NO WAR, NO PEACE?

Sunil Bastian

he dynamics of the Sri Lankan conflict seem to have set into a pattern that can last a considerable period of time. Neither the ruling classes in Colombo nor the LTTE leadership in Killinochchi wants to formally withdraw from the ceasefire. Formal withdrawal means giving 14 days notice and announcing that they are no longer going to abide by the clauses of the ceasefire agreement (CFA). This would signify the end of the agreement.

It is not in the interest of either party to withdraw from the ceasefire. On the contrary it serves their interests in numerous ways. The ruling classes in Colombo entered into the CFA in the context of the economic crisis of the years 2000 and 2001. This culminated in a negative economic growth in 2001. Creating stability in order to put the economy back on track was a major factor behind the signing of the CFA. It is due to this that the ruling classes accepted the presence of a second army and agreed to formalise control of territory by the LTTE. Not only that, they also brought in a mediator from outside the region, and broke the traditional Indo-centric nature of the mediation in Sri Lanka's conflict.

These factors still remain. The possible impact on the economy is a major reason why almost all political leaders in the South continue to support the peace process. The only exceptions are the JVP and JHU, both adhering to Sinhala extremist positions. Even for this regime which seems to want to go ahead with significant investments in infrastructure for the purpose of continuing with the economic agenda, peace and stability are essential. Compared to the UNF they are also under pressure from social groups that supported them in the elections, who are now expecting increased salaries and increased welfare expenditure. Given the precarious nature of government finances these cannot be achieved if the state has to bear the cost of an expensive military exercise.

Unfortunately the government has not shown any inclination to deal with Tamil grievances with or without the LTTE. These grievances include the structure of the post-colonial Sri Lankan state, its identity, numerous public policy areas where Tamil people are at a disadvantage and of course the government's duty to ensure their security, both personal and property. These are duties of any government towards all ethnic groups whether there is a peace process or not.

The LTTE had a number of strategic objectives in signing the CFA. These were gaining access to government controlled areas, control of resources that would flow into the North/East for rehabilitation, expanding control at sea and gaining international recognition. These strategic objectives are still important for the LTTE. It is the emergence of the Karuna faction that has complicated this equation. Hence, the LTTE's insistence on the government disarming the Karuna faction.

If either the Sri Lankan government or the LTTE tries to withdraw from the CFA, both parties will come under pressure from the international community. Internal conflicts of the developing South have become a major security issue for developed countries. Therefore there is a great deal of energy spent towards managing and containing these conflicts. These policy imperatives play a role in the case of the Sri Lankan conflict as well. The Sri Lankan conflict is linked to the stability of the South Asian region. At present both India and its new strategic partner, the US are very much interested in maintaining stability in this region. The nuclear issue, as well as the emergence of India as an important centre of global capitalist growth, are some of the important underlying reasons of this policy. At a strategic level, currently most international efforts amount to nothing more than containing the conflict by supporting the CFA and negotiations. Nobody is committed to taking any other steps which can move beyond this stalemate.

The likely scenario is while neither party will withdraw from the CFA, various types of killings and violence will continue. Even at the best of times under the CFA there was an underground war between the intelligence wings of the government and the LTTE. Now this has been complicated by conflicts between the LTTE and various other Tamil political formations, violence at the level of society where armed actors play a role and sporadic conflicts between the LTTE and Sri Lankan armed forces. The intensity of this violence varies. Resuming talks or actual negotiations can lead to a reduction in the intensity of this violence. However various triggers can increase the intensity as we have seen recently.

In analysing this violence it is important to recognise two aspects which are not given enough attention. First, quite a

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lot of this violence is intra-Tamil. The primodialist characterisation of Sri Lanka's conflict as an 'ethnic conflict', and the focus on the issue of devolution and reforms of the state have tended to ignore this aspect of the conflict right from the beginning. There was always a conflict within the Tamil political formation for political supremacy. The LTTE's constant harping on that they as the sole representatives of Tamils is linked to this conflict. The LTTE has dealt with this factor simply by eliminating its opponents. Thus various Tamil armed groups have been responsible for the death of a large number of Tamil leaders of various types – political, intellectual, civic, etc. The LTTE leads in this venture. Part of the violence that we are seeing at present is a continuation of this tragedy.

The second aspect is the contest for the control of both the population and territory in the Eastern Province. With its peculiar ethnic mix the East was always considered to be the most difficult nut to crack if Sri Lanka is ever to resolve this conflict. It has been the area affected by various types of violence in the context of this conflict. At present we have to add to this conundrum intra-Tamil violence for the supremacy of this area. The violence in the East has resulted in a situation where the civilian populations of all ethnic groups are living under fear. Many reports from the Batticaloa district, for example, speak of the fear that underlies civilian life. Events in Trincomalee show how precarious the situation is.

The sad part is that while the civilian population is gripped by this violence, the presence of the CFA and talks between the government of Sri Lanka and LTTE colours the way we look at the situation. The talks can easily create the impression that this violence is something temporary or something that we need to bear in the context of the more important thing – negotiations, which are going to give us peace. This illusion is strengthened by the dominance of a discourse brought into this country by conflict resolution specialists. They call this situation 'no war, no peace'. The inclusion of the word 'peace' in this formulation gives the impression that it is some sort of a temporary situation at the end of which there will be a transition to peace. This ideology is promoted while the killings go on.

This discourse is very similar to the notion of transition that is now utilised by the ideologues of the establishment to characterise many situations in the world. Hence we are told that occupied Iraq, with a civil war which is breaking the country apart, torture chambers, civilian deaths is in the process of a transition to democracy. Afghanistan, part of which is ruled by war lords, is also undergoing this transition.

The social problems of many other societies which are breaking apart under the power of markets is legitimised as being a process of transition to a fully fledged market economy where these problems will be solved. All negative aspects that societies face are swept under the carpet making use of a notion of transition. As a result alternative ways of interpreting the situation are ignored. Similarly the discourse of 'no war, no peace' gives a more benevolent interpretation to a situation characterised by the rule of armed actors that act with impunity, and deaths and disappearances are the common currency of civilian life.

Thus the possible scenario is Sri Lanka is likely to remain a fragmented state for sometime to come where one part of the country is dominated by a conflict situation. However this fragmented state will exist in a globalised world. Conflict areas as well as the rest of the country will be linked to a global capitalism and a system of global governance in different ways.

International Community

As one of my friends pointed at a discussion, there are three actors in Sri Lanka's conflict -the government of Sri Lanka, LTTE and the international community. Although this was a casual remark it has serious implications on how we look at the international community. This means any analysis of the international community has to take into account the interests of various international actors who have been playing a role in Sri Lanka's conflict. This is what is missing from most consultancy-type studies on foreign aid and conflict. The underlying assumption of most of these studies is that the international actors are a bunch of do gooders, whose principal aim is bringing peace to Sri Lanka.

The role of the international community in Sri Lanka expanded primarily because of the increase in the flow of foreign aid since 1977. There is no doubt that the main reason for this was the shift in development policies that took place since 1977. Liberalising of the economy and greater integration into the world economy, which were essential steps for the expansion of capitalist development in Sri Lanka, resulted in a favourable response from donors and Sri Lanka began to receive external assistance at an unprecedented level. Initially this assistance was concerned with traditional areas of economic and social development. Soon the focus expanded to cover human rights, democratic development, good governance, protection of environment, rights of women, minimum labour standards, rights of children, disabled, old people, etc. In other words the current agenda

of foreign aid covers almost every aspect of society, and its objective is nothing less than a total transformation of the Sri Lankan society.

On the basis of this agenda the influence of foreign aid has stretched into many areas of our social life. Today it is difficult to analyse public investment, state finances, policy-making processes within the state, dynamics of civil society, socio-economic processes even in the most remote villages, politics and ideological debates without taking into account the role of foreign aid.

When the flow of foreign aid expanded in 1977 most donor countries ignored the conflict, although the 1977 election was a turning point in the deterioration of relations between the Sri Lankan state and the Tamils. The principal focus was on supporting the government in promoting the economic model. Donors who had concerns about social issues began to fund social sector projects within the overall framework of a liberal economy. Conflict and impending catastrophe did not interest donors. On the contrary, donors readily undertook funding projects like the Accelerated Mahaweli Programme which clearly had implications for the relationship between the government of Sri Lanka and the Tamils.

This negative approach towards conflict could not last forever. Both the deterioration of the situation internally and international development have made resolution and management of conflicts a central issue for foreign aid. Internally, the turning point was the end of eighties and the beginning of the nineties. The conflict in the North/East and a bloody insurgency in the South made it almost impossible for the donors to implement their normal development programmes. Internationally managing conflicts of the post Cold War world became a central concern of development assistance. As some analysts have argued, this has merged the two fields of development and security within the policy making process of aid agencies.

Currently most aid agencies maintain that peace and conflict is one of their principal concerns. This is certainly better than what prevailed in the late seventies where donors more or less ignored the conflict. The real issue is not so much the concern that aid agencies have about conflict, but the concepts, ideas and ideologies that underlie this interest. To end this section on the international community, we critically look at the dominant ideas and trends.

Promotion of negotiations with the LTTE

Today most donors will support a negotiated settlement to the conflict. This means negotiations with the key armed actor on the Tamil side – the LTTE. The behaviour of some of the donors shows that they have even accepted the LTTE's position of them being the 'sole representatives of Tamils'. However there can be different motivations in promoting negotiations.

Some would promote negotiations merely to ensure strategic stability in a conflict prone area, rather than promote genuine transformation of society. In the language of conflict resolution, the former is called freezing of the conflict. There are many parts of the world where conflicts have been frozen merely to ensure stability. These areas are formally within nation state boundaries, but controlled by various armed actors. If the donors promote negotiations only with the objective of achieving strategic stability, Sri Lanka could very well end up as a fragmented state for a long time to come. Donor countries will be quite happy with this status, so long as our conflict does not generate a negative impact globally, mainly through the flow of refugees.

The other option is a one that will include successful completion of negotiations, reforms of the Sri Lankan state so as to meet the grievances of the Tamil population, disarmament, demobilisation and support to Sri Lanka in order to build a democratic development state. The Indian involvement which culminated in the Indo-Lanka Accord and provincial councils had some of these elements. Unfortunately donor countries do not have this type of a commitment towards Sri Lanka.

Support to the economic reform agenda

As far as economic development is concerned, donors are unanimous in trying to further the liberal market oriented model inaugurated in 1977. Even those donors who in the late seventies focused on social issues have now begun to promote the private sector in the regions. There is hardly any discussion about the social repercussions of this model and their links to conflicts and instability. Although there is some talk of conflict-sensitive development and many consultants seem to be selling this all over the world, there is no serious discussion about the conflictual nature of the development model itself.

Historically the development of capitalism in any society has involved the management numerous conflicts. Politics

of promoting capitalist institutions involve a complex process of negotiations, compromises and of course sometimes overcoming the opposition of certain social groups. The demands of this complex socio-political process of political management of the development of capitalism cannot be understood merely through technical tools. At the same time we might not even begin to fathom these aspects if we cannot get away from the single minded search for economic growth figures, which is the predominant pre-occupation of most agencies concerned with economic development. This has to be replaced by an overall vision that takes into account growth, social justice as well as social peace. What we need to do is to extend the debate on development, begun by scholars like Amartya Sen who took us beyond growth figures, to include conflicts as well.

Rehabilitation of North/East

A lthough the flow of foreign aid expanded after 1977, for a long time donors ignored the North/East. There was a time when key projects such as the Accelerated Mahaweli Development, Greater Colombo Development and numerous Integrated Rural Development Projects brought in new investments through foreign aid to all parts of the country except the North/East.

With the escalation of the conflict, the North/East became a focus of humanitarian assistance. This also brought in a new actor into conflict-torn Sri Lanka, the international NGOs. However it was only after the takeover of Jaffna peninsula by the Sri Lankan army, that major donors, both bi-lateral and multilateral, became interested in funding large scale development projects in the North/East. Currently there is a slow process of expanding such projects. Multilateral agencies like the World Bank, ADB and bilateral donors like Japan and Germany play a leading role in this strategy.

Of course there is a strong case for supporting any new investments in the North/East where people have been suffering for such a long time. However two fundamental problems remain – one linked to the dynamics of the macro-economic model, and the other to possible control of funds flowing for rehabilitation by the LTTE. Even if there is new investment to rehabilitate the North/East, poor people of the area are unlikely to benefit because the market forces that dominate the economy are stacked against them. For example, even if the irrigated schemes are rehabilitated, poor farmers who are cultivating paddy making use of water in these irrigated schemes are likely to face similar problems faced by poor farmers in the rest of the country. These problems are high cost of production, inability to sell the produce and finally meagre returns. It will be a case of continuing misery unless these fundamentals are tackled.

Secondly, it is quite possible that the LTTE will try to gain control of new resources that come into the area. As has happened in many other parts of the world, international actors, including international NGOs, will come to various types of agreements with armed actors in order to continue with their projects and sustain their institutional interests. This is a classic scenario of a strategy where foreign aid and international actors come together to implement a containment strategy. The stability created by the CFA will create a conducive atmosphere for this strategy.

Promoting liberal peace

P romoting liberal institutions is another strategy adopted by aid agencies in dealing with conflicts. Many of the projects implemented under the theme of good governance, which is essentially an attempt to establish a liberal democratic state, are also part of this same strategy. Promoting 'liberal peace' is a dominant ideology within international debates on resolving conflicts.

Liberal democracy is probably the best political system that we have at present. However it is one thing to support democracy, but another to promote democratic institutions as a blueprint without much of a consideration of the politics associated with these institutions. Establishing democracies is a complex historical process where institutions interact with interests of social groups and identities. The political outcome of democratic institutions very much depends on contextual and historical factors.

Democratic institutions in some contexts can actually exacerbate conflicts rather than resolve them. The deterioration of relations between Tamils and the Sri Lankan state is a case in point. Electoral politics that established the hegemonic power of the Sinhala majority was a major underlying reason for it.

Similarly, democratic politics in the context of an underdeveloped economy and social inequalities can generate conflicts. Democratic politics can give rise to populist demands by politically powerful groups, which cannot be fulfilled due to constrain of resources. In addition, when patronage politics dominates electoral politics, which is the

case at present in Sri Lanka, mere institutional designing will not resolve conflicts.

Hence the critical issue is not just establishing or designing institutions as a panacea. What is needed is a much more nuanced focus on the political outcome of institutions in a particular social and historical context. It is this which will help us to understand spaces where new institutions that will result in positive outcomes have to be designed.

Community level peace work

S upporting conflict resolution at community level is another strategy supported by aid agencies in the context of Sri Lanka's conflict. Local level conflict resolution is another term used to identify this strategy.

By and large this is an extension of a discourse that first emerged in the field of development to situations of conflict. It basically believes that root causes of the conflict are found at the level of the community and therefore there has to be intervention at the community level for finding answers to the conflict.

In the field of development there is a strong body of criticism of how little these community based strategies have contributed to alleviating conditions of the poor people. These development strategies actually ignore principal factors such as access to assets, power of capital, market forces and existing power relations which maintain the poor in the conditions that they are in. Usage of terminologies like 'community', ignores categories such as class, caste, ethnicity and gender which are much more relevant to understanding how the current social order is maintained. The latter categories place power relations at the centre of understanding society, which the term 'community' tends to ignore.

Similar criticisms can be made when these ideas are transferred into conflict situations. By focusing on an imaginary 'community' it takes our attention away from both local and international actors who wield power and whose actions are responsible for the conflict and violence. Not paying attention to politics and power behind conflicts helps these projects to come into a cosy relationship with these key actors who are the major players in the conflict. As far as the people are concerned these projects could amount to nothing more than a containment strategy.

The best beneficiaries of these projects are the multiplicity of international actors and their local partners who have proliferated recently with the increase of foreign aid for conflict resolution.

If we sum up these approaches they are likely to result in maintaining a strategic stability through promotion of negotiations, further development of market economy without much considerations for its conflict implications, investments in the North/East that will have meagre benefits to the poor but which will help in the negotiation process with the LTTE and community based approaches whose impact will be questionable.

These critical remarks about the strategies promoted by aid agencies under the rubric of conflict resolution do not imply that Sri Lanka needs to isolate itself from these international efforts and find a so called 'internal' answer. This is no longer possible. Despite the desire of the anti-globalisation movement, Sri Lanka is already an integral part of global capitalism. Hence we need to find solutions within this globalised framework. Moreover, we do not have a configuration of political forces internally that deliver peace and stability. Therefore the real issue is not international community per se, but ideas and concepts that dominate within the international community.

At present these debates are dominated with a large dose of liberalism without seeing its limitations. There are no serious efforts to understand and come to terms with the different historical trajectories that various societies of the global South can go through. The approach is, answers are already there with the liberal-capitalist model, and the question is how to implement them. Of course these answers are always generated in the capitals of donor countries and what needs to be done is to impose them in the South. The worst outcome of this refusal to grapple with the histories of these societies is what we are seeing at present in Iraq – where democracy is bombed in.

Challenges for civil society

A ctivities of civil society groups aiming to find a political answer to Sri Lanka's conflict go back to the end of the seventies. The Movement for Inter-Racial Justice and Equality (MIRJE), formed in late seventies, was probably one of the first organisations that focused its activities on this issue. There were several distinguishing characteristics of this social activism of late seventies from what is today identified as conflict resolution.

First, there was a much clearer recognition of the political nature of this work in terms of links with mainstream politics. There was always an attempt to link with main stream political parties and mass organisations such as trade unions and student movements. There was a recognition that in order to be effective these interventions somehow have to relate to mainstream politics. The currently popular term 'civil society' was never used to identify these interventions. In fact, well known Indian political scientist Rajini Kothari coined the term 'non-party political formations' to characterise this new form of politics. Secondly, there was always an attempt to include members of mass organisation in these activities. In fact MIRJE had two types of members – individuals and organisations. Trade unions were the principle mass organisations represented in MIRJE. Third, finding a political answer to the conflict was considered as a part of the broader democratic struggle. The agenda was much broader and included issues of democracy, pluralism and social justice.

Seventeen years of UNP rule from 1977 to 1994 provided a common focus of opposition for civil society work. Opening up the economy in 1977 and its social repercussions, undermining democratic institutions beginning from the infamous 1982 referendum, violent attacks on the political opposition and deteriorating relations between Sri Lankan state and Tamils and ensuing violence in the North/East provided a broad platform for this activism. This broad platform also meant it was possible to bring together a large number of diverse groups within this politics.

The high point of this work undertaken over a long period of time was the elections in 1994 that saw the end of the UNP rule. The elections and the possibility of ending UNP rule brought together many organisations. It is in this election that election monitoring came into its own. It was a coming together of a large number of organisations responding to the need of the moment. These efforts were also supported by a network of international solidarity. Election monitoring activity of these organisations and the campaign carried out by several tabloid newspapers established by some of these organisations played a critical role in this election. This is the moment in our recent past that these organisations can rightly be proud of. It contributed significantly to defending democratic institutions as well as bringing about a change that provided safety value to the acute crisis that the country was facing.

This broad based politics of civil society began to take a new turn from the middle of nineties in relation to the approaches to the conflict. An approach that had a much wider

political base and a political perspective began to be replaced by a discourse of conflict resolution, whose primary political objective was promoting an agreement between the ruling classes in Colombo and the LTTE. Armed with the now famous conflict resolution triangle, a number of organisations and projects appeared with the objective of promoting conflict resolution.

The conflict resolution triangle is much more a devise to promote an agenda, than any conceptual framework which can help us to understand the historical and political reality within which civil society has to work. There are very similar devices used by evangelical organisations in order to help them achieve their single minded objective of conversion. The objective of the conflict resolution triangle is to focus on different sectors of society so as to promote an agreement between the LTTE and the Sri Lankan government. These triangles are promoted all over the world backed by external assistance. Since it has the primary political objective of promoting an agreement between the Sri Lankan state and the LTTE, it has no room for all the other relevant political objectives such as democracy, human rights, social justice and even values of pluralism that are relevant for Sri Lankan society at present.

The limits of this politics of conflict resolution were seen during the highpoint of the ceasefire and negotiations under the UNF. During this period civil society groups working within this framework ended up as the principal political allies of an agenda where achieving stability through the CFA and promoting an out-and-out neo-liberal economic framework became the dominant trend. By this time this approach had lost the support of a large number of other organisations who were focusing on various other issues such as social justice, democracy and to some extent human rights. Their principal allies were the UNF leadership and sections of the international community. This was certainly a much narrower social base than what was achieved in 1994.

Currently instead of making use of the relative stability created by the CFA to develop a wider political agenda, this conflict resolution discourse is creating an illusion by calling this status 'no war and no peace'. It ignores the violence that is going on and is involved in a numbers game of counting events, which gives very little basis for understanding what is going on. In order to understand the nature of terror imposed by various armed groups under the very shadow of the CFA one needs to go beyond collecting numbers. The worst part is the illusion of peace that this formulation creates. It can easily lull us into a formula and mantra which we might

keep repeating while our society continues to suffer from violence.

In order to get out of this trap, civil society has to get back to the basics from which this work began. The primary motivation for starting this work more than twenty years ago was not the interest of the elite or the international community. The main concerns were the problems faced by the people of this country and the denial of their rights. Civil society activism needs to get back to this fundamental motivation and develop an agenda that covers issues of democracy, pluralism, human rights and social justice. Even if there is an agreement between the LTTE and the government of Sri Lanka tomorrow, these issues will still remain. These elites, armed or otherwise, are not going to deliver these goods. Civil society needs to work both locally and internationally with these wider objectives. The time has come for civil society to expand its horizon and get out of the conflict resolution trap. ■

THE CONSTITUTIONAL COUNCIL MUST FUNCTION

A meaningful interpretation needed says CRM

"*T* *he meaning of a Constitution is to be found, not in slavish adherence to the letter, which sometimes killeth, but in the discovery of its spirit, which giveth life...*" [1]

The general dismay voiced over the non-functioning of the Constitutional Council for over a year is shared by the Civil Rights Movement (CRM). Many have observed with amazement verging on disbelief the apparent unconcern with which institution after institution – the Public Service Commission, the Police Commission, the Judicial Service Commission - has been allowed to cease to function despite appeals and protests by the public. The latest casualty is the Human Rights Commission, whose term ended on 3 April this year.

Why should this happen when the Constitutional Council got off to a good start after the Seventeenth Amendment to the Constitution was passed in 2001?

The Seventeenth Amendment envisages a Constitutional Council of ten persons, three of whom are Members of Parliament – the Speaker, the Prime Minister and the Leader of the Opposition. The actual incumbent may change, but the law takes care that there is never a hiatus, so that we have at any given time three Council members.

Seven members are appointed by the President, but the President does not select them except for one. This one can be removed at will. The nominee of President Kumaratunga (Mr HL de Silva) resigned after some time and the Constitutional Council functioned with nine members. When the vacancy was filled by the President, the appointment (of Dr Colvin Gunaratne) took effect for three years from the date of appointment, and not for the unexpired period. In March 2005, therefore, there was one other member surviving in addition to the three ex officio members. His term may or may not have expired by now. If it has, the President should make a fresh appointment. The position therefore is that today there are in place three or maybe four members of the Council. There is no question of the Council having gone out of existence or having to be totally "reconstituted"; it is a question of filling vacancies, which have occurred.

The remaining six members (as well as the President's nominee) are all expected to be "persons of eminence and integrity who have distinguished themselves in public life and who are not members of any political party". [2] Clearly the Constitutional Council is not meant for stooges, and lobbying for appointment is not contemplated.

Five members are selected by the Prime Minister and the Leader of the Opposition acting jointly. Three of these have to be selected after consultation with party leaders in Parliament to represent minority interests, ensuring that there is a Tamil, up-country Tamil and Muslim in the Council, or persons who represent their interests. The sixth member is chosen by MPs belonging to the smaller parties. According to uncontradicted press reports the selection of the five persons has been completed. If so it was the duty of the Prime Minister and Leader of the Opposition to communicate to the President their names in writing. If this has not been done, it must be done now, and we could then have a Constitutional Council of nine members. There is no requirement that the remaining nomination

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POLITY