

Whose Mission? Limits and Potentials of the SLMM

-- Ingrid Samset

'The problem is that there is no link between the SLMM and the local population.' (Interview with civil society representative, January 2004) [i]

This message stands out as a refrain from the people I talked with about the Sri Lanka Monitoring Mission when visiting the island earlier this year. The feeling of a distance to the SLMM is serious, given the fact that thousands of civilians have remained in need for the protection that a monitoring agency could have given them – due to continued violations in the North and East of the 2002 ceasefire agreement. Why has the monitors' presence failed to deter violations? Would it have mattered if the SLMM had been more responsive to the grassroots? Or have expectations to the SLMM been exaggerated from the outset; pointing to the need for other monitoring and enforcement mechanisms?

In this article I will share some of my findings from a study of the role and performance of the SLMM. [ii] I was curious about this operation for two main reasons. One, having worked for a few months for a youth organisation in Sri Lanka in the midst of the war, I wanted to understand the efforts currently being made to bring that war to an end. Two, coming from this by now (in)famous country, Norway, I was interested in how, beyond the rather rosy picture painted in media up north, my fellow nationals actually were proceeding in this major attempt to resolve another protracted armed conflict abroad.

As *lines* readers probably will be familiar with the main outlines of the process since 2002, for which the prefix 'peace' appears somewhat misplaced at the moment, I will go straight to pointing out the two challenges faced by the SLMM that I find most striking. Then I'll touch on the routes the mission has followed to deal with these challenges, which in turn will usher in a discussion of the ownership and accountability of the mission and of possible alternative ways to protect Sri Lankan people's rights. [iii]

Main SLMM Challenges

A most striking feature about the violations of the ceasefire agreement, in light of the repeated declarations by stakeholders in the process that the ceasefire 'holds', is their sheer magnitude. By the end of June 2004 the number of violations which had been reported to the SLMM, and which the mission had ruled did constitute violations of that agreement, totalled more than 2500 (SLMM 2004a) . This constitutes approximately three

violations every day throughout the 'post-war' period. In practice, given the considerable number of complaints which either were ruled as no violations or still were pending, this represented quite a heavy workload for the less than 60 SLMM monitors. It is beyond doubt, moreover, that the number of reported cases of violations only represents a fraction of the actual amount; for three reasons (interviews): the relative inaccessibility of SLMM offices and officials to many Sri Lankans; the widespread lack of knowledge about what the mission is and can do for them; and the fear of retaliatory attacks by the alleged violators against those who report to the SLMM.

This brings me to the second challenge that the SLMM has confronted: the fact that more than 95% of the violations – 2412 out of the 2524 from February 2002 through June 2004 – have been committed by one of the two parties to the ceasefire, the LTTE. Moreover, more than half of the violations – of the LTTE's, as well as of the total – are cases of forced recruitment of children to Tiger ranks (SLMM 2004a). These simple yet unequivocal truths have been grossly understated; both by the LTTE, Sri Lanka's government, and international representatives – including the SLMM. With regards to the latter, one likely reason is the need not to 'lose face', given that too much attention on LTTE violations would reveal that SLMM strategies to handle Tiger obstinacy have seemed ineffectual.

Facing Up to the Challenges: SLMM Strategies

What should the SLMM do about the complaints that they rule constitute ceasefire violations? Their mandate, given in the ceasefire agreement and in the 'status of mission agreement' on SLMM's establishment and management, is not clear on this. The ceasefire deal states that 'both Parties shall fully cooperate to rectify any matter of conflict caused by the respective sides' (Article 3), but does not specify how the SLMM should respond if a party does not 'fully cooperate to rectify a matter of conflict' that it has caused. Article 3.11, though, gives an idea: 'It shall be the responsibility of the SLMM to (...) assist the Parties in the settlement of any dispute that might arise in connection with such complaints'. In other words, if a complaint is ruled as a violation, monitors are expected to assist the violating party in settling the dispute related to that violation. Such assistance in dispute settlement may aim at making the party undo the harm done – by, for instance, handing back a recruited child or vacating occupied territory – or encouraging it to refrain from similar behaviour in the future.

So how, in practice, has the SLMM tried to influence the violators? Three routes of exerting influence can be envisaged: 'naming and shaming', direct talks, and influence via the facilitators of the peace negotiations.

Public Exposure

As for the first route, Alan Keenan in the previous issue of *lines* suggests that the SLMM has refused to walk it. While this is partly true, my findings indicate that the refusal has not been 'systematic'. There were attempts over the first months in 2002 to be more vocal on the violations, with the SLMM sending its statistics to the local press on a monthly basis.^[iv] Further, in isolated cases in 2003 SLMM district officials single-handedly went out in the media and used normative language, such as 'unacceptable', to describe (LTTE) violations. It is still a valid point, however, that the strategy of public exposure as a means to promote

compliance has not been tested out systematically. Indeed, there is no evidence that suggests that the LTTE would turn its back against the SLMM or the 'peace process' had the monitors been tougher on them – simply because a harder line has not been tried out. Instead, the SLMM largely limited itself to strategy two and three.

Meetings behind Closed Doors

'I wonder whether they [the LTTE] are taking us seriously. When we confront them with violations, they will sometimes look the other way, pretend that they don't hear, or even close their eyes.' (Interview with SLMM monitor)

As this citation indicates, the means of eyeball-to-eyeball confrontations did not seem to reach the goal of greater compliance either. Monitors were unambiguous about the trouble they faced whenever they tried to approach the LTTE to discuss its ceasefire breaches: The organisation would fail to respond to letters, postpone meetings, and, if accepting to meet, often send junior representatives. True, many district offices of the mission had good experiences with LTTE representation in their committees for local-level conflict resolution. Nonetheless, across districts there was a somewhat resigned acknowledgement that influencing the Tigers to abide by the ceasefire remained an uphill battle. One monitor, when asked whether pressure had been brought to bear on the LTTE concerning a specific violation, replied: 'in the beginning yes, but we realised that it didn't lead us anywhere'.

Pressure via the Facilitators

So, could 'track one' of the peace process 'lead them somewhere'? When asked how, most realistically, the monitors thought they could make the parties abide by the agreement; most of them would in fact refer to the facilitators of the peace talks:

'I'm not the one who's supposed to put pressure – that's the peace process ... We are powerless if we cannot report to the peace talk facilitators. We have no stick (...) but the facilitators do' (Interviews with SLMM monitors).

Even if monitors generally felt that it was not their task, but that of the facilitators to confront the violators with their misdeeds, uncertainty raged as to whether these facilitators actually did do so. When asked how the facilitators should use the information the SLMM produced on the violations, one Head of District Office simply replied 'I think they use it' (interview). An investigation of whether he was right is beyond the scope of this paper, and probably difficult to undertake as long as the process towards a final peace deal is still ongoing.

The emerging pattern is hence one of the SLMM being reluctant to 'name and shame' the violators; facing difficulties when confronting them directly with the defiance; and wishing that the facilitators put pressure – but having little say on, and indeed knowledge of, whether they end up doing so. Meanwhile, SLMM statistics show that the ceasefire violations have not decreased, but increased: While reported government breaches did

go down from 2002 to 2003, that reduction was outweighed by the increase of reported LTTE violations over the same period (SLMM 2003; SLMM 2004a) .[v] This brings us back to the core question: Why has the SLMM's deterrence effect on the violators been relatively insignificant?

Ownership and Accountability of the SLMM

To answer that question, we need to understand who the monitoring mission 'belongs' to. On whose behalf do the monitors monitor? Who are they accountable to? While the flying-in-the-face answer would be 'the Sri Lankan people', it doesn't take much analysis to see that under the surface things are slightly different.

Any agent will primarily be accountable to those who have power over it, that is, those who have the capability to obstruct or stop its activities. In the case of the SLMM, such power rests not with the Sri Lankan civilians, but with the parties to the ceasefire agreement and the Nordic governments. The latter's power is due to the fact that most of SLMM's funding and all of its people come from the Nordic countries. If the political will of Nordic governments to support this mission fades, its chances of survival will hence be slim. The LTTE's and the Sri Lankan government's power over the SLMM, on the other hand, primarily derives from Article 4.4 of the ceasefire agreement which entitles either of them to terminate the agreement on a two weeks' notice. Although the political cost of doing so may be high, the clause still means that the SLMM exists at the mercy of the two parties. If either of them realises that the monitors and the ceasefire deal bring it more harm than good, it can decide to chase the monitors out.

The SLMM is thus 'owned' by foreign governments and the parties, not by the people it is supposed to serve. This helps explaining the weak link between monitors and masses, since a prime interest of the monitors will lie in meeting the demands and needs of its 'owners' – the Nordic governments and of the parties – not of the Sri Lankan people. In a large number of cases though, the two will fit: the governments and the parties agree that the monitors should verify whether the ceasefire agreement is being complied with, which also is in the interest of Sri Lanka's civilians. But sometimes a mismatch of interests arises, in particular in relation to violations listed under the agreement's Article 2.1: 'hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion and harassment'.

Allow me to exemplify with the most hostile act imaginable, which has repeatedly been committed after February 2002, namely the killing of civilians. Even though such acts must fall under Article 2.1, the SLMM has chosen not to follow up the reports and complaints of killings, arguing that this is a matter for Sri Lanka's police force. While the argument partly is based on the technical resources at the mission's disposal, including a lack of forensic experts (interviews), it also reflects the priorities of the mission and of those who 'own' it – which sheds light on why the resources to deal with a most serious type of ceasefire violations have remained unavailable.

A quick analysis of the stakeholders' interests here may clarify the picture. Most killings bear the trademarks of the LTTE. The LTTE will therefore not have an interest in the lethal violence being thoroughly investigated. The government of Sri Lanka, on the other hand, has earlier experienced that police investigators of such killings have been attacked too. For this reason, and possibly due to institutionalised 'racism'

inasmuch as Sinhalese lives have been more consistently protected by the government than Tamil lives, which are those who tend to get lost in LTTE hands post-2002; Colombo has been reluctant seriously to try and stop the killings. Finally, the Nordic governments, acknowledging the experience of the Sri Lankan one in dealing with similar incidents in the past, may want to ensure that their monitors, deployed in a no-peace-no-war zone far beyond their reach, don't undertake tasks that openly risks jeopardising their personal security. Further, these governments – at least the Norwegian one, which holds the greatest stake in ensuring progress in the peace talks – may also be hesitant to tackle head-on the clearest demonstration that the ceasefire agreement is defied. After all, if the image of this deal gets too tarnished, the symbolic significance of it – which is fundamental for continued talks – is likely to wither as well.

The end result is that in spite of the widely-hailed presence of international, well-trained staff to monitor compliance with the ceasefire, the interests of the people are not effectively promoted. Indeed, a variety of 'hostile acts against the civilian population' has continued at an unabated pace. If the SLMM is 'owned' by the LTTE, the governments of Sri Lanka and of the Nordic countries; the most dysfunctional part of this set-up is the fact that the instigator of the bulk of the violations of people's rights also is a prime stakeholder in the mechanism put in place to ensure that those rights are protected. In Norwegian, that's what we call 'letting the buck guard the wheat'.

Possible Ways Forward

For Sri Lanka's people to be protected, at least from gross human rights violations, mechanisms must be put in place that are less dependent on appeasing the violators – be it the LTTE or Sri Lanka's government. The need for greater protection requires short-, medium-, and long-term measures to be considered. [vi]

In the short run, a welcome change of the current arrangement would be to transfer the leadership of the SLMM from Norway to another Nordic country, or to let it rotate among the five Nordic contributors involved. The purpose of such a reform is to introduce greater checks and balances in the system; separating more clearly the role of human rights watchdog from the role of facilitator of negotiations. In the current set-up, the monitoring mission is not only partly funded by the facilitator: it also sees itself as subservient to the 'peace process'; a quite elusive entity that the facilitator stands in a key position to define. This subservience is probably exacerbated by the fact that the leaders of the mission comes from the same country as the facilitators, given those national and political allegiances this commonality involves. A non-Norwegian or rotating leadership of the SLMM would not only make sure that such allegiances be weakened; it would also encourage monitors to be more 'daring' in denouncing violations, confronting the violators, and pushing the facilitators to put pressure.

In the medium term, however, there is a need to transcend the established structure and replace at least parts of it. One problem with the current mechanism is that it integrates two functions into one: the monitoring of the parties' hostile acts (1) against one another, and (2) against the civilian population. Given the fact that outbreak of fire between the parties are seen by the parties themselves, the facilitators and the monitors alike as the gravest form of ceasefire violations – more serious than the killing of civilians, as long as that such killing is 'intra-party' – the 'military' monitoring of the SLMM has tended to be given higher priority than the

monitoring of human rights violations. Since rights monitoring does not deserve to come second, this tendency suggests that that part of the monitoring be separated and taken up by another body than the SLMM.

While it would need the consent of the parties to deploy, this new human rights monitoring mechanism has to be far more independent of the two parties than the SLMM is today to be effective. Several set-ups can be imagined, yet the SLMM experience highlights the importance of ensuring a tight link and cooperation between monitors and local civil society and community networks. One way of ensuring such a link could be to let the mechanism be mixed, composed of both international and local staff. While the relevance of including locals is self-evident, the international side is needed both to ensure security and provide credibility to the mission. Indeed, the more powerful the international support for such a mechanism the greater the chances that the monitors not only would be able to supervise and document, but also to enforce compliance in cases of defiance.

Enforcement can also be promoted by linking human rights to the distribution of aid. If relief and development funds and the presence of agencies awarding those would be contingent on the parties' human rights progress, then the monitors would have a powerful weapon to protect the civilians. More than anything else, this depends on the willingness of donors and aid agencies to be real about such threats: their willingness in fact to withdraw or downscale their support if human rights standards continue to be flouted.

It is also important that a human rights monitoring mechanism is implemented not in the long, but in the short or medium term. Indeed, the culture of impunity should not be allowed to consolidate till the peace talks one day are over. With the current deterioration of the rights situation, the need grows by the day for a strong, independent body of human rights monitors.

Nevertheless, no matter how strong or independent such a body may become, it is only possible to push violators that far. In order for abuse to abate in the long run, fundamental questions need to be addressed on dynamics that foster such abuse in Sri Lankan society. More specifically, the internal, organisational and institutional structures of the LTTE on the one hand, and the Sri Lankan state on the other, are in need of reform. While the need is urgent and the process to start such reforms therefore is long overdue, such processes take time. Only with consistent efforts by the parties themselves to democratise, Sri Lankans are likely to find a peace based not on control and violent repression, but a peace based on justice.

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[i] For reasons of the personal security and integrity of my informants, I have chosen to withhold their names as well as the specification of time and place of interview.

[ii] I am grateful to the Working Group on Peace Support Operations of the Nordic Research Programme on Security for supporting my research financially.

[iii] For a discussion of the concept of ceasefire monitoring, and an elaboration on how the SLMM experience feeds into the debate on peacekeeping, see my paper 'Trapped in the Peace Process: Ceasefire Monitoring in Sri Lanka', presented at the conference 'Making Peace Work' at the UN University's World Institute for Development Economics Research in Helsinki, Finland, 4-5 June 2004 (www.wider.unu.edu).

[iv] That practice stopped in September 2002 (interview). Yet from early 2004 statistics on complaints and violations have been available at the SLMM website, www.slmm.lk.

[v] While 2004 statistics given at the SLMM website remained incomplete at the time of writing, data for the five out of the seven months passed thus far in the year suggested a slight reduction in the average number per month of both complaints against and violations by the LTTE (SLMM 2004b; 2004c; 2004d; 2004e; 2004f).

[vi] For inputs that have helped shape the following recommendations, I am grateful to monitors and civil society representatives met in Sri Lanka in January, and to those who gave feedback on the paper I presented at the WIDER conference in Finland in June.

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