
The lethal, the legal and the legitimate

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by Dayan Jayatilke An IANS report from Puducherry, March 25 read as follows: "Congress general secretary Rahul Gandhi Wednesday said he was not particularly fond of Sri Lanka's Tamil Tigers because they killed his father Rajiv Gandhi. He told a press conference here: "The LTTE (Liberation Tigers of Tamil Eelam) is a terrorist group. I am not particularly fond of the LTTE myself. It killed my father." Gandhi, however, said that India was doing its best to protect Tamil civilians caught in the conflict between the LTTE and the military in Sri Lanka's north. "We are trying to help the situation there", he said.

If only the offspring of the Sri Lankan political leaders and prominent personalities, Sinhala and Tamil, who were assassinated or targeted (and wounded) by the LTTE, had the integrity and guts of Rahul Gandhi and denounced the Tigers, either on one platform, or two (Sinhala/Tamil), or even singly, the endgame of the Sri Lankan armed conflict would not loom so large and lacerating as it does today. Instead Sri Lanka — both the Sinhalese and Tamil communities — has been let down by the younger (aspirant successor) generation of its political elite. We are also being let down by the Western democratic elites, which are letting themselves down as well. If they had disallowed the democratic space in their liberal societies to be manipulated so easily by explicitly pro-Tiger constituencies, if they had not allowed themselves to mimic or echo the propaganda of the pro-Tiger lobbyists, if they had not permitted themselves to be quite so lop-sided in their critique, they would not have unwittingly aided the Tigers in the belief that all that is necessary to survive and triumph is to hold on tightly to the hostage Tamil populace of the "Wanni bikini" until the nerve of the Sri Lankan state breaks under international pressure. The Western world and the institutions it dominates are putting pressure on Sri Lanka, while the Tigers hold onto a large number of civilians and fire SAM missiles from the no-fire zone which we, the Sri Lankans, have unilaterally designated. What would be the consequence if Western pressure were to succeed? The situation on the ground would be frozen into a prolonged stalemate which is advantageous to the LTTE. We would have a replay of 1987, in which an external factor aborted a potentially victorious military campaign against the Tigers, resulting in a further two decades of war by the Tigers, several dead leaders in Sri Lanka and India, and nationalist blowback in the South that almost destabilized the democratic state and the market economy. Blinking in the face of Western pressure masquerading as international opinion would also mean that every terrorist group in South Asia and the world would get the message: the Beslan/Bolshoi theatre model works if only writ large enough. Take a sufficient number of hostages from a community that forms someone's electoral base somewhere, and you can generate enough international pressure on the state to let the terrorist cause gain a higher profile and the terrorist cadre get clean away. The West (including politicians who, ironically, are trying to "Swift boat" Sri Lanka) have to figure out whether that is the message it wants to send. This is all the more problematic since the West does not want other countries in our region to talk to terrorists. So what's the policy? Talk to the "moderate Taliban" in Afghanistan; don't talk to the "moderate Taliban" in Pakistan; talk to the immoderate Tigers who make the extremist Taliban seem like the moderate Taliban, in Sri Lanka? Well, that may or may not play in Peoria but it certainly ain't gonna play in Peradeniya. So I daresay the government and people of Sri Lanka are not going to buy it. The West has also to figure out whether its policy towards Sri Lanka is to be guided by or respectful of the views of partners, allies and prospective /quasi-partners/friends in the neighbourhood and the region itself (India, Japan, China), or be driven by Tamil émigré pressures in their own societies, especially those of ex-colonial powers. In the case of Sri Lanka, which relationship is going to prove the more "special" to the sole superpower - that of long standing ex-colonial partner or newly emerging strategic one? Whether or not the Sri Lankan military hunkers down for the long haul outside the safe zone, decides to drive in or to nibble at the fringes has to be decided by the commander-in-chief on the recommendation of the top professionals who have fought the war so successfully so far. While it will be unwise for any decision maker not to take into account the external factors, especially in the neighbourhood (the mistake made by JRJ and Lalith Athulathmudali in 1987), the decision will be ours alone. It will be made in Colombo, not in any other capital, and will not be governed by goings-on elsewhere. Siege or no siege, is, in short, a sovereign decision. The dangers of a long siege, which permits external pressure to mount on Sri Lanka, are evident. So also is the danger of non-conclusion, of indecisiveness in going in for the final kill. This was the case twice over in the history of the Roman Empire, when the rebellious slave army of Spartacus as well as the brilliantly performing army of Hannibal of Carthage, came within sight of the gates of Rome, failed to press home the advantage, camped outside, lost the momentum, and finally lost the war, and were subject to a cruel destruction by the counterattacking Romans. Sri Lanka must not make the same deadly mistake of loss of nerve, focus or momentum. Tamil Eelam (but never the Tamil civilians) must meet with the same fate that Cato called for Carthage: "Carthago delenda est!" Similarly "Tamil Eelam delenda est!" However there is another side to this coin: the implementation of sovereign decisions has to remain within the framework of international humanitarian law, whatever the provocations by terrorists. So far it has been the case. Sri Lanka has not violated any UN Resolutions. Sri Lanka is fighting a war within its internationally recognized and uncontested borders. Sri Lanka is not founded on occupation, dispossession and disenfranchisement of the indigenous. Both major Sri Lankan communities have been present on the soil for millennia. Sri Lanka has not economically embargoed the Tamil people and has not merely sent food but run schools, hospitals and paid the salaries of public servants in separatist terrorist occupied areas. Sri Lanka has not sealed off the exits for the Wanni Tamils; it is the Tigers who are keeping them hostage. Sri Lanka has not rejected possibilities or offers of evacuation of entrapped civilians by friendly powers, singly or in combination. Sri Lanka has not used disproportionate force and in fact has unilaterally desisted from retaliating with air power against heavy artillery embedded among civilian shelters. Sri Lanka does not use white phosphorus in densely populated built up areas. International Humanitarian Law — the laws of war — has to be adhered to because the conduct of political actors be they states or non-states, must be legitimate. If the battle for legitimacy is lost, then even when the

military battle or war is won, the larger, longer contest can be lost and almost always is. The most serious international commentators have concluded that the LTTE has already lost the war. This is true and what remains is for the war to be terminated, which is possible only by terminating the continuing armed resistance of the LTTE – which in turn is possible only by terminating the LTTE’s leadership nucleus, its military apparatus and fighting cadre. There is another reality though: the contest over the future shape of Sri Lanka has not yet been resolved, and will be fought out not only locally but globally; not only by arms but by words, information and ideas. To win that war, the issue of legitimacy is crucial (unless you happen to be a rare state that has an open-ended guarantee from a superpower). Legitimacy is not something that is purely or primarily local: simply because one feels one’s actions are legitimate because of one’s collective cultural self image; because it conforms to local history, prejudices, traditions, thinking or practices, simply will not do, and will not prevent anyone from being raped or winding up at the Hague. Legitimacy, as my father, Mervyn de Silva used to write, must not be confused with legality: as he reminded President Jayewardene, the Referendum of 1982 was legal but not legitimate. Legitimacy is not only judged according to international law, it is also a matter of world opinion. In sum, legitimacy is to do with universality; adherence to universal norms, including, but not only, codified ones. Sri Lanka must win the battle over legitimacy. If that battle is lost, the gains of our imminent military victory can be jeopardized, even rolled back. (The USSR, which defeated Hitler’s divisions, disintegrated without a shot being fired). The military victory of the Sri Lankan armed forces cannot be securely guaranteed in Sri Lanka alone. It must be guaranteed by victories in the international arena, which is the intertwining of two domains: the global interstate system (including its legal superstructure and expanding frontiers) and global civil society (including an increasingly global culture). Humanitarian Law and Human Rights Law are expanding their boundaries both internationally and within national systems - developments which have relevance for Sri Lanka which we ignore to our cost. All this is why Sri Lanka must terminate the ongoing armed conflict and proceed to suppress residual ‘small unit’ terrorism by combining the goal of decisive military victory with methods and tactics that are in consonance with human rights and humanitarian law. It is not a luxury but an imperative for the long term anchoring of victory. That anchorage requires a mentality that recognizes the interlinked notions of legitimacy and universality, and the power of those concepts. (The writer states these are strictly his personal views) Courtesy: Island.lk