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Wrong Turn

Norway has damaged its peace initiative in Sri Lanka

Opposition to Erik Solheim, the Norwegian peace envoy, had been growing amongst the Sinhala far-right for some time. Initially directed at the Norwegian government, the anger of the Sinhala-Buddhist supremacist forces in Colombo had focused on Solheim of late. Barely two weeks ago, the Sinhala Council demanded that the envoy be declared persona non grata. These sentiments are not new in the south. The Norwegian embassy has been the target of public rioting. Sri Lanka's Prime Minister, Ratnasiri Wickremesinghe, the darling of the Sinhala far-right has never concealed his contempt for the Norwegian. But Solheim's tireless shuttle diplomacy and determination to bring about negotiations between the protagonists has made him a household name - and one referred to with respect, even affection, amongst the Tamils.

However, of late, Solheim has made new enemies in Colombo, including Sri Lanka's Foreign Minister, Lakshman Kadirgamar and President Chandrika Kumaratunge - rather ironically, since only a month ago, both were gushing with praise for the Norwegian, even as they effected actions to undermine his primary objective. Solheim's main 'fault' it would appear has been his refusal to be co-opted into Sri Lanka's efforts to smear the Liberation Tigers as the intransigent party in the peace process. The exercise last month by Kadirgamar to create the illusion that the peace process was proceeding well - in this case so as to undermine opposition moves to topple the government - is a case in point. It was Solheim's comments to the press, echoing the LTTE's assertion that no deal had been struck, that ended the euphoria and returned matters to an even keel. It also earned him Kadirgamar's ire.

Having spearheaded his country's peace initiative for two years, and having met all the key figures on both sides countless times in that period, Solheim is arguably one of the most informed Westerners as far as the Tamil question is concerned. That is not to say he is an expert: Solheim can still be surprised by events which Tamils and Sinhalese often expect and understand and his sense of optimism has sometimes seemed to prevent him from differentiating the insurmountable from the difficult and vice-versa. Yet, it was not surprising that when the new US administration wished to appraise itself of the peace process in Sri Lanka, it was Solheim who was invited to Washington. The envoy reportedly urged the US to put pressure on both sides to negotiate. Naturally, the Sri Lankan government, which has been dragging in its feet on the peace process, refusing to reciprocate the LTTE's ceasefire or lift the economic blockade on Tamil areas, was incensed. Kadirgamar's carefully engineered

impression abroad of the LTTE as intransigent and war-mongering was being challenged.

Lately the Norwegian peace initiative had been stalled over Sri Lanka's refusal to lift the proscription of the LTTE, and reports that Norway's Foreign Minister, Thorbjørn Jagland was to fly in for a meeting with the Sri Lankan government was therefore greeted with cheer. However the optimism has proved ill-founded. Jagland's visit heralded the most severe crisis to afflict Norway's peace initiative to date: Sri Lanka wanted Solheim sidelined. The strength and nature of feeling was apparent on Thursday. Though Solheim had flown in with Jagland, he was not permitted to attend the meeting. The writing was on the wall. Jagland and Solheim left the same night, without comment or meeting opposition parties or any other actors on the Sri Lankan political scene. The government issued a terse statement declaring that Norway would be involved at "a higher level." Colombo, it would appear, had successfully neutralised its irritant.

The Liberation Tigers' fury over Sri Lanka's unilateral - and successful - decision to down-grade Solheim's role and supersede him is hardly surprising. As the LTTE acidly observed: "the facilitatory process in peace making is not an exercise in inter-governmental relations; it involves tripartite relations between the facilitator and the parties in conflict." Unfortunately, Norway's regrettable decision to simply acquiesce to Colombo's histrionics over Solheim, has caused its own motives to be called into question amongst the Tamils. The LTTE was circumspect, simply noting that Oslo's "improper" action "entails a breach of protocol and neutrality." But the ramifications of last week's events are wide-ranging and are a cause for concern, even apprehension, amongst the Tamil community. The question as to whether Norway and Sri Lanka are collaborating against the LTTE will inevitably be asked - particularly as the movement itself raised the issue, albeit obliquely. Ultimately, the damage to the peace process stems from Sri Lanka's opposition to an honest broker. The government would rather work with an official more sympathetic to its objectives with regards to the Tamil question. But that is not as important as the fact that Colombo can in fact alter the modalities of the peace process at will - and the LTTE may or may not be involved - or, as in this case, even aware. Hence, after the events of the past week, the LTTE could not faulted if it was to reconsider the very bona fides of the Norwegian initiative. What is clear this week is that the peace process has suffered its most critical setback - on the matter of trust. It remains to be seen how this issue can be addressed. But until then, all other matters related to the peace process are justifiably of secondary importance.

First Line

Civilian concentrations are protecting Sri Lanka's bases

The Sri Lanka Army's use of Tamil civilians as human shield is not new, having been practiced at both tactical and strategic levels for many years. The matter has been raised by local and international human rights organisations, church leaders and Tamil parliamentarians, yet it continues. In the east, the Sri Lankan security forces travel with loaded weapons on packed civilian buses, to deter attacks by the Liberation Tigers - and on occasion have engaged the LTTE's fighters from these vehicles. Sri Lankan troops on search and destroy missions have often forced Tamil civilians to walk ahead of their patrols to trigger any mines that may have been planted. Tamil civilians have been tied to the perimeters of military camps to deter attack. The strategic use of Tamil civilian centres to deter the LTTE's conventional onslaughts is also a well known practice. The LTTE's Operation Unceasing Wave 3, intended to overrun the strategic SLA garrison at Elephant Pass was held up for weeks early last year when thousands of Tamil civilians fleeing the fighting were prevented by the SLA from leaving the general area of Pallai when the town was next in line for a major offensive. With considerable international pressure, the SLA relented - the Tigers overran the town in hours.

This year also, the SLA has been incorporating Tamil civilian concentrations into the defences of its larger camps. The approaches to its sprawling complex at Palaly pass through large numbers of villages. In the eastern province, the SLA places checkpoints and minicamps near schools and hospi-

als. As one head teacher observed, each day his students have to file past the muzzles of machineguns to attend school. The SLA's attempts to forcibly move Tamil refugees from the Alles Garden refugee camp in Trincomalee to a location north of the town must inevitably also be seen in this light.

In the Jaffna peninsula, residents of the Chavacachcheri sector who fled the fighting are also being forcibly resettled in their homes. A carrot and stick approach is being used by the paramilitary Eelam People's Democratic Party (EPDP) whose leader, Douglas devananda, is Sri Lanka's Minister for Rehabilitation. A thousand families have been moved into positions being vacated by the Army, via a combination of intimidation and monetary grants. It is abjectly clear that were the LTTE to launch a conventional assault on Jaffna town, its forces would have to fight their way through this sector, and the intensity of the artillery exchanges can cause horrific casualties.

International human rights agencies which often raise concern at the extent of civilian casualties in attacks attributed to the Liberation Tigers in the south of the island are conspicuously silent when Tamil civilians are killed or wounded in Sri Lankan attacks, often exploiting the lack of access as an excuse for failure to follow up. The issue of the Army's human shields is however more clear cut, with large numbers of independent sources verifying these civilians plight.

It remains to be seen if the considerable risk to their lives causes any concern amongst the international community.



Balance of Forces

De-proscription must be seen in its wider context

The refusal of the Sri Lankan Government to de-proscribe the Liberation Tigers was a lost opportunity to improve the negotiating atmosphere. Muruges Arumugam argues that it would have been a simple step towards reforming the draconian laws and regulations that remain an impediment to a sustainable solution to Sri Lanka's conflict.

THE DE-PROSCRIPTION of the Liberation Tigers would have been a symbolic and relatively small measure for the Sri Lankan government to agree to, particularly given the primacy accorded to the matter by the movement. However, the effects of the Emergency Regulations (ERs) that proscribe the LTTE are far from symbolic, and considered in the context of the substance of possible future talks, the repeal of these particular ERs is not as unreasonable as the Government would like to make out.

Further, de-proscription, though necessary, will not be sufficient if a full and frank discussion is to be possible. The ERs under which the LTTE is proscribed are just one of many impediments to peace negotiations in Sri Lanka. Indeed, it could be argued that a genuine peace process will not be possible without significant reform of Sri Lanka's draconian public security laws that have curbed political freedoms.

The Emergency (Proscribing of LTTE) Regulations No.1 1998 were drafted by the President and came into effect when they appeared in the Government Gazette of January 1998. This was the first time since July 1979 that the LTTE was officially proscribed in Sri Lanka and occurred in the midst of Sinhala-Buddhist fury following the bomb attack on the Dalada Maligawa which was attributed to the LTTE.

The Regulations make it illegal to, amongst other things, be a member of, wear the uniform or symbol of, attend a meeting of, and distribute material supporting the proscribed organisation. Anyone found guilty of any "offence" under these Regulations would face imprisonment of at least 7 years.

Interestingly, despite the Government's claim that the proscription relates to the LTTE's "criminal activities", the Regulations make no mention of other, more traditional criminal activities. Presumably, anyone charged under the Regulations would also be liable for punishment under Sri Lanka's expansive criminal laws and regulations.

Therefore, the proscription adds little to the substantive "offences" for which someone can be tried. Instead, it has been designed to outlaw with threat of severe punishment any activity that relates even remotely to the LTTE. Indeed, the panic that ensued soon after the LTTE was banned, amongst many journalists in Colombo who either received the move-

ment's press releases or publications reflecting its views underscored the simplest impact the proscription had.

By repealing the Regulations and thus de-proscribing the LTTE, the Government would have made an important gesture towards peace and towards a political solution. And, as the rule in question is a Regulation, it could easily be repealed by the President without Legislative approval, thus sparing her of a potentially hostile encounter with Parliament.

Yet, for all of its symbolism, the proscription has significant effects. Contrary to the Government's claim that proscription "does not in any way preclude [the LTTE] from entering into the process of negotiation with the Government", the presence of this and the other Regulations presents considerable problems.

The notion of a Government negotiating with an organisation that it doesn't even recognise is as ludicrous as the policy of waging a "war for peace". Apart from this hypocrisy, proscription has practical implications. The continued proscription of the LTTE would mean that any member of the organisation attending peace talks would be risking arrest and at least 7 years of imprisonment.

Ironically, the same penalty could potentially apply to Government representatives in such negotiations. While the Regulations exempt international organisations that work with the LTTE in providing humanitarian assistance, there is no such protection for domestic actors.

For example, under Section 3(b) of the relevant ERs, "any person who summons or attends a meeting of such proscribed organisation, or participates or engages in any activity, or, or connected with, or related to, such proscribed organisation shall be guilty of an offence" and liable for imprisonment for between 7 and 15 years.

If we assume that successful peace talks will require Government negotiators to "engage in" some activities "connected with" the LTTE, then can we expect the Government to arrest its own officials for discharging their duty - and imprison them for at least 7 years? Of course, the Government can say that it will not actually enforce the Regulations but this begs the question as to why not repeat them beforehand. Far from being unreasonable as the Government insists, the call for de-proscription makes plain sense.

The issuing of new emergency regulations should not be confused with the declaration of a state of emergency as such. A state of emergency has been in force in Sri Lanka nearly continuously since 1983, coming into place before the anti-Tamil pogrom in which thousands of Tamil people were massacred and Colombo virtually cleansed of Tamil residents. During a declared state of emergency, which has to be renewed monthly by parliament, emergency regulations come into force. They are issued by the President under the Public Security Ordinance, by-passing the normal legislative procedure.

The ER rules introduced by the President last year, confer powers of arrest to "any authorized person" in addition to the police and armed forces and considerably extend the powers to detain available to them. The regulations also provide wide powers of censorship; provisions for prohibiting public meetings and processions; and broad provisions for proscribing organizations which the President considers to be prejudicial to national security, public order or the maintenance of essential services.

But no matter how problematic proscription is, it is not the real difficulty. Proscription is only one of many measures through which successive Sri Lankan governments have sought to limit political freedom.

Many of Sri Lanka's problems can be traced to the systematic denial of the basic rights and freedoms that are vital to the functioning of a successful democracy. Indeed, the draconian laws still in effect under wide ranging public security provisions, of which the proscription of the LTTE is just one, are just shy of authoritarianism.

Even before the powers were extended last year, the emergency regulations which were in force already granted powers which considerably exceeded the limits permissible under the International Covenant on Civil and Political Rights (ICCPR), which Sri Lanka acceded to in 1980.

The backbone of Government legislation in this area is the Prevention of Terrorism Act (PTA), originally enacted in 1979 for a period of three years but amended and made permanent in 1982. The Act provides for the detention for up to 18 months, without trial and without access to lawyers or relatives, of any person suspected of offences ranging from incitement of communal disharmony to the mutilation of street signs. All PTA offences, no matter how small, carry a minimum sentence of 5 years in Sri Lanka's notorious prisons.

Under a Public Security Ordinance that dates back to 1947 and Article 155 of the current Constitution, the President can declare a state of emergency under which

all other laws, except the provisions of the Constitution, can be suspended. This can be done without the consent of the legislature and is immune from judicial review. Not surprisingly, Sri Lanka has one of the worst records in the world in this regard - 28 out of the 54 years since independence, and almost all of the last 18 years, have been under a state of emergency.

ERs are orders or proclamations that are issued by the President and, once published in the Gazette, are in effect during emergencies. They are rules not laws passed by a Parliament and, though they are supposed to be temporary, they are in fact almost permanent in the Sri Lankan context. The effect of these laws and regulations have been to curb any political expression that is deemed by the Government of the day to threaten its position.

A quick glance at the Sri Lankan Gazette reveals that the list of ERs is almost endless. The most important heads under which ERs are drafted are the Miscellaneous Provisions & Powers, Maintenance of Essential Supplies & Services, and the Prevention of Subversive Political Activity. Curfews are another form of ERs.

Apart from these often-amended ERs, there are countless others, some that are clearly attempts by the Government of the day to bypass the legislative process. For example, there are ERs on Industrial Disputes, Prohibition of Importation of Instruments and Appliances for Gaming, Regulation of the Use of Boats with Out-board Motors, and even on the Use of Motor Vehicles with Tinted Glasses.

In August 1998, the government attempted to postpone elections for five Provincial Councils using ERs but, in that case, the Supreme Court ruled that Government had gone too far and breached constitutional provisions on the freedom of expression.

A United Nations Working Group that visited Sri Lanka in 1999 recommended that the ERs in place at the time "should be abolished or otherwise brought into line with internationally accepted standards of personal liberty, due process of law and humane treatment of prisoners."

Far from complying with its obligations under international human rights law, however, the Sri Lankan government has instead further eroded the human rights guaranteed in international human rights treaties with the emergency regulations promulgated on 3 May 2000 and their subsequent amendments.

Despite widespread criticism by international human rights agencies, the US State Department and the European Union, the Sri Lankan Government, declar-

ing that the country was in a "state of war" in May 2000, widened the powers of the President and the security forces even further. It is estimated that some 18,000 people, mostly Tamils, were arrested under ERs and the PTA in 2000 alone.

So far we have seen that it is not just the ER concerning the proscription of the LTTE that needs repeal, but all of Sri Lanka's draconian ERs. However, there is another more fundamental impediment to discussion of meaningful solutions to Sri Lanka's woes: the Sixth Amendment to the Constitution.

Passed by the UNP super-majority in Parliament in 1983, the Sixth Amendment inserted Article 157A into the Constitution. Section (1) is clear about the Amendment's intent: "No person shall, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka." Similarly, the Article prohibits any political party or other association or organisation from having the establishment of a separate state as one of its aims.

Further, the Amendment requires every member of Parliament, the civil services, local authorities or any other Government official to take an oath swearing that they will comply with Section 157A.

No other vibrant democracy, however threatened it may be by separatism, has enacted a similar set of provisions. After all, a mature democracy can only evolve if even the thorniest issues are debated and resolved. The Sri Lankan solution of banning even the support, advocacy and espousal of greater autonomy is undemocratic and affects Tamils unfairly - particularly it denies them a key aspect of their right to self-determination.

These Constitutional provisions, in addition to the PTA and the ERs, have had the effect of emasculating Tamil parliamentary parties and forced Tamil aspirations to take voice outside the Parliamentary process.

Seen in this light, whether the Government de-proscribes the LTTE or not, is not so important in the long-term. After all, banning the messenger will not get rid of the message. In the Sri Lankan case, it is time for that message to be discussed in a sensible and genuine forum.

All this, of course, begs the question as to whether the Sri Lankan Government is actually willing to hear the message. As DBS Jeyarajah a columnist with the Sunday Leader says, "The Government... has to cater to the Sinhala hardline constituency outside Parliament and minority parties inside Parliament is apparently reluctant to/incapable of defying the Sinhala Buddhist Constituency - even if it can stomach its own pride."