article 13

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a proces-verbal and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article 11.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected, subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article 14

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article 15

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective. Article 16

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article 17

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article 11;
- (b) Notifications received in accordance with article 12;
- (c) The date upon which the present Convention comes into force in accordance with article 13;
- (d) Denunciations received in accordance with article 14;
- (e) The abrogation of the Convention in accordance with article 15;
- (f) Notifications received in accordance with article 16.

Article 18

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

Article 19

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

