

Sri Lanka: Talking Past Each Other

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Sri Lanka's victory over the LTTE in May 2009, which should have been a moment of opportunity as well as triumph both for the country and for relations with the United States, is in danger of leading to a downward spiral. Sri Lanka and the United States have sharply different priorities and are talking past each other. The result is not just a sour bilateral relationship in which the U.S. has little impact on the Sri Lankan policies it finds most objectionable, but an adjustment in Sri Lanka's regional policies that could affect Indian Ocean security.

The U.S.-Sri Lankan mismatch:

Since May, 2009, the United States and Sri Lanka have been caught up in a dialogue of the deaf. Sri Lanka had just emerged from three decades of brutalizing civil war against adversaries the world recognized as terrorists. Indeed, for about one-third of that period, it had been engaged in two civil wars at once. Most Sinhalese greeted victory with triumph and relief, along with a keen sense that Westerners – including specifically Americans – had given them bad advice and shown little sympathy for their desperate struggle. Especially galling was the absence of a congratulatory message from the U.S. government on the defeat of the Liberation Tigers of Tamil Eelam (LTTE), an organization the U.S. had formally designated as terrorists. Even sober-minded Sri Lankans were prepared to believe the rumors that the U.S. had offered to evacuate the LTTE leadership by U.S. navy ships – despite all the logic to the contrary. Critics of the government and stout defenders of human rights recognized that the end of the war was marked by large-scale killing and major civilian losses. But even in this group, many Sinhalese Sri Lankans believed that the government had no choice but to use whatever means it had.

Sri Lanka's Western friends, by contrast, were transfixed by the last days of the war. This horrifying spectacle appeared to officials in the United States as the classic example of war crimes for which the world needed to demand an accounting. Since the end of the war, this dimension has become the most visible U.S. priority, overshadowing the LTTE's long and grisly record of terrorism. The fact that the U.S. appears to look more critically at the Sri Lankan misdeeds than at those of the LTTE cuts off most useful communication even with many of the country's strongest defenders of human rights.

Several NGOs and other Western aid donors, notably the U.K., Canada and Australia, shared this perspective. These countries all have large and politically active Tamil populations who had earlier been sympathetic to the LTTE and simultaneously victims of LTTE shakedowns. The NGOs too were carrying some difficult baggage in their relationship with the Sri Lankan government: they had protested Sri Lanka's record of arbitrary arrest, disappearances, and other human rights abuses during the long period of two civil wars, and were consequently seen by many Sinhalese as apologists for the LTTE.

A year after the defeat of the LTTE, Sri Lanka and the United States are talking different languages and pursuing different priorities. The Sri Lankan government, hoping to deflect demands for investigations, has established a Commission on Lessons Learned and Reconciliation to look into events during the last few months of the war. While the U.S. has welcomed this as a step “with promise,” the composition of the commission and its proposed procedures raise questions about how much independence it is likely to have. Neither the U.S. nor Sri Lanka, in short, is likely to convince the other to drop its concerns.

This paper looks first at the domestic prospects in Sri Lanka, the chances for political reconciliation and economic development. It then assesses the international consequences of the current breakdown in communications between Sri Lanka and the U.S., and considers whether there is a human rights agenda that can be effective in Sri Lanka.

Political reconciliation: limited prospects:

At this writing, the chances of transforming the Sri Lankan political scene and fully integrating Tamil political parties are poor. In the first days after the end of the war, Sri Lanka’s diplomats, clearly acting on instructions, stressed the importance of healing and reconciliation. However, the government along with probably a hefty majority of Sinhalese believes that its victory makes unnecessary the kind of far-reaching constitutional change that had been under discussion during Sri Lanka’s unsuccessful negotiations with the LTTE. They expect that as long as Sri Lanka sustains the basic “compromises” that had already been accepted in the political system – use of Tamil language and a provincial structure – and as long as Tamils are not barred from politics, the minorities will simply accept a place in Sri Lankan politics that more or less matches their modest share of the population.

For President Mahinda Rajapakse, the priority now is consolidating power. Presidential and parliamentary elections in early 2010 have cemented his control over national institutions. The constitutional changes he has in mind – elimination of the two-term limit for the president, a second chamber of parliament, and presidential control of hitherto independent bodies like the Election Commission – will complete the job. The president’s popularity as the architect of victory will deter serious political challenge from either within or outside his party.

Rajapakse dominates the government together with his three brothers, Basil (Minister of Economic Development), Gotabaya (Secretary of Defense) and Chamal (Speaker of Parliament). Others operate in their shadow. Prof. G. L. Peiris, a highly respected academic and jurist, is foreign minister. But the way he has handled his responsibilities, including his visit to Washington in May 2010, suggests that he is constantly on guard lest his loyalty be questioned. His ability to persuade Rajapakse to shift government policy is probably sharply limited.

Rajapakse has promised to consult with all parties, including the Tamil ones, about his constitutional proposals. He has also been reaching out to the Tamil diaspora. There are reports of a deal in the making between the government and one of the few surviving LTTE personalities. This could in theory provide a bridge to a broader reconciliation with the Tamil community. However, at this point there is little sign that he intends to encourage Tamils to

expand their political role beyond limited tokenism. And within the provincial structure, government spokesmen are talking about bringing in Sinhalese settlers to create a multi-ethnic population in northern Sri Lanka, from which Sinhalese and Muslim residents had earlier been expelled by the LTTE. Both these narrow limits on the Tamils' political role and government-facilitated Sinhalese settlement in Tamil-majority areas are issues with a long history and huge emotive power.

Whether a new LTTE insurgency arises is another question. The death of so many of their leaders at the end of the war probably means that no serious successor will arise for the next couple of years. If Sri Lanka's leaders behave as this paper expects, what happens beyond that time will depend heavily on the effectiveness of Sri Lanka's police and intelligence. Unfortunately, if LTTE-like elements revive, they will have grievances to sustain them.

Economic Progress: more promising:

The economic picture is more encouraging. Sri Lanka's economic growth remained surprisingly robust during the long years of intermittent combat, over 6 percent during most of the past decade. The government is already declaring economic victory, and is working hard to bring in both aid and investment resources. But it bristles at any linkage between economic resources and human rights. The conditions the EU stipulated for resuming access to duty-free trade access under the European "GSP-plus" were branded as an affront to Sri Lanka's sovereignty. The EU has now suspended its "GSP-plus" program.

The government sees economic development as a tool for creating more balanced growth and ethnic harmony. This is certainly needed. The predominantly Tamil Northern and Eastern parts of the island suffered more than other parts of the country from war damage and from economic stagnation during 27 years of intermittent conflict. The "Hill Tamils" of the central highlands never fully shared in the country's amazingly strong record on health and nutrition. But the effectiveness of economics as a tool for reconciliation will depend on the vitality of the political outreach that goes with it. A real push to bring economic advancement to troubled parts of the country would represent a major departure from the patronage-oriented way that the current government leaders usually operate. Moreover, the practice under practically all Sri Lankan governments has been to run economic development programs from the top down, rather than giving local officials and politicians a stake in creating and implementing them. This reduces their value as an instrument of national integration.

The International Dimension:

An edgy "we told you so" discourse is overwhelming, even a year after the victory. The press has always had a strongly emotional quality, but today even sober-minded, careful observers are caught up in resentment at the bad advice and lack of sympathy they received from the U.S. and more generally from the West. One quip attributed to Basil Rajapakse by the June 27 *Sunday Times* conveys the attitude: " 'Do you want to know our frank opinion about the US?' Basil asked [Samantha] Power, who is known to be close to President Obama and meets him almost daily at the White House. She nodded. He said, 'The US Government is a little jealous

about Sri Lanka. We are a small country but we have achieved what the US has not been able to.””

This attitude has driven Sri Lanka’s foreign policy for the past year. Criticisms from the West are met by over-the-top, bombastic rejection. When U.N. Secretary General appointed a Panel of Experts to advise him on accountability for possible rights violations during Sri Lanka’s civil war, one minister announced that its members would not be given visas, another accused one of the panel members (an American lawyer) of bias, and a third urged people to blockade U.N. staff resident in Sri Lanka in their offices until the Secretary General reversed his decision. The government quickly distanced itself from this extreme view, but the hotheads carried on. Three days later, Wimal Weerawansa – Minister of Housing and former member of the JVP, whose armed insurrection convulsed the country twice in the past thirty years – was still manning the barricades while a senior Sri Lankan diplomat tried to negotiate with a minister in his own government to secure a safe exit for the U.N. staff.

In the period since the end of the war, Sri Lanka has made a sharp turn toward its non-Western friends. It has gone to Iran, Russia and China looking for military and commercial funding and for publicity. All responded, and all won points in Sri Lanka for publicly criticizing the U.N. panel on Sri Lanka.

One significant development has been the tremendous growth in Sri Lanka’s relations with China. The U.S. and China have an interesting history in Sri Lanka. In 1950, a rice-for-rubber barter deal with Sri Lanka helped China get around the strictures that then existed in U.S. law against trade with the newly installed Communist government. Since then, China has had an honored place among Sri Lanka’s foreign friends. Colombo is full of large Chinese-built public buildings. Two decades later, however, China and the United States found themselves on the same side, providing military support to the Sri Lankan government in battling an insurgency that called itself Maoist, the first such case of common U.S.-Chinese action in the world.

This time, the re-energized Sri Lanka-China relationship is operating in ways the U.S. will not find comfortable. China has committed close to \$1.5 billion in the last year and a half. Most of this is for infrastructure – a bunkering facility in Colombo, a new airport, a railroad upgrade. The biggest project is a new port at Hambantota, on the southeastern corner of the island. This coincides with other moves by China to establish a more regular presence in the Indian Ocean – support for facilities in Burma, construction of a port in Pakistan near the border with Iran, and the announcement that China wants to participate in anti-piracy operations in the Arabian Sea. No single project on this list threatens the security of the Indian Ocean or of the countries that depend on it for their security, but taken together they change the environment.

The other beneficiary of the new look in Sri Lanka’s foreign policy is India – which has good reason to be concerned about the position China is staking out. Following the end of the war, a series of high level visits culminated in Rajapakse’s state visit to Delhi in June 2010. Rajapakse came home with a dizzying array of joint projects: enhanced defense exchanges, reconstruction projects in Jaffna, energy cooperation, possible electric grid connections, a CEO Forum to boost economic cooperation, and agreements on legal assistance and prisoner transfer. Two provisions were particularly noteworthy: an apparent pledge of Sri Lankan support for

India's quest for a permanent seat on the U.N. Security Council and the establishment of additional consulates, with India adding offices in Jaffna and Hambantota. This is the first time since its disastrous involvement in a Peace Keeping Force in the late 1980s that India has been able to sustain such a high profile role in Sri Lanka.

The Sri Lankan government appears to look on closer relations with India as an alternative to ties with the West. This certainly fits the historical pattern: India for years looked askance at any enduring manifestations of the U.S. presence in the island. However, with today's close U.S.-India cooperation especially on Indian Ocean issues, a closer Sri Lanka-India relationship is if anything a plus from the U.S. perspective.

India will not be much help, however, when it comes to U.S. concerns over investigating the end of Sri Lanka's war. India has a strong political interest in human rights problems that affect the Tamil population, and may therefore discreetly weigh in on current issues involving Tamils (see below). India has generally been reluctant, however, to get involved in Western-led campaigns on issues like war crimes, especially in countries where India has strong strategic interests. This has been the case in Burma, and will surely be the case in Sri Lanka, especially since China is using the human rights issues to bolster its credentials as a true friend of Sri Lanka.

Managing the U.S. agenda:

Under normal circumstances, the United States would take Sri Lanka's shift toward China in stride. But with the accountability issue topping the list of U.S. priorities – and triggering a passionate outburst of nationalist resentment every time it comes up – it has become difficult for the U.S. to keep the rest of its foreign policy agenda in play.

One regional interest in which Sri Lanka plays a part is ending terrorism, arguably an interest advanced by the end of the war, which would benefit further by reconciliation within Sri Lanka. Another is building a stable regional environment in the Indian Ocean area. Sri Lanka is a small country and its military plays little regional role, but maintaining access and at least a basic working relationship with its defense establishment is important. The defense relationship has always been calibrated to our human rights concerns in Sri Lanka, and this will presumably continue to be the case. The important thing is not to allow the current disagreement to block U.S. access.

Among the bilateral U.S. interests, the principal one outside the human rights realm is the U.S. economic stake in Sri Lanka. Again, the island is not a major player on a global or even regional scale, but it can be attractive to American business as a trade and investment partner. The most important U.S. government-sponsored trade program for Sri Lanka is duty free access under GSP. The U.S. program, unlike its European counterparts, comes without political strings, and is still operating – although the U.S. has just announced a review of Sri Lanka's GSP eligibility on labor policy grounds. But the continuation of some trade benefits and both countries' interest in negotiating an investment treaty will keep the economic relationship moving forward.

In some ways, the biggest challenge posed by the present disconnect between U.S. and Sri Lankan priorities is how to protect the rest of the U.S. human rights agenda. Besides the issues of potential war crimes, which have to do with accountability for events that have already taken place, Sri Lanka has serious human rights problems that arise out of contemporary conditions. The Sri Lankan government thus far appears more willing to listen to its foreign friends on these contemporary issues than on the war crimes question. This unfortunately sets up a tradeoff within the broad human rights field. Examples include:

- Release of Tamil civilians detained in camps at the end of the war. The number of such detainees was estimated at 250-300,000 as of the end of the fighting; it was down to 50-55,000 as of July 1, 2010. The slow progress in moving people out of camps at the outset resulted from the security forces' insistence on vetting the detainees for connections to the LTTE. By the end of 2009, the Sri Lankan government had come to recognize the camps as a national embarrassment and began working much more seriously to wind them up.
- Harassment of opposition figures: This reflects the triumphalist atmosphere in Sri Lanka at the end of the fighting, coupled with the national leadership's iron determination to capitalize on their military victory to consolidate their political power. The most famous case is the arrest and court martial of the general who led the army to victory, General Sarath Fonseka, the day after he lost the presidential election to Mahinda Rajapakse.
- Intimidation of the press and harassment of journalists: This too reflected a combination of triumphalism and intolerance of divergent views. In early 2009, journalist Lasantha Wickrematunge was murdered in mysterious circumstances; most observers believe the government was involved. After the war ended, suppression of journalists and media organizations that published news objectionable to the government continued, with offending web sites being blocked, journalists arrested, and other journalists "disappeared." The internationally best-known case concerned Tamil journalist J. S. Tissainayagam, who was sentenced to 20 years at hard labor in late 2008, pardoned on May 3, 2010, and released and permitted to leave for the United States the following month.
- Police abuses: these have been a problem in Sri Lanka for many years. The media are full of reports of citizens beaten up or otherwise abused at the hands of police either while in detention or while attempting to report a crime.

All these human rights problems have a history in Sri Lanka. In both their past and their present manifestations, they arise when governments and police authorities in a country beset by a brutal civil war persuade themselves that the only way to keep the "bad guys" at bay is to be totally ruthless – and conclude that they will never be punished for it. During the time of two civil wars, between 1987 and 1991, Sri Lanka had over 30,000 disappearances, the highest level in the world.

There have been episodes of dramatic improvement in this sorry record, however. Between 1991 and 1993, for example, disappearances virtually ended. The government made significant changes in its procedures for handling detainees, so as to make it easier for relatives to trace them. It began using the human rights institutions (and expanding them) to identify and address past cases. Military and civilian leadership passed the word down the chain of command

that disappearances had become a national embarrassment and had to stop. By the time that happened, U.S training teams in military law (funded by IMET) were finding a receptive audience. The flood became a trickle, and ultimately did stop when a new government was elected in 1994.

The lesson from this period is that Sri Lankan governments have been willing to take action when they were persuaded that a problem needed fixing, but have not, in general, been willing to admit publicly that they had made mistakes. And for the U.S., it is worth noting that U.S. criticism had a less public character, especially when compared to, say, Britain, Canada and Australia. Moreover, the United States emphasized practical engagement with the Sri Lankan government and military – and also had other things to offer, such as an important textile market. U.S. engagement of this sort actually helped produce a change in Sri Lanka's current behavior.

The recent standoff at the U.N. offices in Colombo suggests that the Sri Lankan government will be pulled along by the momentum of its passions on the issue of accountability. The voices within the government that preferred keeping things under control were ultimately out-shouted by more extreme views. These passions are still as strong as ever a year after the war.

Summing up: Managing Limited Influence

Sri Lanka's foreign policy in the aftermath of the war is built on the premise that if need be, Sri Lanka can do without its Western aid donors. Aid has sharply increased from China and India, and seems to be holding steady from Japan, long Sri Lanka's largest bilateral donor. China, Russia and Iran have taken Sri Lanka's side against what it regards as the arrogant demand to investigate the end of the war. The Sri Lankan government sees a passionate defense of its military victory and sovereignty as both popular and amply justified. It sees no compelling reason to change its position on the issue of investigating the war. And with every fresh gesture of defiance, it becomes politically more distasteful for the government to accept what the Western countries are demanding.

In principle, of course, Sri Lanka would prefer not to cut its ties with the countries that have provided the bulk of its foreign assistance over the years, and the countries where so many of its elite have been educated or have settled. Moreover, Sri Lankans are well aware that the democratic heritage they prize is valued in the West and in India but not in China, Iran or Russia.

The U.S. government faces a distasteful choice about how to reconcile the competing parts of its human rights agenda – those relating to the war, and those relating to offenses that are continuing today – and how to keep alive the parts of its agenda that relate to regional security. But it also has assets such as Sri Lanka's long-term interest in its largest export market and the fact that the United States and India are working together and that this can benefit Sri Lanka. The period immediately ahead will be ugly. For the sake of our enduring interests – including our interests in helping Sri Lanka improve its human rights record – we need to categorize our human rights concerns as problems Sri Lanka can solve with honor, rather than as offenses it needs to expiate. Otherwise, the Sri Lankan government will burrow further into its psychological bunker, with harmful effects on U.S. security and human rights interests.