

Peace-building and Reconstruction Monitor*

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Achieving Legitimacy with Accountability

The release of the sixteenth volume of Conciliation Resources's *Accord* Series "Choosing to Engage; Armed Groups and Peace Processes," (<http://www.c-r.org/accord/engage/accord16/index.shtml>) comes at a time when the Sri Lankan peace process appears on the brink of collapse. With the recent assassination of Foreign Minister Lakshman Kadirgamar, it is clear that the approach to engaging with the LTTE as constructed by the Norwegian facilitators of the 2002 Cease-Fire Agreement has failed. Far from placating the LTTE and reining it into the democratic mainstream, the policy of marginalizing human rights has led to no change in the pattern of child recruitment or political killings by the LTTE. The anti-democratic method of secret negotiations has likewise only empowered the political opposition which draws its strength from the sections of the public already wary of the peace process. The tragic murder of Mr. Kadirgamar was no more brutal than any of the LTTE's other assassinations during the peace process, but it demonstrated the willingness of the LTTE to fully exploit the lack of accountability inherent in the structure of engagement, even to the extent of murdering a senior member of the government with which it is claiming to engage.

It is appropriate to reflect then on common assumptions of conflict resolution theory that have driven peace efforts in Sri Lanka. *Accord* makes the case that militant sub-state actors ("armed groups") must no longer be marginalized in attempts to bring peace to conflict-ravaged regions. It argues that engagement with armed groups as opposed to pursuit of a purely military solution will strengthen their moderate factions which could be vital to ending the conflict and creating a durable peace. Such engagement it follows, could also help reveal the underlying conditions behind the conflict. Third-party actors, such as other states who can provide incentives (or pressure) to bring the parties to the table or local communities and NGOs who can discreetly provide back-channels can facilitate this engagement.

This overview of the potential merits of engagement is useful from the perspective of conflict resolution, but there are a number of problems with the volume's conclusions, particularly related to asymmetry in engagement between states and armed groups. The volume concludes that the use of the "terrorist" label, proscription and other tactics that deny armed groups legitimacy hinder engagement and are ultimately counterproductive to peacemaking. That is fine, as far as it goes. But if a sustainable peace is sought, rather than a simple shifting of conflict scenarios, legitimacy and recognition extended by the international community must be accompanied by accountability on the part of the armed groups. The question is, then, how do we accomplish that? Common wisdom in conflict resolution circles (repeated in this issue of *Accord*) holds that the demand for human rights is unrealistic and can spoil a peace process. But by a good number of the volume's own case studies challenge this view, finding instead that the inclusion of human rights principles and conditions actually strengthened specific peace processes and improved outcomes

Some conflict resolution theorists go further and suggest that international recognition itself can encourage abusive forces to reform. In fact, the case material suggests that a much deeper exploration of the dynamics at play within individual armed groups is needed before drawing broad conclusions about the path from war to peace.

Vested Interests, Structure, and the Internal Logic of Armed Groups

Contributors mention the importance of “understanding” armed groups. Sue Williams and Robert Ricigliano, identify the importance of analyzing the groups’ behavior and their relationship to the conflict. Clem McCartney describes the factors which contribute to a militant mentality and other factors which could shift the armed group towards dialogue with the state. The contributors hint that the armed groups operate on their own sense of logic which has been dictated by circumstance and their own analysis of the situation. They also note how the interests of the state and third-party actors may influence the engagement.

However, they do not adequately explore how the internal structure of the armed group and its own vested interests influence its choices and contribute to its unique sense of logic and imperative. They make the general mistake of trying to relate an “objective” sense of logic and moral imperative to the armed group which may have little or no bearing with the group’s experience and/or doctrine. If an armed struggle has reached a point where it cannot be militarily dislodged, and it controls territory having a population and resources, then it would truly be a challenge to convince the group using “reason” or “morality” that it must discontinue the very activities which had resulted in this advantaged position. Such an approach to “educate” the armed group carries an arrogant assumption that the armed group does not really know what it is doing (an assumption which in itself demonstrates a lack of understanding of the armed group). It is indeed the other side of the argument used by the opponents of the armed group that it is ‘psychopathic’ and thus cannot be reasoned with.

McCartney’s conclusion that the decision of armed groups to enter into negotiations generally is not the result of reasoned analysis is not substantiated by the case material presented. If these negotiations will benefit the organization in relation to its privileged community and the state, then how could one argue that the decision to negotiate has not followed ‘reason?’

Ricigliano’s and McCartney’s assertion that a lack of engagement will strengthen hardliners requires attention, because it is not easily applicable to all situations. A relatively plural resistance movement such as the FMLN as described by Villalobos or the Chechen resistance as described by Ilyas Akhmadov may have the space for internal dissent. However, they do not consider that the ‘political leadership’ (whom they assume to be ‘moderate’) of totalitarian movements consists of the same people who are behind the hard-line behavior and human rights violations. The line between hawks and doves is difficult to draw in a one-leader movement. In the history of the Tamil Eelam struggle, pluralism had only existed briefly in the 1980s until the LTTE eliminated the other armed groups on the grounds that they were too eager to accept a negotiated settlement based on compromise. This was its initial justification for its quest for sole representation”, but having decimated its alternatives and dissent, the LTTE sees no contradiction in negotiating with the government, on its own terms. In the context of the current peace process, engagement can actually further marginalize the moderates in the Tamil community, if only the hardliners are invited to the table!

Like most other organizations, an armed group may prioritize the preservation of itself and its own welfare over its stated goals. This ignored reality has serious implications for conflict resolution. It explains why in the Sri Lankan peace process, the issue of human rights has been explicitly sidelined by the parties at the table. The government for its part, especially the bureaucracy has little interest in altering the status quo and providing greater protection to the Tamil minority (among other minorities) from Sinhalese dominance. Contrary to what one may expect, the LTTE too has little to gain as an organization if the aspirations of the Tamils are met, since that would remove the conditions which created and continue to fuel its existence. This is not to say that the LTTE will continue the conflict indefinitely, or that it will never seriously pursue peace. However, it is entirely in the LTTE’s interest to pursue a solution for the Tamil people on *its* own terms and for *its* particular gain. As important as

securing human rights may be for the Tamil people, it does not offer anything compelling to the parties at the table despite the fact that the violation of rights led to the conflict itself. Under the severe conditions of repression which they currently face, independent Tamils cannot easily force this issue on the government and the LTTE. In this example, human rights can only become an issue realistically if the international community makes it an issue, tying it to legitimacy and recognition.

The Indispensability of Human Rights and Humanitarian Law

Ricigliano argues that adherence to international humanitarian law as a precondition to dialogue may be unrealistic. His position is contradicted by a number of the case studies in the same volume of Accord. Mo Mowlam states that in her experience, human rights could not be separated from the peace process. The British government excluded Sinn Fein from peace talks for seventeen days in Feb 1998 after the IRA's murder of two men. Rene V. Sarmiento in discussing the peace process in the Philippines described the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) in 1998 as the first agreement between the government and the communist insurgents, although it has been only partially implemented because the authority over prosecution and punishment of human rights violators is in dispute (due to a political disagreement regarding sovereignty).

Joaquin Villalobos, presenting an example of a "success story" in the FMLN's engagement with the El Salvadorean junta explains his belief in a "language of violence." According to Villalobos, "terrorism, massacres and torture transmit messages that impede understanding." He says that those who have a "moral advantage" in the use of force can be potentially more powerful than those who are materially stronger. He provides examples of the FMLN's "moral advantage": treating prisoners well, avoiding revenge killings, and respecting humanitarian law in the face of severe repression by the Salvadorean army. This contrast allowed the FMLN to acquire a greater legitimacy than the Salvadorean regime in the eyes of the people and the world, according to Villalobos. He notes that the first agreement between the FMLN and the regime was based on human rights, stating, "Reactive and vengeful violence runs counter to messages of peacemaking and democratization." The focus on human rights first regulated, and later negated violence in El Salvador.

Clearly, human rights have successfully served as the basis and starting point for peace processes. They served to muster credibility among the local communities and to enhance legitimacy with the outside world. Some of the contributors to Accord have missed this point.

Asymmetry, Proscription and Legitimacy

Many of the theorists who contributed to this volume emphasized the danger of asymmetry and proscription as obstacles to peacemaking. Clem McCartney (*Armed Groups' Choices*) and Liz Philipson (*The Impact of Asymmetries*) each note the potential for legitimacy and recognition to bring armed groups to the negotiating table. They argue that armed groups should be rewarded with legitimacy and recognition for agreeing and adhering to ceasefires, while acknowledging that such behavior is often the result of stalemate and not merely a "confidence-building" exercise. Along with Visuvanathan Rudrakumaran, long-time political writer and legal advisor to the Liberation Tigers of Tamil Eelam, they blame the LTTE's withdrawal from the Sri Lankan peace process as the result of its proscription by the US, which prevented the LTTE from participating in a donor conference in Washington in 2003. Philipson briefly acknowledges that those who favor de-proscription for the LTTE have been muted due to its political killings (without mentioning child soldiers), but she still supports de-proscription as a "very positive signal."

With these arguments in mind, the Chechen case study as written by a committed separatist provides a fascinating comparison. Asymmetry is a great concern of Akhmadov, but in the context of a lack of

legitimacy *despite the rebels' adherence to international norms and standards* (as opposed to a sense of *entitlement* to legitimacy and symmetry based on the military strength of the rebels). Such standards include: elections of President and Parliament certified as free and fair by the Organization for Security and Cooperation in Europe, popular participation (not subordination) in civil disobedience and support of the resistance, the tolerance and encouragement of free media and information transparency, and a plural (not monolithic) system of resistance based on coalition and the subordination of fighting groups to their political representatives (though not all militants have aligned with the Chechen government).

Akhmadov's grievances against the international community center around its refusal to acknowledge the Chechens' efforts and to monitor and hopefully regulate the war. At a roundtable discussion in March 2005, the Parliamentary Assembly of the Council of Europe (PACE) excluded the rebels and only included the Russian government, the Russian-installed government in Chechnya, and Russian NGOs. Akhmadov could not understand why European institutions granted the Russians and its proxy administration in Chechnya more legitimacy, even though they appointed its proxy through undemocratic means and suppressed the media's coverage of the conflict. Additionally, he decried the Westerners' granting of *unilateral concessions* to the Russian government in the naive hope that it would *reciprocate*. He has noted that this approach has failed, and that the Russians have not made any substantial concessions as a result.

These finer details show that asymmetry in the Chechnya and Sri Lanka struggles do not have the strong correlation suggested by the theorist contributors; Akhmadov and Rudrakumaran as representatives of their respective movements have very different ideas about what constitutes legitimacy and how it must be obtained. Nowhere in Rudrakumaran's article does he express the pride in his organization's transparency and commitment to democracy that Akhmadov demonstrated in his article. Instead, Rudrakumaran focuses his frustration on the treatment the LTTE has received due to its repression of democracy and its use of child soldiers. Rudrakumaran's statement that a "liberation movement" necessarily represents its privileged community even without a mandate is nothing more than an echo of the LTTE's totalitarian claim that it is the "sole representative" of the Tamil people. His citation of Judge Amoun that "the struggle undertaken in common, with the risks and even sacrifices it entails... is more decisive than a referendum" does not demonstrate that armed organizations acquire the equivalent of a mandate without democratic procedure. Rudrakumaran does not address the fact that without a democratic mandate, there is little way to ensure that the armed group maintains accountability to its privileged community. In this case, the LTTE's repression of popular voices and participation ensures that it is in no way accountable to the Tamil people. By relying on force as its sole measure of legitimacy, the LTTE does not need to address its failure to establish the rights of the Tamils with respect to the state and to improve their standard of living.

Echoing Philipson's reasoning, Rudrakumaran attempts to show that the proscription of armed groups is another tool of asymmetry from which states enjoy immunity. They both forget that the international community has the ability to impose sanctions on states as well and has done so on the grounds of human rights. Indeed, sanctions against apartheid South Africa for its egregious violations of human rights brought about political change and democratization. On this topic, it is believed that one of the factors which led Pres. Kumaratunge to support the Post-Tsunami Operational Management Structure over massive opposition was a fear that the international community would send aid directly to the LTTE without such a joint mechanism, bypassing the government.

There are many arguments against all-out bans on organizations, the most compelling of which is the threat such actions pose to the civil liberties of a group's non-violent political supporters. However, in this case those who argue most vociferously against the proscription of the LTTE avoid employing human rights arguments or exploring the possible role of lesser sanctions in encouraging reform.

Both Philipson and Rudrakumaran argue that proscription does not accomplish anything constructive, and it only provides a disincentive for armed groups to participate in negotiations. Neither of them offer any method which the international community could use to pressure or convince such groups to be accountable to international standards. Nor do they show how the lack of proscription by a number of Western governments has allowed these governments to convince the LTTE to improve its human rights record. The use of proscription or more limited sanctions, such as the UN's proposed travel ban on the leadership of forces engaged in the recruitment and deployment of child soldiers, are among the few ways the international community can tell armed groups that they cannot act with impunity. Rudrakumaran's proclamation that proscription has not weakened the LTTE cannot be treated as sincere, as he is no position to safely make a claim to the contrary. In fact, the LTTE lobbies undertook a massive effort to de-proscribe the organization before the 2001 ceasefire. Rudrakumaran was a key contributor to that effort.

Philipson does acknowledge that legitimacy can come from compliance with rule of law and human rights, and that the objective of negotiations is to bring the armed group into the mainstream away from violence. Unfortunately, her conclusion did not find its way to the "Lessons Learned" section of the Policy Briefing Paper for the volume.

Conclusion

Perhaps the most cogent and useful comments, particularly to the Sri Lankan context, were made by David Petrusek. He lists humanitarian principles and carefully distinguishes between political and humanitarian engagement. He recognizes that if a group had an interest in committing acts of terror, then its goals would be counter to humanitarianism. Nicholas Haysom addressed the importance of transparency and inclusivity in negotiations, noting that the lack of these factors has probably led to the current problem in the peace process. It is important to note that the various Sri Lankan governments from 1956 onwards had generally neglected these factors when negotiating with various Tamil political parties on the topic of Tamils' rights in Sri Lanka. These governments invariably sought to accommodate the Tamil parties without informing or educating the public (particularly the Sinhala majority) on the issues involved in the debate. Whenever agreements were reached after such secret negotiations, such as the 1957 Bandaranaike-Chelvanayagam Pact and the 1965 Dudley Senanayake-Chelvanayagam Pact, the political opposition exploited the public's natural distrust leading to the scuttling of the agreements and the continued marginalization of the Tamil minority. The nature of the current peace process has preserved this destructive pattern of secrecy and exclusivity. If the people once again refuse to accept the outcome of such a process, the parties to the process and its facilitators will have to share the blame.

The major lessons gleaned from *Accord's* case studies, but largely ignored by its theorist contributors, are that human rights must be addressed to provide a lasting solution to a conflict, and that legitimacy and recognition must be bought with accountability to these rights. As the Chechen example demonstrates, adherence to international norms will not necessarily bring full legitimacy to the cause. However, this failing on the part of the international community cannot justify the notion of "might is right" if it desires stable outcomes to conflict resolution. The climate of impunity in Sri Lanka which has led to countless political killings and other atrocious actions is largely a function of a short-sighted approach to engagement which has neglected human rights and accountability.

****Note on the 'Peace-building and Reconstruction Monitor'***

This is the third in a series of briefings on the politics of peace and reconstruction by a group of Sri Lanka Democracy Forum (SLDF) activists. These briefings are meant for discussion and to further develop the analysis of SLDF and SLDF's partners, and do not necessarily reflect the position of SLDF.