



A Global Pro Bono Law Firm

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CONTENTS

Lessons Learned:  
Parties' Negotiating  
Approach..... 2  
Lessons Learned:  
The Substantive  
Issues..... 2  
Looking Forward..... 6

ABOUT PILPG

The Public International Law & Policy Group (PILPG) is a 501(c)(3) non-profit organization, which operates as a global *pro bono* law firm providing free legal assistance to developing states and states in transition involved in conflicts. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution. To date, PILPG has advised over a dozen countries on the legal aspects of peace negotiations and constitution drafting, and over fifteen countries in Europe, Asia and Africa concerning the protection of human rights, self-determination, and the prosecution of war crimes.

The Sri Lanka negotiation simulation was prepared by PILPG in cooperation with American University and is made possible by a grant from the Carnegie Corporation of New York.

# SRI LANKA: NEGOTIATING A LASTING PEACE

## Lessons Learned From a Negotiation Simulation: Establishing an Interim Self-Governing Authority, Reducing High Security Zones to Promote Refugee Return, and Interpreting the Ceasefire Agreement

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In the Spring of 2004, the Public International Law & Policy Group held a day long negotiation simulation designed to stimulate debate, surface points of impasse, and identify potential solutions for the points of contention which may arise in the subsequent rounds of negotiation between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE). Since establishing a ceasefire agreement in February 2002, several rounds of negotiations have yielded substantial progress, but many contentious issues remain unresolved, and tensions relating to the maintenance of the ceasefire continue to grow.

The negotiation simulation was held at American University's Washington College of Law and was designed according to the methodology used by the United States Department of State's National Foreign Affairs Training Center to train American diplomats for peace negotiations. The simulation brought together individuals from different professional backgrounds, including policy experts, former diplomats, lawyers, and peace and conflict professionals.

By simulating a defined set of issues, the negotiation simulation sought to produce a clearer understanding of the dynamics involved in the conflict and identify potentially problematic issues. The primary issues addressed were the creation of an interim arrangement, the status of the High Security Zones, and disputes concerning the interpretation of the ceasefire agreement. The simulation material is available at [http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Sri\\_Lanka](http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Sri_Lanka)

This negotiation simulation was part of the Public International Law & Policy Group's Peacebuilding Practice. During the Spring of 2004 the Group also ran a series of negotiations simulations relating to the Kashmir conflict, the negotiation of a new Iraqi constitution, and the Nepal crisis. The Group has also run a series of negotiations in Pristina, Kosovo, and Washington, D.C. on Kosovo final status talks. These and additional negotiation simulations for Sudan, Congo, Aceh, and the Tigris/Euphrates River Basin are all available on the Group's website at <http://www.pilpg.org> and may be freely used for academic or professional purposes.

The report has been prepared on behalf of the Public International Law & Policy Group in cooperation with American University. The views in this report do not necessarily reflect the views of the PILPG, which does not advocate specific policy positions, nor do they reflect the views of American University.

## LESSONS LEARNED:

### PARTIES' NEGOTIATING APPROACH

The delegation for the **Government of Sri Lanka** focused on four primary themes throughout the negotiations:

- Maintaining the sovereignty and territorial integrity of Sri Lanka;
- Reserving the option to use force to protect Sri Lanka's sovereignty and territorial integrity;
- Ensuring active participation/control by government representatives in the interim administration; and
- Protecting the minority rights of the Muslim and Sinhalese communities in the North and East.

On the whole, the Government of Sri Lanka viewed the conflict as a domestic rebellion and hoped to modify the existing political structure to peacefully reincorporate the Northern and Eastern provinces. The Government was open to limited compromise with the LTTE so long as these concerns were addressed.



The delegation for the **LTTE** entered the peace talks from the perspective that they had already made several concessions to the Government, including no longer seeking an independent state and unilaterally maintaining the ceasefire in spite of stalled peace negotiations. The four primary themes for the LTTE were:

- Establishing and maintaining parity between the two parties;
- Creating a viable interim administration under their effective control;
- Enabling post conflict reconstruction through the return of refugees;
- Obtaining direct international aid in order to reconstruct and develop the northeast region.

On the whole, the LTTE initiated each discussion with a desire to establish parity with the Government of Sri Lanka. The LTTE was also very insistent on preserving their ability to defend the North and East from the Sri Lankan army, and to create a political structure which would enable them to maintain their position as the repre-

sentatives of the Tamil people in the North and East.

The **Mediators (Norway and Japan)** sought to maintain a sense of parity between the LTTE and the Government of Sri Lanka on all issues in order to ensure that the negotiations moved forward. The mediators perceived their role to be to ensure both parties' concerns were being adequately addressed and that they were being treated as equal negotiating partners. In particular, the LTTE felt as though they were talked down to and not on equal footing with the Government. The mediators were, however, careful not to lend legitimacy to the positions of the parties. The mediators proved to be most effective when they proposed measures or compromises to bridge the differences between the parties after the parties had made some initial concessions to narrow those differences.

## LESSONS LEARNED: THE SUBSTANTIVE ISSUES

This negotiation simulation identified three major issues:

- **Interim administration:** How to establish structure, authority, and the means to finance the interim administration in the Northern and Eastern provinces of Sri Lanka. This was the primary and most contentious issue during the simulation.
- **Refugees:** How to address the return of refugees, an issue linked to the status of the high security zones.
- **Ceasefire arrangement:** How to clarify whether under the Ceasefire Agreement the LTTE may continue to import arms, and whether the Government of Sri Lanka breached the Agreement by interdicting LTTE vessels in Sri Lankan waters.

### Interim Administration

Since the signing of the Ceasefire in February 2002, no agreement has been reached on how to govern the Northern and Eastern provinces or on how to establish an interim arrangement. The next round of negotiations will focus on the interim administration and the participants in this simulation spent a considerable amount of time negotiating this issue.

The LTTE and Government of Sri Lanka delegations disagreed over the structure and power arrangement under the interim agreement as they each possessed significantly different visions for the interim administration. The parties, despite the assistance of the mediators, were unable to reach a final agreement on the interim administration.

However, they did develop detailed proposals and identified points of emerging consensus. The mediators were able to broker a compromise approach to the allocation and distribution of international assistance in the form of an internationally monitored trust fund. The mediators also facilitated agreement among the parties to revisit and progress on the issue of merging the Northern and Eastern provinces as one unified region.

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*The Government proposal clearly sought to prevent the creation of a de facto independent state...*

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With respect to the Interim Administration, the **Government** proposed an arrangement that would allow some local power while reserving most powers to the national government. Under this political structure, the Government would have a voice in all decisions made in the Northern and Eastern provinces. The Government proposal clearly sought to prevent the creation of a *de facto* independent state in the northeastern region ensuring a unified country.

The Government delegation proposed:

- A Council for the Northern and Eastern provinces subject to review by both parties every six months. The Council would consist of members from the Government, LTTE, and Sri Lanka Muslim Congress, with a LTTE majority and weighted representation for the Muslim and Sinhalese communities.
- The Council would have the power to engage in policymaking, administration, and distribution of international assistance, but the central government reserved control over the police and security, land and revenue.
- District committees would exist in each of the eight districts of the Northern and Eastern provinces and ensure the effective implementation of Council decisions and coordination of all development activities within the region.
- The Government, with Council majority approval, would appoint a "Special Commissioner." This official would use state machinery to implement Council decisions and would be a non-voting, but accountable member of the Council.
- The Council would also be encouraged to establish special committees in specific areas such as the economy, infrastructure, and essential services.

The **LTTE** proposed an interim arrangement calling for the creation of an "Interim Self-Governing Authority" with jurisdiction over all eight districts in the Northern and Eastern provinces. The proposal would provide for Government input through their representatives on the Interim Authority, but more importantly, it would ensure strong autonomy in the northeastern region.

The LTTE delegation proposed:

- The Interim Authority would consist of a defined number of members as determined by the parties to the agreement. The LTTE appointed members would compose an absolute majority in the Interim Authority with additional members appointed by the Government and the Muslim community. The chairperson would be elected by a majority vote and would serve as the Chief Executive of the interim authority.
- The chairperson would appoint a Chief Administrator for the Northeast and other officers as may be required to assist in the performance of his/her duties. If needed, the power to suspend or terminate those appointments would be reserved by the chairperson.

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*[The LTTE] proposal would provide for Government input...but more importantly, it would ensure strong autonomy in the northeastern region.*

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- The Interim Authority would have broad, far-reaching powers. Specifically, these include authority over the land, rehabilitation, resettlement and reconstruction, the power to directly receive international aid, regulate internal and external trade, solicit direct investments from abroad, and collect taxes.
- The LTTE was particularly concerned with acquiring enough financial resources through international aid and tax revenue to support an autonomous government in the region and provide for the reconstruction and development of the Northeast. The Interim Authority was also empowered with the administration of the judiciary in the northeast region.
- The Interim Authority would continue for five years and if no agreement is reached, the LTTE would conduct elections in accordance with international democratic principles and standards under international observation.

### *Points of Emerging Agreement*

Both the LTTE and the Government of Sri Lanka argued for their respective proposals. However, toward the end of the negotiation session, issues of emerging agreement were discovered.

- The LTTE and Government agreed to drop the Government's proposal for having two chairpersons each with veto power, because this would only lead to stalemate.
- Although other points of the interim agreement proposals were met with interest, the talks stalled until the mediators made their own compromise proposal which won the acceptance of both parties and consisted of the following elements:
  - \* Setting aside a final decision on merging the two provinces.
  - \* Offering a proposal for the creation of two separate interim administrations in the two provinces for a period of five years. During this period, international observers would monitor human rights abuses throughout the country and collect data for a report to be presented at the end of the interim period. Upon completion of the five-year period, the issue of merging the provinces would be revisited.
  - \* Providing protection for minorities in the region, including the Muslim community.
- The mediators also helped broker an agreement on international aid. Both parties agreed to have international aid channeled to a jointly controlled trust fund overseen by representatives from both parties and international monitors. The Government also agreed to allow LTTE representatives to join its officials when it solicited aid from international sources.
- Surprisingly, the Government delegation indicated its willingness to consider allowing the development of a federal structure as long as there was a unified, national military and the federal government retained the right to levy taxes and control trade.
- The LTTE softened their original demand for control of the northeast region's court system and agreed to allow national or federal courts to have some jurisdiction over the regional judicial system.

### *Points of Disagreement*

While they reached consensus on the above issues, there were still challenges in the negotiations that were not resolved during the simulation.

- Both the Government of Sri Lanka and LTTE disagreed as to which governing powers should be allocated to the interim authority.
- The Government and the LTTE disagreed as to how best to ensure effective, yet not disproportional, Muslim representation, and how to protect minority rights in the northern and eastern provinces.

### *The Question of Federalism*

While the issue of a federal structure was not the focus of the simulation, during discussions on the interim arrangement, a federal structure for Sri Lanka was continually raised by both delegations. This was a clear indication that the final status of the northeast region and its future relationship with the central government was in the minds of both the Government of Sri Lanka and the LTTE during interim arrangement discussions.

- The LTTE pushed for a structure that resembled a confederation rather than traditional federalism.
- The Government was very guarded in the amount of power it would devolve to the northeast region, fearing that this threatened the integrity of the state and that it might then be required to devolve similar powers to the other regions.

### **High Security Zones and Refugee Return**

The status of the High Security Zones ("Zones") was a contentious issue during the simulation. High Security Zones are areas created for and occupied by the military prior to the signing of the ceasefire agreement. Under the obligations of the ceasefire agreement, the military should be vacating these Zones to allow for refugee resettlement in these areas. However, the military's failure to leave these areas has caused problems with efforts to resettle the refugees.



The LTTE worked to reach an agreement eliminating or reducing the Zones. Specifically, the LTTE sought to reduce the amount of territory designated as a High Security Zone, in particular in the Jaffna region, to enable the return of refugees. They noted that in accordance with the terms of the ceasefire, they have removed their weapons from these Zones and they were no longer a security threat to the Government of Sri Lanka. The LTTE did not call for the immediate withdrawal of troops from Jaffna or the dismantling and elimination of the Zones altogether. However, they sought to relocate the Zones out of civilian areas to allow refugee return and resettlement.

On the other hand, the **Government of Sri Lanka** maintained that there remained a potential security threat in the Jaffna region that deemed the maintenance of the Zones of great importance. The Government was cautious about any agreement that reduced the size of the Zones because they argued that this would allow the LTTE to strengthen their military capabilities.

#### *Points of Emerging Agreement*

Although their initial positions left little room for compromise, both parties worked toward agreement on some High Security Zone issues and other security matters.

- Both the Government and the LTTE favored the return of refugees to the northern and eastern provinces.
- With the help of the mediators, the LTTE and the Government agreed to phase out the Zones over five years and to facilitate disarmament through advisory committees composed of the LTTE, the Government, and international monitoring representatives.
- The Government believed they should retain control over security and the police. In contrast, the LTTE sought absolute control over security and the police in the northeast region. While a very contentious issue, the Government and the LTTE agreed in principle to move toward integrating their military and police forces in the future.
- The parties seriously considered a proposal brought forth by the mediators that would decrease the military strength of both parties through a military disarmament committee. This would serve as a confidence building measure by strengthening the peace process and addressing the Government's concern for more guarantees that the LTTE was no longer recruiting or strengthening their military forces.

#### **Ceasefire: Importation of Arms/Interdiction at Sea**

Both the Government of Sri Lanka and the LTTE accused the other party of breaching the ceasefire agreement. The Government alleged that the LTTE was importing weapons and asserted that the LTTE was restricted from doing this according to Articles 1 and 2 of the Ceasefire. The LTTE defended their behavior by stating that they were not breaking the Ceasefire because the agreement did not specifically address the importation of weapons into LTTE controlled territory, but instead only prohibited moving weapons into territories controlled by the Government.

The LTTE also contended that the Government did not have a right to use its navy to interdict their marine vessels and that by doing so the Government violated the Ceasefire by performing an offensive operation. In response, the Government maintained that their navy had a right to interdict LTTE vessels under the terms of the ceasefire because the LTTE repeatedly violated the ceasefire by importing

weapons. The Government also cited Article 1.3 and claimed that interdicting LTTE vessels was necessary in order to safeguard national security. Thus, it was not an offensive operation.

In response to this disagreement, the mediators proposed several approaches:

- Creating maritime committees that included representation from both parties and international monitors to maintain communication between the parties.
- Enforcing the Ceasefire through inspections of ships for illegal materials and facilitating the peaceful existence of both navies.
- Establishing a jointly controlled ship registry administration.

#### *Points of Emerging Agreement*

After much debate, the LTTE and Government moved forward on the following issues:

- Both parties agreed to recognize each other's navy and work toward the eventual integration of their forces.
- Both parties agreed to support the creation of maritime committees composed of representatives from both parties and led by international monitors. These committees were also intended to provide a line of communication between the LTTE and the Government and facilitate the peaceful co-existence of both navies.

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## LOOKING FORWARD

This simulation set forth major issues that will dominate forthcoming peace negotiations. While grappling with these issues, the participants realized there were five important lessons learned that should be recognized in future discussions.

1. In light of the incredible death and destruction caused by this conflict in Sri Lanka, animosity has grown between the two opposing groups. However, the LTTE and the Government of Sri Lanka must recognize each other as legitimate and equal partners at the negotiation table in order to move forward in the peace process. Mediators should take a proactive approach to ensure that both parties are perceived to be equals during negotiations.

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*Focusing on reconstruction and development in the region may facilitate the resolution of other contentious issues and move the peace process forward.*

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2. Due to the prolonged history of the conflict and the distrust among the people, confidence building measures and continuous dialogue are more important in future peace negotiations than firm timelines.
  3. It will be necessary to create a mechanism for Muslim participation without unsettling the delicate balance between the Government and LTTE delegations or creating a trilateral negotiation.
  4. Non-governmental organizations may contribute to the success of the overall peace process. Their expertise and value as a knowledgeable resource for creative approaches and insights continues to be overlooked by parties in the peace process.
  5. Reconstruction and redevelopment is the most pressing issue for the northeast region. Efforts should focus on alleviating the economic issues, especially channeling international aid and other financial assistance into the region. Focusing on reconstruction and development in the region may facilitate the resolution of other contentious issues and move the peace process forward.
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## PILPG Negotiation Simulations:

*Indonesia/Aceh:*

<http://www.publicinternationallaw.org/programs/peace/diplomacy/#Aceh>

*Democratic Republic of Congo:*

<http://www.publicinternationallaw.org/programs/peace/diplomacy/#Congo>

*Georgia/Abkhazia:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Georgia>

*Iraq Constitutional Negotiations:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Iraq>

*Kashmir:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Kashmir>

*Kosovo Final Status:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Kosovo>

*Nepal:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Nepal>

*Sudan:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Sudan>

*Tigris/Euphrates River Basin:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Tigris>