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Rigorózní práce

Mediation in Ethnic Conflict in Sri Lanka:

Applying the Adjusted Winner Procedure

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¹ The list of the websites used in this paper is at page 92.

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Index of abbreviations

Theory

ADB	Asian Development Bank
AW	Adjusted Winner
DNA	Det norske arbeiderparti
IDP	Internal Displaced Person
OAS	Organization of American States
OAU	Organization of African Unity
OSCE	Organization for Security and Cooperation in Europe
UN	United Nations
UNHCR	United Nations High Commissariat For Refugees
UNICEF	United Nation Children's Fund
SAARC	Summit of the South Asian Area for Regional Co-operation
WB	World Bank

Sri Lanka

CWC	Ceylon Worker's Congress
EPDP	Eelam People's Democratic Party
ENLF	Eelam National Liberation Front
EPRLF	Eelam People's Revolutionary Liberation Front
EROS	Eelam Revolutionary Organization of Students
FP	Federal Party
GOSL	Government of Sri Lanka
HSZ	High Security Zone
IPKF	Indian Peace Keeping Force
JVC	Janatha Vimukthi Peramuna (People's Liberation Front)
LTTE	Liberation Tigers of Tamil Eelam
MOU	Memorandum of Understanding
NERF	North-East Rehabilitation Fund

PA	People's Alliance
PLOTE	People's Liberation Organization of Tamil Eelam
PTA	Prevention of Terrorism Act
SLFP	Sri Lanka Freedom Party
SLMC	Sri Lankan Muslim Congress
SLMM	Sri Lanka Monitoring Mission
SLN	Sri Lankan Navy
TELO	Tamil Eelam Liberation Organization
TNA	Tamil National Alliance
TRO	Tamil Rehabilitation Organization
TULF	Tamil United Liberation Front
UNP	United National Party

1. Introduction

The field of conflict resolution has received more attention after the fall of the iron curtain and the end of the bipolar division. The study of mediation is one of the major themes of the field. The current world suffers from many conflicts to which mediation could be a potential solution. Academic interest in the subject of mediation has the potency to attract the professionals dealing with resolving conflicts on the governmental and international level¹. Hence it is important to look for new strategies and procedures in mediation. There are several definitions of mediation. The author uses the Bercovitch definition of mediation as: *“A process of conflict management, related to but distinct from the parties’ own efforts, whereby the disputing parties or their representatives seek the assistance, or accept an offer of help from an individual, group, state or organization to change, affect or influence their perceptions or behavior, without resorting to physical force, or invoking the authority of the law”*². Hopmann characterizes mediators as: *“Third parties that are not direct participants in the negotiations, but whose role is to assist the conflicting parties to reach agreement in what otherwise basically remains a bilateral negotiation.”*³ Fisher defines mediation as *“a process of disentangling the parties from their separate positions and then leading them to commit themselves to a common position”*⁴. The general presumption is that the mediator should be neutral and acceptable to both parties. Hopmann mentions Fisher’s opinion that the *“ideal mediator is seen as a kind of eunuch from Mars who happens to be temporarily available”*⁵. On the other hand impartiality is not always crucial for successful mediation. For instance, the United States of America has been engaged in facilitating the peace talks between Israel and Palestine despite the nation’s eminent relations with the Jewish state. *“More important are considerations of the possible consequences of acceptance or rejection on the ultimate terms of an agreement and on relations with the would-be*

¹ Bloomfield and Moulton classify finding new strategies that would be useful in the reality of world affairs as a *“daunting task”*. Bloomfield, L.P., Moulton, A. (1997): *Managing international conflict: from theory to policy: a teaching tool using CASCON*. St. Martin’s Press, New York.

² Bercovitch, J. *The structure and diversity of mediation in international relations*, in: Bercovitch, J., Rubin, J., ed. (1992): *Mediation in international relations: multiple approaches to conflict management*. St. Martin’s Press, New York, p. 1-29.

³ Hopmann, P.T. (1996): *The negotiation process and the resolution of international conflicts*. University of South Carolina, Columbia, South Carolina, p. 221.

⁴ Fisher, R. (1978): *International mediation: a working guide – ideas for the practitioner*. International Peace Academy, The United Nations, New York, p. 104.

⁵ Hopmann, p. 223.

mediator.” and “Successful mediation is achieved not so much by the mediator’s objectivity but, rather, by the interests and capabilities of all participants, the mediator included”⁶.

1.1 Mediators

Speaking of mediation it is essential to point out the role of international governmental organizations, especially the United Nations. Given the UN’s status, its mediation efforts are supported by the entire international community of the states gathered under the banner of the organization. The UN has a special position among other organizations for its wide range of member states. Mediation is in a way one of the original missions of the UN (UN Charter, Article 33). The forum of the states should have provided ground for discussions to prevent any possible escalation of conflicts. The other international organizations, which occasionally engage in mediation, are various regional organizations such as the Organization for Security and Cooperation in Europe (OSCE), Organization of African Unity (OAU), Organization of American States (OAS), and Arab League. Mediation is often practiced among their member states. On the other hand every international governmental organization is still more or less dependent on its member states and their willingness to engage in any mediation action.

Apart from organizations, some respected individuals play the intermediary role. The UN secretary general is often asked to participate in mediation because of his neutrality based on his representation of the majority. In other cases, the mediators are experienced politicians who are backed by their countries. There are three kinds of such personal involvement - individuals coming from strong countries (i.e. US Senator George Mitchell facilitating peace negotiations in the Northern Ireland in 1998) who are in most cases subsidizing participation of their governments and individuals coming from neutral countries (i.e. Count Folke Bernadotte, Gunnar Jarring, Swedes, assisting with resolving the Arab-Israeli disputes) who are easily

⁶ Touval, S.; Zartman, W., ed. (1985): International mediation in theory and practice. The John Hopkins Foreign Policy Institute, Westview Press, Inc., Boulder, Colorado, p. 15.

perceived as mediators not representing interests of any tendencies in the world's politics. The third type is a person whose position guarantees a certain approach and adherence to definite values. For instance, the countries with majority of the Roman Catholic believers may seek the pope as an intermediary for his impartiality and authority in the Catholic world. For instance the pope John Paul II was selected as a mediator in the Argentina-Chile conflict over islands located in the Beagle Channel.

Despite the efforts by international organizations and respected individuals, most mediation activity is carried out by nation states. There are two kinds of states in mediations – small (weak) states and great powers. The identification is based on their influence on international politics. The small state does not have to be necessary less successful than the great powers. Some disputants may prefer a mediator that has no strategic interests in their region or in the field of dispute. Alternatively, great powers have resources and influence to 'push' disputants to a decision or hold them in a stalemate, prepared to intervene if one side does not observe the results of negotiations. In the case of Sri Lanka, there were three kinds of state mediators: India (regional power), Norway (small state), and Japan (leading economic power) hence the characteristics of state mediator are further discussed in the chapter dealing with mediators in Sri Lanka.

While dealing with mediation and its actors it is necessary to explain the reasons why various international actors play the role of intermediary. Their motives are not purely generously humanitarian or altruistic. Touval and Zartman⁷ identify the causes of such involvement. Firstly, a mediator can be motivated by protecting its own interests or position which could be hurt by a negative outcome of the crisis. Secondly, the mediators may desire to extend their own influence. Touval and Zartman's classification was presented in 1985, at which point the field of international mediation was paralyzed by the Cold War. Currently, some countries engaged in mediation process want to enhance their international prestige and recognition.

⁷ Touval, Zartman, p. 11 - 13.

There are many ways a mediator can approach the process of mediation. In this work one particular procedure from the area of fair division is being applied. The distinguished experts in mediation, Touval and Zartman recognize several methods of mediation – (1) the mediator transforms the bargaining structure from a dyad into a triangle – meaning that the mediator is focused on keeping the triangular structure rather than a dyad since it holds parties in a mutual statement and the potential of the mediator joining one or another in a coalition against the other prevents them from any uncooperative action. Mediator as communicator (2) functions as a facilitator of communication delivering messages, redefining the issues of conflict, etc. Mediator as a formulator (3) “helps the two parties help themselves, by tactful, systematic, accurate, straightforward prodding and suggestion”⁸. Mediator as a manipulator (4) possesses resources of power, influence, and can make the parties act in a certain way by using all those tools to create a pressure. There exist more classifications of the methods of mediation, however the above schema is the most relevant and complex.

1.2 Arbitration

In exploring mediation, it is vital to distinguish “*arbitration*” from mediation. Those terms are sometimes misinterpreted and interchanged. The author would like to clearly state that the procedure being discussed in this work is one of mediation not one of arbitration. Touval and Zartman define arbitration as an activity “*which involves judicial procedure and results in a verdict the parties have committed themselves to accept*”⁹. Alternatively, mediation is a process which does not have to necessarily lead to a conclusion. The third party simply assists with finding modes of communication between the parties of the dispute and tries to prevent any potential misunderstanding. If the disputants do not reach any solution the mediator has no power to force them into any solution. Opposite to arbitration, the mediator has no power whatsoever if the disputants do not observe the reached resolution. Finally; mediation is not identical with peacemaking. Peacemaking involves using force by the third party while mediation should be left exclusively at the diplomatic level.

⁸ Touval, Zartman, p. 12.

⁹ Touval, Zartman, p. 7.

1.3 Sri Lanka

This work analyzes the conflict in Sri Lanka and applies an innovative procedure – Adjusted Winner¹⁰ – to it. The author chose Sri Lanka for its seemingly clear division of the parties involved in the disputes. There are two parties involved in the conflict, however at a second glance there are evident cleavages among different cliques within the Tamil and the Sinhalese groups¹¹. The author is aware of these existing divisions and tendencies and the fact that it can negatively affect the application of the Adjusted Winner procedure. Particular emphasis will be given to correlation of the disunity of the actors and the potency of the usefulness of Adjusted Winner to the conflict in Sri Lanka.

Secondly because the conflict in Sri Lanka lacks the involvement of world powers and is not connected to any of the current major issues (i.e. the clash of the western world represented by the United States of America and the Islamic fundamentalism represented by radical Muslim groups). Hence, it seemed to be an ideal conflict, free of any external influence, to apply the new procedure. Thirdly, the author sought a conflict where the sides had previously expressed their willingness to terminate the dispute and have already engaged in mediation. The Indian involvement as an intermediary did not meet with success nevertheless the Norwegian peace talks facilitation resumed in truce and signing the Memorandum of Understanding in February 2002. Seeing the potency for terminating the ongoing conflict the author chose the Sri Lankan case for the purposes of the Adjusted Winner application. The tsunami disaster from December 2005 proved the relevance of finding lasting solution to the conflict. The Tamil inhabited areas in the East and North of the island were one of the most affected areas. The ongoing (malice) between the Sinhalese and the Tamil ethnic groups aggravated distributing the humanitarian aid and immediate reconstruction of destroyed regions. The Government of Sri Lanka prohibited the UN Secretary General Kofi Annan from visiting the LTTE¹² controlled territory in the Northeast¹³. Secondly, the tsunami

¹⁰ To Adjusted Winner will be referred as to AW or the AW procedure.

¹¹ The problem is discussed in detail in chapter 4 dealing with the history of the conflict and the part introducing the Tamil player before the application of Adjusted Winner.

¹² Liberation Tigers of Tamil Eelam, hereafter referred to as the LTTE.

waves moved landmines remaining from the times of active fighting. Yet the landmines represent great danger for civilian population cooperation on their removal is not easy. The mediation attempts in the Sri Lankan conflict were not completely successful. The Norwegian initiative met with partial accomplishments (i.e. stop fighting after signing the Memorandum of Understanding in February 2002) however none of the used procedures was entirely successful.

The conflict in Sri Lanka is an internal conflict. The conflict is complex since it affects all aspects of everyday life (i.e. politics, economy, refugees, internal displaced persons). The resolution of this conflict has to go deeper than (simply) finding a political solution. Living environments have to be created for all ethnic communities in Sri Lanka. The violent conflict has persisted since 1983; however the grudge and intolerance between the two largest communities, the Tamil and the Sinhalese, has been present since the mid 1950s when the '*Sinhala only*' campaign was introduced. If the conflict is supposed to be resolved and terminated for good, the intolerance among the ethnic communities has to disappear. The conflict resolution cannot be limited only to finding a political solution. The main aim of this work is to find a mediation procedure which has the potential to go beyond only finding the political resolution. The author presents the hypothesis that procedures dealing with different kinds of mediation (such as mediation of divorce settlements, business mediation, and mediation of labor relations) would affect different aspects of mediation in mediating political conflicts as well. While studying different procedures in business and labor mediation the author found the Adjusted Winner procedure by Steven Brams¹⁴ of New York University and Alan Taylor of Union College. The procedure provided a complex conflict resolution rubric. While applying the procedure, all dimensions of the conflict were accounted. After meeting Steven Brams and discussing the potential usage of the AW procedure to the ethnic conflict in Sri Lanka

¹³ When referring to the Northeast the author means the predominantly Tamil inhabited territory in the North and the East of the island; hereafter referred to as the Northeast.

¹⁴ Prior to the Adjusted Winner procedure Brams was writing about the application of the game theory to the solving problems of political disputes. "*His "theory of moves" (1993) takes into account the tendency of players to look ahead before making a move or decision. By doing so, the theory seems to capture several aspects of actual strategic encounters between antagonists and allows for the possibility that players have only incomplete information. As such, Bram's theory assumes that players can rank outcomes in terms of preferences but cannot necessarily attach utilities to them, and allows for the use of threats and cycling of moves to wear down an opponent*". Source: Druckman, D. Negotiating in the international context in Zartman, W ; Rasmunssen, J.L ed. (1997): Peacemaking in international conflict: methods & techniques. United States Institute of Peace Press, Washington D.C. .

the author decided to use the AW procedure for the purposes of her thesis. It seems more essential to provide a detailed illustration of one procedure than to discuss more strategies in mediation without any depth. The procedure is applied to the situation in Sri Lanka after signing the Memorandum of Understanding. The truce represented one of the lightest moments of the peace negotiation throughout the history of the entire conflict. If the AW procedure would be applied to the conflict in Sri Lanka, it would be applied after February 2002 when the LTTE and the Government¹⁵ were most open to such negotiations.

1.4 Aims of this work

The aim of this work is to analyze the conflict in Sri Lanka, its roots, previous mediation efforts and most importantly to ascertain the possible usage of the Adjusted Winner procedure in finding a lasting solution to the ongoing dispute. In order to demonstrate the AW application it is essential to explain the function of the method and briefly describe other fair division procedures. The hypothetical divorce settlement between Christina and George is used to better illustrate the procedure and its possible alternatives (i.e. when both players assign the same value to an item, unequal entitlement) which will not appear in the AW application to the conflict in Sri Lanka, but which is essential to a better understanding of the procedure. Adjusted Winner was chosen as a method which is being used in mediating interpersonal (divorce settlement, dividing share of an inheritance) and business disputes. Nevertheless it has to be affirmed at the beginning that it is not feasible within the framework of this thesis to present any general statement regarding the possible usage of such procedures in mediation as the AW to political disputes. The author presented such aim in the project of the thesis, however at the time of writing the project she had very vague comprehension of the field of conflict resolution and mediation. After an independent summer research trip to the libraries of Columbia University (Lehman Social Science Library) and New York University (Bobst Library) in New York City, the author gained better understanding of the topic and narrowed the topic of the thesis to the application of the Adjusted Winner procedure to the conflict in Sri Lanka.

¹⁵ One of the reasons was that the Government was led by the United National Party which is more open to concessions towards the Tamil.

The core aims of this thesis are:

- To answer the question of whether the Adjusted Winner procedure is applicable to the conflict in Sri Lanka.
- Whether any general hypothesis can be made about applying the AW to political conflict.
- To what extent does the disunity of the players affect the outcome of the application, and if an application is even possible with such a condition.
- Whether it is sufficient to use only experts on Sri Lanka's opinions to assign values to selected items or whether it is necessary to lead direct talks with the representatives of the parties involved in the dispute.

It is important to notice that the conflict in Sri Lanka is an internal conflict; taking place within borders of one (still) unitary state. When the author refers to the international conflicts (while explaining the application of the AW procedure) the group includes the internal political conflicts as well. Kumar Rupensinghe in *Resolving international conflicts: the theory and practice of mediation* defines internal conflict as: “*conflict taking place primarily within the borders of a given state. Internal conflicts often occur between state and the civilian population. While the civilian population may or may not belong to an ethnic or minority group different from that of the dominant elite, these conflicts often involve a notion of identity, a concept of security, and a feeling of well-being*”¹⁶. Rupensinghe emphasizes the influence of “*fragmentation of societies*” and “*communication breakdowns between segments of society*” which was the case of Sri Lanka. The Adjusted Winner procedure has the potential to reduce the effect of those symptoms on the peace negotiations. The institutions and actors have to transform during the process of the conflict resolution in order to adjust to a new environment. All these tendencies will be examined in this work. Special emphasis will be given to the adjustment of both actors of the conflict (Tamil and Sinhalese) to the peace process.

¹⁶ Bercovitch, J. ed: (1996): *Resolving international conflicts: the theory and practice of mediation*. Lynne Rienner Publishers, London, Rupensinghe, K. :*Mediation in Internal Conflicts: Lessons from Sri Lanka*, p. 156.

2. Introduction to the Adjusted Winner procedure

In this work AW's possible usage will be examined for conflict between the Sinhalese government and the Tamil minority in Sri Lanka. Due to the complexity of the conflict, it is essential to choose specific period to which application of AW will be demonstrated. The most opportune phase is the situation after signing the Memorandum of Understanding (sometimes referred to as the Ceasefire agreement) in February 2002. The AW procedure will be applied to that time frame. One of the aims of this work is to establish whether this procedure is applicable to the conflict in Sri Lanka and to explore the possible usage of the Adjusted Winner in the negotiation of political conflicts.

Looking for a new procedure to mediate ethnic and religious conflicts every conflict is very unique in its nature, and the purpose of this work is not to overgeneralize but to look for a procedure which would be applicable to numerous types of conflicts. The main idea of this work is to find procedures, which work well both for disputes of labor, divorce, and business and examine their possible usefulness for conflicts on the international level – in this case study to the Tamil – Sinhalese conflict in Sri Lanka. The conflict will be structured, and points will be assigned according to parties' preferences. In an ideal situation it would be possible to have both sides meet and generate items and oversee point allocation. However, this is not possible and it is not necessary for the aim of this work. In other disputes such as divorces or a business dispute participants have to distribute points themselves.

Mediator's presence is very beneficial while he/she helps to find items, which will be negotiated and can assist both sides with allocations of points. The most significant problem in applying AW to international conflict is proving that all disputed items are wholly separable. Some items might be linked to each other and acceptance of one is conditional on the acceptance of another. This could jeopardize the whole procedure of AW since division of points and goods would not be possible.

The AW procedure has never been applied to the conflict in Sri Lanka. Nevertheless, many case studies illustrating the method have been carried out¹⁷. In a real negotiation of international disputes the AW procedure has never been used. Furthermore, AW has been widely employed in divorce settlements and business disputes. New York University owns the patent to the Adjusted Winner and currently negotiates about its wider commercial use. According to Steven Brams, any company or individual can freely use the AW if not seeking personal profit.

2.1 Other fair division procedures

Before AW other procedures were employed to solve disputes when more than one item was being discussed. There were not as developed methods as AW and possessed some flaws (i.e. were not envy-free) since they mostly just divided goods into two equal parts but did not concern if the sides of disputes were satisfied with the value of the items they were given under other than AW procedure.

Under *strict alternation* actors take turns in choosing from the list of items. It is not envy free procedure since the side, which chooses the first is immensely advantaged while it can choose the most desired item.

The other method used for dividing articles is *balanced alternation*. Both sides make own list of items from the most desirable one to the least desirable one. If some items happen to be desired the same they are put into a *contested pile*. Goods in this pile are not divided under strict alternation but by taking turns. If actor A takes the first turn then the actor B takes the two next turns (A-B-B). This should compensate actor B for not taking the first turn from the contested pile.

The other procedure applicable to solving disputes is *divide and choose*. One side divides all the items and the other side chooses which would she/he prefer. Divider has to make parts as equal as possible since he/she does not know which

¹⁷ Steve Brams and Alan Taylor conducted three main analyses applying the AW procedure to: the conflict over the Spratly Islands, the Panama Canal Treaty from 1974, and the Camp David Accords from 1978. Tansa George Massoud from Bucknell University simulated the usage of AW to the final solution of Izreli-Palestinian conflict in her article, *Fair Division, Adjusted Winner Procedure (AW), and the Israeli-Palestinian Conflict*, in the Journal of Conflict Resolution (Massoud, T.G. (2000): *Fair Division, Adjusted Winner Procedure (AW), and the Israeli-Palestinian Conflict*. Journal of Conflict Resolution, Vol.44, No.3, June 2000, 333 – 358. Currently, Moshe Hirsh (Faculty of Law, Hebrew University of Jerusalem) is applying the AW procedure to the future negotiations over east Jerusalem. His work is still in progress, hence Hirsch requested not to be quoted yet.

part will he/she receive. The problem with this procedure is whether the divider has any information concerning preferences of the chooser. Supposing he had such knowledge he could make the division in his/her favor. If a basket of fruit (consisted of apples and oranges) were being divided the divider would split it in two halves with equal portion of apples and oranges. If the divider preferred apples to oranges he/she could make one pile just with apples and the other pile just with orange. Supposing the chooser picks oranges then the divider received 100% of his preferences. Divide and choose procedure does not guarantee envy freeness or efficiency. Hence one cannot secure that the divider does not know the other side's preferences this procedure is not the most sufficient one.

3. Adjusted Winner

One of the most interesting tools for mediation on the international level is Steven Brams' and Alan Taylor'¹⁸ method *Adjusted Winner*. This approach according to the author is applicable to any kind of conflict. The main idea is to *take well-structured problem and help the parties obtain a fair settlement*¹⁹. It is a means of dispute settlement; if used correctly²⁰, both parties are winners. The author describes the procedure:

*"Under this procedure, the two parties begin by independently (that is, secretly) distributing a total of 100 points across all the items to be divided, depending on the relative value they attach to them. Thus, if you consider a certain item to be worth one-fourth of the total value of everything to be divided, then you would put 25 points on it."*²¹

The term *winner* represents the second part of the process. Each party temporally wins the items to which it assigns more points than the other party. In this step each player is given all the points for items, which they desire more than the

¹⁸ Steven Brams is a professor of political science at New York University in New York City.

¹⁹ Brams, S.J., Taylor, A.D.(1999): *The win-win solution: guaranteeing fair shares to everybody*. W.W. Norton & Company, Inc., New York, Preface ix, .

²⁰ It is unfeasible for the purposes of this work to interview the actors involved in the dispute. The preferences will be assigned after consultation with experts on the region (Jan Filipisky and Radek Novotny) and after studying materials and statements released by the disputants.

²¹ Brams, Taylor, p.11.

other side. Supposing one side places 35 points on Muslim involvement in the negotiation process (i.e. the case of Sri Lanka) and the opponent places just 30 points on that item, the first side has temporarily won that item.

The term *adjusted* explains why all the items are won only temporarily. Once the points are distributed in the first part generally one party has more points than the other. The adjustment is necessary in order to achieve equitability (a.k.a. both parties have the same amount of points at the end). The result of this adjustment is that at other the final point redistribution both parties possess 50 or more of the total points of the settlement.

A clear way to demonstrate²² how this procedure works is to apply it to a divorce settlement. It is a dispute of a different nature than the case studies for this thesis; however, it will serve as a clear demonstration of the AW procedure. In this hypothetical situation Christina and George are getting divorced and the following items must be divided:

- City apartment
- Summer house
- Shares
- Trailer
- Other

They are both given one hundred points and they must assign them according to their preferences. The items may appear indivisible, but anything can be divided under AW. Supposing that Christina and George had a child and its custody would be one of the items under dispute, it would be treated as any other kind of item (with parents sharing the custody of their child according to the results of final point allocation). Dividing such an article in a strictly rational manner may seem extraordinary but the AW procedure can be applied to conflict of any nature.

²² This method is a crucial procedure for this thesis. It has never been applied to the conflict in Sri Lanka. The author feels strongly about explaining the whole system of this method, which is why the divorce settlement demonstration is necessary.

To begin applying AW to this example one must distribute the points according to party preferences. For this example we will suppose that George values *City apartment* more than Christina since it's close to his office and he does not have time to arrange a new place to live. For that reason he assigns nearly half of his points (45) to the apartment. Christina values *Summer house* more since she has more time to spend there. She also values *Shares* more (30 opposed to 20 from George) since her monthly salary is lower than George's and she will need an extra financial asset. *Trailer* is the least desired item; Christina shows very little interest (5); George placed one tenth of his points (10) since he was positive that that would be enough to win this item²³. *Other* includes the family car and a collection of wedding china. Christina assigned her points more evenly hence she had more extra points (15). George implied through the distribution of his points that he does not value any other items as much as he values the apartment.

Based on their preferences they allocated their hundred points in this way:

<i>Item</i>	Christina	George
City apartment	15	<u>45</u>
Summer house	<u>35</u>	15
Shares	<u>30</u>	20
Trailer	5	<u>10</u>
Other	<u>15</u>	10
<i>Total</i>	100	100

Christina temporarily won three items and George two. Her *initial point total* (the total value of the points she won – 35+30+15) is greater, 80, as opposed to George's, 55 (45+10). Thus some points need to be transferred from Christina to

²³ Predicting or guessing other's side point allocation can be to certain extension dangerous to the whole purpose of AW procedure. "Manifestly, insincerity carries with it risk, in part because successful manipulation requires not only having a good idea of your opponent's preferences – and his or her sincere point assignments – but also having some idea of what his or her announced point allocation will be. Without knowing the likely announced allocations, each party may end up being too clever by half – that is, hurting itself by being overly clever. Unquestionably, it is safer to be naïve or sincere, or almost so. Sincerity provides an absolute guarantee of obtaining at least 50% of the total value in one's own eyes, and possibly much more, as we will see in later examples. This makes sincerity a guarantee strategy under AW: No matter what strategy an opponent chooses, sincerity guarantees an envy-free portion to the sincere party." Brams, Taylor, p. 83.

George. At this point both of them won the items they desired the most but they still would not be completely satisfied. George is envious because he knows that Christina is more satisfied with the results, since she received 25 more points than George.

In order to achieve equability the item with the smallest ratio will be the item that has to be divided between George and Christina. For Christina's items²⁴ being x and for George's items²⁵ being y , the fraction of Christina's first item (*Summer house*) is $35/15$ with the ratio 2.33; the second (*Shares*) $30/20$ with ratio 1.5; and her last item (*Other*) $15/10$ with ratio 1.5. The item *Shares* has the smallest ratio and in order to achieve equitability some these points must be transferred to George²⁶.

Let p be the portion of *Shares* that will be transferred to George. We must solve the following equation for p .

$$80 - 30p = 55 + 20p$$

$$p \approx 0.5$$

Since *Shares* is the item they value most similarly some points need to be transferred from Christina to George. $P(0.5)$ will be used for this calculation.

Calculated point allocation:

<i>Item</i>	Christina	George
City apartment	0	<u>45</u>
Summer house	<u>35</u>	0
Shares	<u>15</u>	<u>10</u>
Trailer	0	<u>10</u>
Other	<u>15</u>	0
<i>Total</i>	65	65

²⁴ The items Christina temporarily won.

²⁵ The items George temporarily won.

²⁶ *Shares* has more assets that be divided and thus it is preferred over *Other*.

In total both parties must receive the same total number of points. *Shares* is the item that George desires the most from all the items Christina won. She still wins this item but she has to pay off George; he will receive 1/3 of its value²⁷. After this point re-allocation both sides end up winning 65 points of 100 they had originally allocated. Since they both have more than half and at the same time have all the items they desire the most, they do not envy each other. This way, both parties feel like they received more than the other. Complete satisfaction on the both sides leads to the end of the conflict – neither side feels like it's necessary to continue negotiations.

Brams talks about four criteria, which are crucial for the satisfaction of both parties while settling a dispute. The first one is *proportionality* (1). Receiving a fair share is ensured by the final reallocation of points, when both parties have received the same total amount of points. Second, *envy-freeness* (2), both sides are satisfied that they received equal or greater portions of the items they desired the most. The fact that both parties feel that they received what they desired the most is a key element of AW.

According to Brams everything is divisible and that even seemingly indivisible values (like national rights) can be divided into portions²⁸. It will be closely examined in this work since most of the items of the conflict in Sri Lanka are of this nature. *Equitability* (3) means that *both parties think that they received the same fraction of the total, as each of them values different items*²⁹. The last criterion is *efficiency* (4), which means that the achieved solution is the best possible outcome for both parties in the dispute.

²⁷ She can either pay him off or suggest some other way of sharing the house (i.e. rules/schedule for George when he can use the house, etc.).

²⁸ "If the items being divided are not tangible property but more intangible issues, then before AW is applied, the parties should decide what each would obtain if it came out the winner on an issue. Only on the one issue on which an equitability adjustment must be made will a finer breakdown actually be necessary. Because this breakdown will be known only after AW is applied, the division on this issue must await the application of AW. This is a situation in which a mediator could play a valuable role. He or she could tell the parties the split on this issue but not which party is the relative winner. Each party, not knowing whether it got the larger or the smaller percentage, would then be motivated to reach a fair-minded agreement." Brams, Taylor, p. 86.

²⁹ Brams, Taylor, p. 14.

3.1 Both players assign the same points to an item

If both players assign the same number of points to one item, the item wins the one who has less points (or the one who needs more points respecting the divorce settlement) in order to achieve equitability. Supposing if both Christina and George put the same amount of points on *Shares*, with point allocation:

<i>Item</i>	Christina	George
City apartment	15	<u>45</u>
Summer house	<u>35</u>	15
Shares	25	25
Trailer	5	<u>10</u>
Other	<u>20</u>	5
<i>Total</i>	100	100

Initially, Christina wins 80 points (35+25+20) and George 55 (45+10). *Shares* is assigned at first to Christina but it does not mean that she has won this item. Some points must be transferred from her to George in order to achieve equitability. *Shares* is the smallest ratio item ($25/25 = 1$) therefore the transfer process has to commence with that item. The items with the same points will always be the items with the smallest ratio hence if something has to be divided it has to be those items. The calculation is

$$80 - 25p = 55 + 25p$$

$$p = 0.5$$

If the points for *Shares* are multiplied by 0.5 both Christina and George receive 12.5 of that item (i.e. item is equally divided between them). The calculated point allocation is:

<i>Item</i>	Christina	George
City apartment	0	<u>45</u>
Summer house	<u>35</u>	0
Shares	<u>12.5</u>	<u>12.5</u>
Trailer	0	<u>10</u>
Other	<u>20</u>	5
<i>Total</i>	67.5	67.5

3.2 One player is entitled to more than the other player, or he/she is stronger

If one player is stronger³⁰ than the other or is entitled to a larger ratio of the goods it has to be reflected in the final adjustment. Let's assume that George was the cause of divorce and therefore Christina is entitled to 3/5 of all the items. The ratio of their temporally won points is 80/55 (1.45)³¹. Christina should be given 3/5 (1.5) of the divorce settlement. Hence some points from George have to be transferred back to Christina³². *Shares* is the item with 1.5 ratio so a part of this item that George receives has to be given back to his soon to be former wife. George cannot get 10 points of *Shares*. If Christina wins *Shares* her points are up to 80 and George is left with 55 a ratio being 80/55 (1.45). Some points still need to be transferred to Christina since she is entitled to 3/5 of the settlement. The next item with the smallest ratio that George wins is *Trailer*. Thus some portion of *Trailer* has to be transfer to Christina so she can receive adequate portion of the divorce settlement. The portions comes from the equation:

$$\frac{80+5(1-x)}{55+10x} = \frac{3}{2}$$

$$x = \frac{1}{8}$$

³⁰ For instance, if one side represents a larger population it could be entitled to a larger portion of goods in settlement.

³¹ Based on the first point allocation on page 13.

³² Based on the calculated point allocation on page 14. The results give both George and Christina the same. Since in this case the entitlements are unequal, the point allocation has to be changed in the ration 1.45 for Christina.

$1/8$ of *Trailer* needs to be transferred to Christina in order to fulfill her unequal entitlement to $3/5$ of the divorce settlement. Christina values *Trailer* at 5 points therefore she gets $1/8$ of 5 which is 0,625. It is important to think of the numbers not in a strictly mathematic way, because the AW procedure is based on the preferences of the players. For George *Trailer* is worth 10 points but in Christina's eyes it is worth only 5 points. Hence when the final allocation is calculated it is based on the preferences rather than numbers.

The calculated point allocation:

<i>Item</i>	Christina	George
City apartment	0	<u>45</u>
Summer house	<u>35</u>	0
Shares	<u>30</u>	0
Trailer	<u>0.625</u>	<u>8.75</u>
Other	<u>15</u>	0
<i>Total</i>	80.625	53.75

At the end Christina has 80,625 points, which is $3/5$ of the whole settlement. George won one whole item, *City apartment*, which is the item he preferred the most. He also received $7/8$ of *Trailer*. (George valued *Trailer* for 10 points; 10 less $1/8$ is 8,75. Christina valued *Trailer* for 5 so her portion of the item is calculated from 5).

One could think that this is rather impossible to apply to political conflicts or to religious and ethnic disputes. Some items that are typically involved in disputes of this nature could appear indivisible. For instance, it may seem that simply splitting the items into half would diminish the whole purpose of the AW procedure. On the other hand, by applying AW the chances that items have to be divided into half are smaller. If there is one item which has the same amount of points from both parties, it does not necessary mean that both sides will share this item³³.

³³ The item may be given to the side that needs more points in order to achieve equitability.

3.3 Flaws in AW

A possible flaw of this procedure could appear if one or both parties knows the other's preferences or tries to guess how many points the other side would assign to different items. Then they can purposely allocate fewer points to items that they are sure to win in order to save points to win more items. Brams argues that this attitude only means harming your chance of successfully closing the settlement (getting 50 or more of your points). *“Sincerity provides an absolute guarantee of obtaining at least 50% of the total value in one's own eyes, and possibly much more ...this makes sincerity a guarantee strategy under AW: No matter what strategy an opponent chooses, sincerity guarantees an envy-free portion to the sincere party.”*³⁴

Another problem in whether AW is successful is the question of sincerity. Both sides have to assign the points according to their true preferences. This is rather hard to prove (Its proof is beyond any exact science method.) and it has the potential to jeopardize the whole mediation under AW. On the other hand, with the mediator's assistance this possibility should be completely eliminated. The mediator can assist choosing items in the dispute and lead negotiations concerning point allocation.

Looking at the AW application from a broader prospective it may seem that the application is irreversible and does not allow the sides to reconsider their point allocation. The authors of the procedure count on the fact that the AW procedure offers a final solution which would make both sides satisfied without further intentions to continue in the negotiations or to change the results. It is perfectly understandable in a mathematic sense, where the constants of equations never change. In case of political disputes it cannot be guaranteed that the players will remain invariable. Fisher in his work accentuates the significance of negotiation flexibility. *“In analyzing any negotiation process, one of a mediator's key concerns should be the extent to which that process may be freezing the parties into negotiating postures or positions.”*³⁵. Brams and Taylor view the Adjusted Winner application as a procedure taking place at a single moment in time. In the peace process in Sri Lanka the

³⁴ Brams, Taylor, p. 83.

³⁵ Fisher, R. (1978): International mediation: a working guide, ideas for the practitioner. International Peace Academy, the United Nations, New York, p. 103.

positions of both sides on different issues have developed over a long period of time (e.g. the Tigers adhered to the concept of the separate state till November 2001). Nevertheless, the author sees the potential of the AW procedure for resolving international conflicts³⁶. The potential flaw could be that the mediation under the AW procedure cannot be divided into several stages in which the players could adjust their positions and initial point allocation. When using the AW it is assumed that the actors will assign their points at certain time (it hasn't been said explicitly, however it is presumed that it is a limited time period). Secondly, while applying the AW procedure to a divorce settlement or a business dispute there usually is an arbiter who ensures that the final settlement is followed. In the case of an international or political dispute the lack of such an arbiter cannot guarantee adherence of the final agreement based on the calculated point allocation of the AW. Consequently, governments, state representatives, and negotiators frequently change their minds, which can affect the players' preferences and values³⁷. For that reason the settlement reached under the AW procedure cannot be claimed to be definitive.

4. History of the conflict in Sri Lanka

In order to better understand the nature of the case study conflict for this work, it is necessary to explain the history of the disputes and its roots.

4.1 Division of political power after 1948

Sri Lanka, formerly known as Ceylon, became a British colony in 1815³⁸. The island officially gained independence³⁹ in 1948 when the country became British

³⁶ Brams and Taylor discuss the potential use of AW for the dispute over the Spratly Islands in the South China Sea. Brams, p. 125.

³⁷ For instance, the two key Sinhalese parties – United National Party (UNP) and Sri Lanka Freedom Party (SLFP) have different perspectives on the conflict. While the UNP is willing to make more concessions towards the LTTE, the SLFP is considerably less tolerant. The point allocation for this AW application is based on Sinhalese preferences after signing the Ceasefire Agreement in February 2002. Supposing there had been a SLFP led government, the GOSL (Government of Sri Lanka) point allocation would have differed.

³⁸ The first European colonial power on the island was the Portuguese. They controlled the entire island except for the central highlands around Kandy. The kings of Kandy were able to thwart the Portuguese attempts to gain control over their territory. The Portuguese sought help from the Dutch who, in the end, became the new colonial power. As with the Portuguese, the Dutch were also not able to claim the highlands around Kandy. After 1796, the British supplemented the Dutch as the result of French revolution.

³⁹ In 1947, the Soulbury Constitution laid out the framework for the new form of government in Ceylon. The country changed its name to Sri Lanka in 1972. Sinhalese have always called the island Lanka; after an ancient

dominium. Sri Lanka did not experience the same sort of national liberation uprising as India. The shifting of political power to the local elites (Sinhalese and Tamil⁴⁰) was a slower process and was discussed only among educated English elites (both Sinhalese and Tamil). As a result of this independence process, the elites were expected to replace the British and become the new “rulers”. The founding constitution did not guarantee equality, national rights, or fundamental human rights⁴¹. The insufficient recognition of minorities⁴² and their basic political rights was a key factor leading to the future separatist war. The division of political power did not reflect the national division of the island. Any amendments added to the new constitution, or laws made against ethnic, religious, or racial discrimination required a two-thirds majority vote in the new parliament. Political parties presented this constitutional condition as an unsurpassable burden hindering the passing of important legislations. Although the two-thirds vote caused some problematic issues, the most prevalent reason for the prolonged injustices was a lack of political will to solve the problems of ethnic division and to set up guidelines for successful Sinhalese, Tamil, and Muslim cohabitation. Another important issue was the question of religion. The first Sri Lankan Prime Minister D.S.Senanayake did not influence his politics with any religious prejudices. On the contrary, Senanayake did not have any restraints in cooperating with the leader of the Tamil Congress, G.G. Ponnambalam. However, this situation changed after Senanayake’s death in 1952. Creating a policy of secularism, from the beginning, could have saved the country from strict ethnic and religious (Sinhalese – Buddhist, Tamil – Hindu, Muslims⁴³) divisions. At the root of conflict in Sri Lanka were other questions as well. These related to the official language, the system of political parties, and the decentralization of the country’s political power.

tale taking place on the island. The word “sri” means “auspicious” or “resplendent” in the Sinhalese language. Renaming the country in Sinha was one of the signs of Sinhala language dominance.

⁴⁰ British colonists brought the Tamils to Sri Lanka from southern India to work as cheap labor on the tea, coffee and coconut plantations.

⁴¹ The Tamils and other minorities did not have the same political rights as the Sinhalese. Laws were passed to restrict the amount of Tamil youth accepted by universities; the Government officially recognized neither the Tamil language nor their religion (Hinduism).

⁴² Tamils are the largest ethnic minority group (18%), the other ethnic minority groups are Moor (7%), Burgher, Malay, Vedda, (1 %). Source: www.countrywatch.com .

⁴³ Sri Lanka is 7% of Muslims. The largest religious group is Buddhists (70%), the second are Hindu (15%), the third Christians (8%). Source: www.countrywatch.com .

4.2 Official language

After the disintegration of control by British, both the Sinhalese and the Tamil fought to replace English with their own language and cultural predominance. The majority of the ruling elites⁴⁴ spoke English, and was educated in private Christian schools. The majority of people who could not pursue an English education were excluded from decision-making processes. Non-English speaking students could not pursue a university degree; this made the gap between the rich class and the rest of the country even more evident.

4.2.1 'Sinhala only' campaign

Since there was no national liberation movement in Sri Lanka, the fight against the ruling wealthy elite in a way replaced the liberation movement for the country. For the Sinhalese, the only way to adjust the power differences between the elites and the Sinhalese majority was to replace English with Sinhala. Even though originally, after gaining the independence in 1948, the political leaders agreed to replace English with both Sinhala and Tamil. However, in 1955 the Sinhalese, namely the Sri Lanka Freedom Party (SLFP), started the "*Sinhala only*" campaign in order to make Sinhala the sole official language for the country. The struggle against wealthy English speaking elites could also be viewed as a social class fight. Hence, the Marxist parties⁴⁵ joined SLFP in the "*Sinhala only*" campaign. Sinhalese volunteers (i.e. teachers, Buddhist monks, and educated youth) led the campaign throughout the areas of Sri Lanka with a Sinhalese majority. The socio-economic aspects of the movement were also cogent since the campaign could have easily been replaced with a struggle against the high privileged class. After the national election in 1956, the Sinhala movement gained its first success. The Ministry of Cultural affairs launched several programs to fund a number of Buddhist and Sinhalese protest proposals. Private schools were nationalized and Christian schooling was replaced with a Buddhist education. The recognition of Sinhala as the official language of Sri Lanka caused many difficulties for the Tamil minority. The Tamil speaking population

⁴⁴ The English speaking elite represented about 6% of the Sri Lankan population. Source: Nubin, W: (2002): Sri Lanka: current issues and historical background. Nova Science Publishers, Inc., New York, p. 62.

⁴⁵ One reason why Marxists favored the Sinhala ethnic group over equality was the special relation between the Tamil minority and India. India was perceived as a threat to Sri Lankan independence.

had no chance to learn Sinhala; without a knowledge of the official language, one could not seek employment in public service positions. Events that started as an act of revolt against a wealthy English class eventually turned into an act that further discriminated the Tamils in the 1950's. The situation improved in 1966 when the government introduced a regulation for implementation of the Tamil Language Special Act of 1958. Throughout the entire "*Sinhala only*" movement, a clear message was sent to the Tamil minority: a unitary rather than a federal approach was going to be pursued in Sri Lanka. This united the opposing Tamil population and provided one of the main causes of their national fight. The Official Language Act declaring both Sinhala and Tamil as the official languages of Sri Lanka was passed after signing the Indo-Sri Lanka Agreement in 1987. However, the problem did not seem to be solved even in 2003. In January, 2003, V. Anadasangari, a member of Parliament for the Tamil United Liberation Front, complained that government representatives sent letters to residents⁴⁶ in North and East in Sinhala only⁴⁷. The Norwegian government launched programs promoting the Tamil language throughout Sri Lanka and taught Tamil to the Buddhist monks, police personnel and schoolteachers. The language problem is rather sensitive and neglecting this topic can lead into even more serious ethnic clashes.

The only chance for an equal society would have come from keeping religion out of politics, accepting both Sinhala and Tamil as official languages, and respecting the other minorities and their languages. They would have had to build a new society on a human basis, not on ethnic and religion bases. In this way, Tamils would not feel the need to fight for their ethnic rights and would be able to accept the whole island of Sri Lanka as their homeland. A separatist war is not a surprising outcome from a society built on ethnic division and disrespect for minority rights. At this point, it is almost impossible to rewrite the Sri Lankan constitution from the scratch; the only solution is to start negotiations without any prejudices and with a will to compromise. This war has been on going for 21 years though, and it is a major obstacle in continuing and future development of the country.

⁴⁶ Muslims living in the Northeast speak Tamil.

⁴⁷ An article about this matter was published on the official website of the Government of Sri Lanka (www.priu.gov.lk) on January 29, 2003.

4.3 Political parties and electoral rights

Since Sri Lanka did not go through a liberation anti-colonialist movement like other countries in the region; there was a lack of common political will to enforce a universal franchise. The ruling elites simply wanted to replace the British and eliminate the uneducated and poor majority from all decision-making processes. If this premise had won, the problems regarding the Tamil minority would not have occurred because they never would have experienced the minority status. Tamils made up a good half of the educated and wealthy elite. Only with a universal franchise did it become evident that Tamils were both a linguistic and territorial minority. Despite all the attempts against a universal franchise, it was introduced in 1956. In a political sense, Tamils have become the linguistic and territorial minority. Nothing was done to create equal opportunities for all ethnic groups living in Sri Lanka. The Kandyan's proposal for a federal system at the Royal Commissions of 1927 and 1947 was one solution for these issues; however, neither the Tamils nor the Sinhalese supported this proposal.

After gaining the independence in 1948, the country's system of political parties reflected their ethnic division as well. Parties were built on an ethnic instead of an ideological base⁴⁸. The Multiethnic Ceylon National Congress transformed into the United National Party (UNP) with only the Sinhalese at authoritative positions. None of the other parties (Sri Lanka Freedom Party - SLFP, the Marxist party (JVC) had any Tamil representation in high rankings. On the other hand, there were only Tamil parties (TULF – Tamil United Liberation Front, PLOTE – The People's Liberation Organization of Tamil Eelam) defending the Tamil interests. In 1978, the government changed the constitution and established the office of an Executive President. The purpose of this office was to overcome the gap between the Sinhalese and the Tamil population. The President would be elected based on a popular vote that would represent all people of Sri Lanka with no regards to ethnic or

⁴⁸ The only exceptions were the Marxists parties - the Lanka Sama Samaja Party (LSSP) and the Communist Party, which were not founded on the basis of ethnic and religious cleavage; however, both Marxist parties entered the coalition with the Sri Lanka Freedom Party (SLFP) and supported its chauvinist policies by embracing 'Sinhala Only' policy. The radical Marxist group Janatha Vimukli Peramuna (JVP, People's Liberation Front) based its anti Tamil policy on Tamil's close relation to India (through their common religion and language). India was perceived as a threat to the Marxist ideologies.

linguistic backgrounds. This effort failed because the president could be elected without any votes from the minority groups.

4.4 Provincial Councils

The first attempt at answering the Tamils' call for self-governance and independence came with the *Bandaranayake – Chelvanayakam pact* of 1957⁴⁹. The government proposed establishing 'Regional Councils' with powers on regional development, education, land, health, water schemes, roads and colonization. The government proposal roused a new sense of Sinhala nationalism against recognizing Tamil rights for self-governance under the banner of the Regional Councils. The government yielded to the Sinhala pressure and abandoned the idea for a new regional establishment⁵⁰. The Federal Party (FP) introduced a new proposal for decentralization after the election in 1960 and again in 1965. The latter attempt was successful and led to an agreement, The *Dudly-Chelvanayakam pact*. This pact established 'District Councils', and elected authorities with fewer powers⁵¹. Their resemblance to the 'Regional Councils' was only marginal since they represented smaller territorial units. The Sinhala national movement and other opposition groups were strictly against this and began a protest campaign. The government again gave in to the Sinhala pressures and abandoned the plan for decentralization a second time. The establishment of the Provincial Councils in 1988 was another attempt to solve the ethnic crises. The level of independence proposed was insufficient and did not establish the requested degree of self-determination and decentralization. The central government refused to share control over security and other important issues (taxes, local budgets) with the Provincial Councils. For the most part, final control over the provinces would remain in the hands of the central government and the President. The President could appoint the provincial governors who, in turn, could then veto a law passed by the regional council. Through this system of checks and

⁴⁹ The pact between Sinhalese prime minister, SWRD *Bandaranayake*, and the Tamil leader, SJV *Chelvanayakam*, represented the first effort to accommodate some of the Tamil demands. The pact was abrogated within less than a year in April 1958, *Bandra*, p. 64.

⁵⁰ The proposal to institute Tamil as the official language of Northern and Eastern provinces was rejected due to its incompatibility with the Official Language law, *Bandra*, p. 64.

⁵¹ *Bandra*, p. 65.

balances, the Provincial Councils would remain a second-class institution. Both Tamil and Muslim⁵² minority rejected this governmental proposal.

The idea of decentralization was presented in Sri Lanka during the 1940's as an alternative to a centralized colonial administrative system. After gaining independence in 1948 and after the beginning of the 'Sinhalization' of the government, the separation was seen as a concession to the Tamil minority. Failing to solve the issues of decentralization was one of the major reasons leading the Tamils to protest for a separate state instead of finding a solution for regional self-governance within the Sri Lankan state.

5. Peace talks

5.1 The first peace talks in Sri Lanka 1985 – 1989

The first peace talks⁵³ began in 1985, two years after the beginning of the conflict. Tamils were represented by an umbrella organization, Eelam National Liberation Front (ENLF)⁵⁴, and by two organizations outside of ENLF, The People's Liberation Organization of Tamil Eelam (PLOTE) and the Tamil United Liberation Front (TULF). As a solution to growing ethnic crisis, the Tamil delegates held four main principles: the "*Thimphu principles*". These principles are the cornerstone of the Tamil struggle for their rights. They included: *recognition of Tamils as a separate nationality; recognition of the traditional homeland of the Tamils and guarantee of its territorial integrity; recognition of the inalienable right of self-determination; conferment of citizenship on all Tamils who looked upon the island as their country*⁵⁵. The *Thimphu principles* determined the direction of the Tamil's struggle. The Sinhalese government did not accept any of these principles. In the end, the first peace talks served as an exchange of information more than anything else – both

⁵² The Sri Lankan Muslim Congress (SLMC), which had 11 members in parliament, withdrew from the PA led government coalition as a protest to uniting the Muslim dominated province Kalmunai with the Tamil East province under the banner of the Provisional Councils. The last straw was the removal of the SLMC leader, Rauf Hakeem, from government (he was the minister of trade).

⁵³ The negotiation took place in Thimphu, Bhutan.

⁵⁴ ENLF included three military organizations: The Eelam People's Revolutionary Liberation Front (EPRLF), The Tamil Eelam Liberation Organization (TELO), and The Eelam Revolutionary Organization of Students (EROS).

⁵⁵ Herath, R. B. (2002): Sri Lankan ethnic crisis: towards a resolution. Trafford Publishing, Victoria, p. 61.

sides learned about each other's positions. Sri Lankan President Jayewardane proposed a second peace talk which was held in Bangalore, India in 1986 under the cover of the Summit of the South Asian Area for Regional Co-operation (SAARC). President Jayewardane introduced the "*Trifurcation Proposal*", a proposal that did not deal with the Tamil ethnic crisis directly. The plan called for: (1) the separation of the Amparai District from the Eastern province since the majority in the Amparai District were not Tamils and the Eastern province was mainly Tamil area, (2) the creation of the Provincial Council for the Eastern province, and (3) the separation of the Northern province, as it was before. The proposal did not address any of the minority rights issues only the administrative division of the island. The Tamils could not accept this offer and end the separatist war. The government underestimated the ethnic problem and did not place enough focus on solving the political differences between the Tamils and Sinhalese. The situation worsened as the government launched its "*Operation Liberation*" to fight against the Tamil forces (LTTE)⁵⁶. The peace talks were impossible to continue under the given circumstances. India supported the Tamils by providing food and other essential supplies. Such involvement aggravated India's later position as the first mediator in future peace talks.

In July 1987, the Sri Lankan government decided to allow temporal unification of the two Tamil provinces – the northern and eastern. The LTTE requested a withdrawal of the Sri Lankan government troops and an allowance for the return and resettlement of all the Tamil refugees before peace talks could be renewed. At the same time, the LTTE announced that both disarmament and referendum on the Eastern province alone would not be acceptable as pre-negotiation conditions.

On July 29, 1987, India stepped in and signed the Indo-Sri Lanka Agreement to Establish Peace and Normalcy in Sri Lanka. Sri Lanka agreed to recall the government troops from Northern and Eastern provinces and replace them with the Indian Peace Keeping Force (IPKF). The Indian forces were there to protect the

⁵⁶ Tamils were not afraid to use any means while waging the guerrilla war. In 1985, Tamil fighters shot and killed 146 Buddhist worshippers at Anuradhapura. They were the first to use suicide bombing (July 1987). The greatest concern of the international community arose from the fact that the LTTE guerrilla army recruited children and women to serve in their forces. LTTE declared that it would stop sending children to fight; however, it did not honor this commitment. www.countrywatch.com, Sri Lanka, Political Conditions, page 5.

guerrilla fighters while they laid down their arms. As Howard Wriggins⁵⁷ mentions, the Tamil negotiators did not possess complete support of the entire Tamil representation – especially of the most militant fraction. As a consequence, the guerrilla movement turned on the Indian peacekeepers and the conflict resumed⁵⁸. Allowing India to assist in ending the civil war was unwise because the Sinhalese majority did not perceive India as trustful. As Sri Lanka's neighbor, with a Hindu population of 80%⁵⁹, India has a great interest in the situation of the Tamil minority. India did not prove to be a good impartial mediator; hence, in the future, other countries⁶⁰ with no previous particular relations with either the Tamil or the Sinhalese were chosen for negotiations.

5.2 The end of the IPKF's mission

Although the government expressed some efforts to solve the conflict by proposing partial decentralization through setting up Provincial Councils, the LTTE refused to accept this offer and did not surrender their weapons. In 1989, the newly elected President, Premadasa from UNP⁶¹, replaced President Jayewardane. The new President opposed Indian involvement in the conflict and in May 1989, he began new negotiations with the LTTE without Indian assistance. Both sides agreed that withdrawing the IPKF would be beneficial for the whole country. During this time, the Government was secretly providing the LTTE with money and weapons to fight the Indian troops. In February 1990, President Premadasa officially asked the IPKF to leave Sri Lanka. LTTE presented two demands to be negotiated: (1) *the dissolution of the North East Provincial Council* and (2) *the repeal of the Sixth Amendment of the Constitution*. The government did not accommodate those demands and in June 1990, LTTE stepped away from the negotiations. This set of peace talks was not very successful; however, both the Government and the LTTE proved that they were able to enter into negotiations and make some convergences and concessions.

⁵⁷ Wriggins, H.: Sri Lanka: negotiations in a secessionist conflict. In: Zartman, W. ed., (1995): *Elusive Peace: negotiating an end to civil wars*. The Brookings Institution, Washington, D.C. .

⁵⁸ Wriggins, p. 35.

⁵⁹ Source: www.countrywatch.com .

⁶⁰ The Norwegian and Japanese engagement in the conflict as mediator is discussed in details in the chapter 4.

⁶¹ UNP, United National Party.

The Tamils continued to fight in the separatist war. The most significant actions by LTTE were the assassinations of the Indian Prime Minister, Rajiv Gandhi, in 1991 by a suicide bombing, and the Sri Lankan President Premadasa in 1993.

5.3 People's Alliance's peace initiatives

The general approach to the ethnic conflict changed in 1994, the year of the parliamentary elections. The People's Alliance (PA) entered the campaign with certain knowledge that the separatist war must be ended through new negotiations. PA won the election and Chandrika Kumaratunge⁶² became the new prime minister. On October 13, 1994, a new round of negotiations with the LTTE began but negotiation did not meet with success and failed after six months. The Government insisted that all the issues should be discussed at the same time, whereas LTTE preferred to separate talks concerning the renewal of peace and a peaceful political situation. After the negotiations failed, LTTE resumed the war by bombing two navy boats on April 19, 1995. The government sought national and international support to fight the terrorism led by LTTE. An important turning point came on December 2, 1995 when the Sri Lankan army captured Jaffna, the main stronghold of the LTTE⁶³. LTTE responded with several attacks on the government and commercial Sinhalese buildings. Also, in May 1998, the mayor of Jaffna was assassinated⁶⁴. Conditions for peace talks revitalization proved to be quite poor as both sides showed no effort whatsoever to stop fighting and revise their positions. Another significant turn in the situation came on September 6, 1998 when LTTE announced their willingness to continue in peace talks under one condition – mediation conducted by a third party. The Government rejected the offer and LTTE continued in their attacks on the Sinhalese public figures. On December 18, 1999, President Kumaratunge and the

⁶² Kumaratunge's parents S.W.R.D. Bandaranaike and Sirimavo Bandaranaike were both Sri Lankan prime ministers. Kumaratunge was not a prime minister for a very long time, and she joined the presidential race just a few months later. When a suicide bomber killed her main opponent, Gamini Dissanayake, she won the presidential election. President Kumaratunge named her mother, Sirimavo, the next prime minister.

⁶³ This action severely affected the people of Jaffna. Many of them had to flee the country and ended up in refugee camps. The Sri Lankan government started to censor the press on information about the fights in the Jaffna region. The government did not want news spread of some affairs, such as the corruption in the Sri Lankan army. Source: www.countrywatch.com.

⁶⁴ LTTE used many of the same methods as other terrorist groups, attacking trains (on July 24, 1996 a bomb exploded in a commuter train in Colombo), business centers (Twin-Tower World Trade Center on October 15, 1997, Maradana, March 5, 1998), religious symbols (Temple of the Tooth in Kandy, January 25, 1998, the most sacred Buddhist place in the country), killing a total of 141 people and wounding more than 850 others, Herath, p. 65.

Prime Minister Sirimavo Bandaranaike, President's mother, survived a bombing attack. LTTE offered a truce again on May 8, 2000, shortly after winning control over an important part of the Jaffna peninsula, the Elephant Pass. Determined to win the war through the military, the Government rejected the truce and peace negotiations. By now, the war had been continuing for 17 years and both sides were exhausted both militarily and economically. The situation in Sri Lanka did not change even after the parliament elections in October of 2000. Although the PA lost some mandates, they still won the majority vote forming coalition with some small Tamil and Muslim parties. Ratnasiri Wickramanayake of the PA became the new prime minister. The new government did not plan to enter any fresh peace talks.

5.4 Unilateral ceasefire

On November 2, 2000, the Norwegian diplomat Eric Solheim, announced that LTTE was willing to enter new peace talks without preconditions. This was a great break through because overcoming preconditions was a difficult burden in previous negotiations. The government rejected this offer. The main question was whether or not the Tamils would give up their request for a separate state and would be willing to negotiate about the level of their political autonomy within the Sri Lankan state. On December 24, 2000, LTTE declared a unilateral ceasefire and called on the government to accept this and ceasefire as well, but the government refused.

The Government's position was weakened by a withdrawal of the Muslim party – The Sri Lankan Muslim Congress - due to the PA's reluctance of administrative separation of Kalmunai from the Eastern Province. Coalition led by the PA lost its majority in the Sri Lankan Parliament. President Kumaratunga saved the situation by signing an agreement, the Memorandum of Understanding⁶⁵; the Marxist party was ultimately in opposition. However, none of this did anything to solve the unsettled situation in the Sri Lankan parliament. After a proposal of opposition, the United National Party with little confidence motioned to shift some key government members in the opposition. President Kumaratunga dissolved the parliament on October 10,

⁶⁵ JVP signed the agreement with several conditions. President Kumaratunga had to reduce the size of her cabinet from 44 to 20. On September 24, 2001 the parliament passed the 17th Amendment to the Constitution appointing Constitutional Council and four independent commissions on elections, the judiciary, the police and public service, Herath, p.67.

2001. The UNP came out of these matters as the strongest party from the following parliament elections in December 2001. The New Prime Minister, Ranil Wickremesinghe of the UNP⁶⁶, started a new era of cohabitation with President Kumaratunga of the PA. The new political situation brought change in the Government position towards the ongoing separatist war and the LTTE. The new prime minister called for international support in ending the war and for the renewal of the Norwegian present as the third party mediator. In return, the LTTE announced a month long ceasefire starting on December 24, 2001. This positive step forward was followed by the government, which followed LTTE and matched the ceasefire. Conditions for peace talks were better than they had ever been since the beginning of the conflict in 1983. Both parties reached a point when they realized that entering peace talks was beneficial even without a fulfillment of any preconditions. On January 3, 2002 the Sri Lankan news website, Colombopage, released that the LTTE leader, Vellupillai Prabhakaran, sent an official letter to the Norwegian⁶⁷ prime minister, Kjell Magne Bondevik, to continue as the facilitator of conflicts. According to R. B. Herath (p.68) it was an important input from the LTTE since such a letter was the first in the history of the conflict. The first success was the signing of the Memorandum of Understanding (MOU, February 22, 2002) in which both sides agreed on an open-ended cease-fire. The peace effort, which started in 2002) is the sixth one in the history of the conflict. The LTTE felt very confident about their position and made a proposal for additional conditions under which LTTE would continue the actual peace talks. The conditions were: lifting the ban on the LTTE (In post September 11 issues, connected to terrorism that were regarded with immense sensibility, LTTE was put on a list of international terrorist groups in the United Kingdom. On the other hand, most countries including the US demonstrated that they would not negotiate with terrorists under any circumstances. The labeling of the LTTE as a terrorist group was a definite burden on the peace talks⁶⁸.) The Sinhalese public was skeptical of the results of the peace talks as none of the talks beforehand were very efficient. Some news about LTTE recruitment and regrouping of Tamil military forces emerged in the Sri Lankan

⁶⁶ The UNP formed a coalition with the help of the Sri Lanka Muslim Congress (SLMC) and the Ceylon Worker's Congress of the Indian Tamil (CWC). The official name of the coalition was The United National Front (UNF). The December 2001 elections brought up one curiosity – the Buddhist monk, Baddegama Samitha, who was an MP but was elected for the PA in the Galle district, Herath, p.68.

⁶⁷ More on Norway as a mediator (and its role) in the mediators' section, chapter 6.

⁶⁸ Herath mentions that apart from LTTE being viewed as a terrorist group, its leader, Vellupillai Prabhakaran, was suspected of being involved in the assassination of the Indian Prime minister, Rajiv Gandhi, Herath, p.69.

press⁶⁹. The GOSL⁷⁰ and the LTTE met 6 times under Norwegian supervision. In spite of the fact that the initial negotiation process was lacking support of some key participants (i.e. president Kumaratunga had some major reprehensions against the content of the Ceasefire agreement), it succeeded in several ways. Firstly, it happened to be the longest period without direct fighting in the history of the war. The other great achievement was establishing sub-committees where representatives of both the LTTE and the GOSL were cooperating on addressing practical issues (such the humanitarian funds), hence working on practical issues was important in the transformation the LTTE into a legitimate political party. Japan joined Norway in facilitating the talks even though they focused more on the socio-economic aspects of the negotiations. Despite all the mediation attempts and some success, the peace process ended in April 2003 due to the continued violation of the Ceasefire agreement by the LTTE cadres and general mistrust on both sides.

6. Mediators in the ethnic conflict in Sri Lanka

This work applies the Adjusted Winner procedure to the conflict in Sri Lanka. Its potential for resolving the conflict between the Sinhalese government and the Tamil minority represented by the LTTE is discussed. It is vital to mention the mediators assisting the two sides in negotiations throughout the history of the conflict. There are many theories dealing with the nature of the mediator and its characteristics. Mitchell mentions motives of the mediators when entering a conflict. According to Mitchell, the mediator side is not necessary neutral. Just by taking an initiative and getting involved in the conflict is the third side expressing its opinion to terminate the dispute. The type of intermediary that intervenes can greatly influence the nature of negotiation. *"The underlying motives from which an intermediary initiative arises and which sustain it are likely to have a marked influence on the way that an intermediary conducts the process, on the manner in which the parties in conflict react to the intermediary's activities and on the eventual outcome particularly*

⁶⁹ Herath, p. 70.

⁷⁰ Government of Sri Lanka (GOSL) hereafter referred to as the Government or GOSL.

in terms of the form any final settlement might take."⁷¹. Furthermore, Mitchell presumes that the mediators do not always act in an altruistic manner. This theory is relevant to the conflict in Sri Lanka. The first intermediary, India, is a typical example of such behavior⁷².

In the conflict in Sri Lanka, there were three mediators. The first, India was the least successful one. Norway was the one who played the most vital role because it facilitated the peace negotiations that began in 1995. In order to present the whole picture of the conflict in Sri Lanka it is important to characterize the mediators (and their techniques). There are three types of mediator – regional power (India), small state with no self interest in the conflict itself or a strategic interest in the region (Norway), and leading economic power (Japan)⁷³. It is remarkable how the three different types of mediators can influence the peace process.

6.1 Regional power – India

India had several reasons to intervene in the conflict in neighboring country as a mediator. Apart of the geographical proximity and India's geopolitical interests, India has a large Tamil population in Tamil Nadu⁷⁴. The emancipation of the Sri Lankan Tamil could have led to similar actions by the Tamil in India. The Indian government feared the spillover effect and the disability of the region. Alternatively, India was interested in playing the role of the regional hegemonic leader and keeping the West from intervening in the Indian subcontinent. Furthermore, the role of the Indian state, Tamil Nadu, was rather unique since it influenced the Indian policy towards the Sri Lankan conflict. The Indian Tamils provided the Sri Lankan Tamil freedom fighters with sanctuaries, training, bases, arms, and occasionally with

⁷¹ Mitchell, C., R.: *The Motives for Mediation* in: Mitchell, C.,R.; Webb, K. ed. (1988): *New approaches to international mediation*. Greenwood Press, Westport, Connecticut, p. 30.

⁷² It has to be noted that the Mitchell's work was written in late 1980s when the tradition of non-state mediators was not as strong as it is at the present. International organizations such as the United Nations acted in the shadow of the Cold War. While talking about biased third parties, Mitchell principally means state mediators.

⁷³ However, the fact that Japan did not play the role of the typical mediator is important to include in this list. Japan has played a very important part in organizing the donor conference to help finance the reconstruction of the Northeast. It was an important aspect of the socio-economic side of the conflict.

⁷⁴ The Tamil population in Indian state, Tamil Nadu, sympathized with the Sri Lankan Tamil. From 1980 India provided arms and shelter to the LTTE. After the assistance stopped in 1987 the political parties in Tamil Nadu continued their support of the LTTE and other Tamil groups. Source: de Silva, K.M. (2001): *Sri Lanka's Prolonged Ethnic Conflict : Negotiating a Settlement*. International Negotiation 6/2001, 437-469, Kluwer Law International, the Netherlands, p. 439.

financial resources. Although the Indian government has never officially confirmed tolerating such activities in Tamil Nadu both prime ministers, Indira Gandhi and Rajiv Gandhi were aware of what was happening in the union state Tamil Nadu⁷⁵. The other important factor was the pressure from the Indian Tamils on the Indian government in the matter of the Sri Lanka crisis on behalf of the Tamil fighters. India assisted in arranging talks between the representatives of the GOSL and the LTTE. In 1985, India sponsored two rounds of talks in Thimpu, Bhutan. During the talks the Tamil officially formulated their claims in the *Thimpu principles*⁷⁶. The Thimpu peace conference did not meet with success. After the Thimpu meeting other talks were held in Delhi, India on August 30, 1985. The results of this meeting were the bases for later Indo-Lankan accords in 1987.

Indian involvement can be divided into two phases. The first phase ended in July 1987 when India finished its diplomatic engagement⁷⁷ in the conflict in Sri Lanka and chose a different, military, approach. At the end of the diplomatic negotiations the Indo-Lanka accords were signed. On the basis on these accords India committed to send a peacekeeping mission to Sri Lanka. The role of changed from one mediator to one as active participant. The Indian Peace Keeping Force (IPKF) arrived to the island after signing the accords on July 29, 1987. At that time the unit consisted of around 5,000 men. At the end of the IPKF's operation in Sri Lanka there were around 100,000 men in the unit⁷⁸. The initial task of the Indian peacekeepers was to monitor the situation between the Tamil and the GOSL army forces. The peacekeeping mission was not met with the local support. The Sinhalese majority accused the peacekeeping troops of being impartial and secretly supporting the LTTE fighters. According to Bercovitch, mediation is in its nature "*a non-coercive, non-violent and ultimately non-biding form of intervention*"⁷⁹. The Indian involvement in Sri Lanka

⁷⁵ Source: de Silva, p. 454.

⁷⁶ The *Thimpu principles* are described in the chapter on the history of the peace talks, page 26.

⁷⁷ Rupesinghe characterizes this phase as "*active diplomatic engagement through high-level political meetings, shuttle diplomacy, consultations with the main protagonists, and the establishment of formal frameworks for negotiations*" Rupesinghe, 159 It has to be mentioned that India was rightfully accused of being impartial. During their diplomatic engagement in the Sri Lankan ethnic conflict, the Tamil LTTE cadres were armed and trained in Indian state of Tamil Nadu (Rupesinghe, 159).

⁷⁸ "*At the height of India's Sri Lankan operation, more than 120 000 of its troops were in the country; 7000 were killed and many more wounded*" De Silva, M., and Cowper R. (1993): New Dehli Has Score to Settle. Financial Times, October 27 in: Rupesinghe, 159.

⁷⁹ Jacob Bercovitch in Studies in International Mediation (Bercovitch, J., ed. (2002): Studies in International Mediation. Palgrave Macmillan, New York, p. 5).

exceeded such criteria. In this case India definitely acted more as an intervening nation than as a neutral, impartial mediator. As de Silva mentions in his article, despite all assertions by president Jayewardene that the IPKF would be under his command, the peacekeeping force remained under the Indian government's control. Paradoxically, the mission was fighting against the cadres that were once trained and armed in India. The second phase of the Indian involvement in the Sri Lankan peace process was the lowest point of mediation throughout the history of the conflict. In 1988, the newly elected president of Sri Lanka, Ranasinghe Premadasa, started negotiation with the Indian government about withdrawal of the peacekeeping troops from Sri Lanka. The last Indian units left Sri Lanka in March 1990⁸⁰. The three year long presence of the IPKF immensely effected the Indian position in the peace process. India proved to be an unsuitable mediator which served its own interests before those of the parties involved in the dispute. Despite India's aforementioned failure in the past India's current proven inability to be beneficial to either side, President Kumaratunga does not discount the possibility of India's assistance in the current ongoing peace process. In the interview for *The Hindu*⁸¹ she said: "*In the final count, India is the one country that would be justifiably interested in Sri Lanka. Sri Lanka's future in this (peace) matter, for reasons that are known ... the historical reasons, the geographic proximity, the linkages, economic and everything else.*" India as the regional power will be always interested in the political situation of its neighbors, however its credibility as the mediator in the peace process in Sri Lanka has been irrevocably tarnished by its military intervention in the late 1980s.

6.2 Small (weak) state mediator – Norway

Norway developed a good reputation as peace facilitator in 1993 while brokering the Israeli-Palestinian negotiation that led to the Oslo Accords. Consequently, Norway assisted in various peace processes in Guatemala (1996),

⁸⁰ The IPKF offered the Sri Lankan army to occupy the positions (camps and other army facilities) in the Northeast. According to de Silva (de Silva, p.457) the Sri Lankan army was "*lulled into a false sense of security by the cordiality of the early talks between the government and the LTTE, the Sri Lankan troops did not move in; indeed even the large police force in parts of the east were withdrawn. Thus the LTTE forces were permitted to establish themselves in the areas vacated by the IPKF.*"

⁸¹ *The Hindu* is one of the biggest national newspapers in India. The article with the interview with President Kumaratunga was published on the Government official website (www.priu.gov.lk) on April 12, 2003.

Haiti, Sudan, Cyprus, Kosovo (1999), and Columbia (2000). As Bullion mentions in his article⁸², Norway is selective and occasionally refuses to assist in peace negotiation. *“Sometimes people come to us after meeting a guerrilla leader in a bar who says he wants to make peace with the President.”*⁸³. Nevertheless, Norway has the best potential to become a leading mediation power in the world. With its non-existing ex-colonial and geostrategical interests, it has the best qualification to be impartial and suitable for various parties. Norway is the typical example of small (some publications use the term “weak”) state mediator. Pruitt relates the character of mediator to the success in mediation. He explains the mediation power of “weak” states like Norway. *“The weak mediator’s main tools are in the realm of communication and formulation rather than manipulation...They include the capacity to transmit and interpret messages, to bring realism into the parties’ conceptions of each other, to reframe the issues, and to make suggestions for settlement. When the motivation to settle is secure on both sides, weak mediators like Norway are often superior to strong mediators like the US, for several reasons: international reporters are less attentive to the weak than strong, making it easier for them to assure secrecy to the disputants; weak mediator are less often biased by their own interests; and disputants sometimes find it easier to agree to a weak mediator’s suggestions, because it is less likely to be viewed as giving in to superior power.”*⁸⁴. Bullion adds that Norway hopes to enhance its standing at the United Nations (UN) and other fora by establishing its role as a third-party mediator⁸⁵. Consequently, Norway as a stable democratic country, is not likely to change its foreign policy in the event of a government change. Such a country can engage in long-term perspective peace negotiations without fearing its potential foreign policy modification. For instance in the middle of negotiations with the GOSL and the LTTE in 2000, the Norwegian Labor Party (Det norske arbeiderparti, DNA) won Norwegian parliamentary elections and the Socialist Left Party (Socialistisk Venstreparti), previously engaged in the Sri Lankan negotiations, became a minority opposition party. The change had no effect whatsoever on the Norwegian involvement in the Sri Lankan peace talks. The Tamil community in Norway (population of refugees counting over 10,000, many of whom

⁸² Bullion, A. (2001): Norway and the peace process in Sri Lanka. Civil Wars, Vol. 4, No.3, p. 70 – 92, Frank Cass, London.

⁸³ Bullion, p. 77.

⁸⁴ Pruitt, D. G: Mediator Behavior and Success in Mediation in Bercovitch, J., ed. (2002): Studies in International Mediation. Palgrave Macmillan, New York, p. 51.

⁸⁵ Bullion, p. 77.

work in the fishing industry) is considered to be a minor side effect of the Norwegian initiative in the peace process.

6.2.1 Norwegian initiative in Sri Lanka

After the failure of the first peace attempts in Sri Lanka facilitated by India, the next peace initiative came in January 1995. The new People's Alliance coalition government was skeptical of the idea of inviting a new third party mediator since the first such attempt was not successful. Newly elected President Kumaratunga in mid-1997 first approached Norway to enter the peace talks⁸⁶. The first Norwegian appearance in the negotiation did not conclude with any great accomplishment. The talks were initiated by the Government side and failed because of a lack of trust on both sides. The Sinhalese nationalist Janatha Vimukthi Peramuna (JVP, People's Liberation Front)⁸⁷ and chauvinist Buddhist monks undermined the Government peace actions. Despite the mediator's attempts, the war was re-ignited. Norway was called back in 1998 to facilitate talks between the GOSL and the LTTE⁸⁸. Either side was not prepared to compromise on discussed items (i.e. the separate status of the Northeast region). Even though the Tigers declared a unilateral ceasefire on December 24, 2000 and renewed the ceasefire (truce) every month until April 2001, the Government did not recognize their demands, which the Tamil required in order to enter the negotiation. The Norwegian government was immensely active in bringing the two parties to a table. The Norwegians deployed a special peace envoy, Erik Solheim⁸⁹, to lead exclusive talks with both the LTTE leadership and the Government's highest representatives (President Kumaratunga and prime minister Wickremesinghe) after the hardest fighting after the unilateral LTTE truce in April 2001. Solheim was often accused by the Sinhalese public for being impartial and too

⁸⁶ As Sisk mentions (Sisk, T.: Peacemaking processes: forestalling return to ethnic violence in: Zartman, W., ed. (2001): Preventive negotiation: avoiding conflict escalation. Rowman & Littlefield Publishers, Inc, Lanham, Maryland, p. 76) president Kumaratunga firstly sought the mediation assistance of the government of France. The French refused and offered the assistance of François Michelle instead. The LTTE did not agree with any other assistance than that of a government. Bullion mentions that India opposed any strong mediator (such as the USA) being involved in South Asian internal affairs. Norway, as a representative of a weak state, was acceptable for everybody, Bullion, p. 79.

⁸⁷ JVP is a Maoist revolutionary organization opposing any modernization attempts.

⁸⁸ Prior to that in 1996, the LTTE lost their control of the Jaffna stronghold which struck their confidence in winning the war militarily.

⁸⁹ Erik Solheim has been the special adviser to the Norwegian government on the peace process in Sri Lanka since 2000.

friendly towards the key Tamil for his bargaining with the Tamils. The anti Solheim notion led to his removal from the negotiations⁹⁰. Colombo requested an upgrade of the Oslo participation and hence to deal directly with the foreign minister Thorbjørn Jagland instead of Solheim. The Norwegian initiative was jeopardized by Government attempts to recapture the Elephant Pass leading to Jaffna and the LTTE's efforts to gain full military control over the city of Jaffna. Despite the Norwegian involvement, the parties preferred the military solution to the crisis instead of seeking peace settlement at that moment. A shift in the process occurred in 2001 when the moderate UNP won the parliamentary elections. Additionally, the LTTE's attitude towards negotiations changed radically after the September 11 terrorist attacks on the United States. Hence the label terrorism gained very negative associations and the LTTE was very keen on acquiring legitimacy through successful peace talks. The major Norwegian contribution to the peace in Sri Lanka results from this negotiation wave leading to signing of the Memorandum of Understanding (MOU, know also as the Ceasefire agreement) in February 2002. In addition, The Sri Lanka Monitoring Mission (SLMM) under the Norwegian command played a significant role in securing the observance of the Ceasefire agreement. The function of the SLMM and the Norwegian involvement in it is often criticized. The SLFP representatives expressed via Laksman Kadirgamar⁹¹ an opinion that the Norwegian involvement in the mission exceeded its role as a third party mediator. Kadirgamar was referring to the fact that SLMM could decide on violating the Ceasefire agreement at the site of an accident. For instance, the Sea Tigers⁹² were often accused of violating the parts of the Ceasefire agreement dealing with the movement on the sea. The Scandinavian⁹³ members of the SLMM were sometimes indicted for being impartial and siding with the LTTE's Sea Tigers. Despite all these allegations, the Norwegian participation in the SLMM cannot be compared to the Indian deployment of the peacekeeping forces at the end of 1980s. The SLMM was not engaged in fighting

⁹⁰ “*Criticism of Solheim’s role and objectivity, which had been voiced by some Sinhala opposition politicians, was now being taken seriously by the government. It was felt that Solheim was ‘tainted’ by being too friendly towards key Tamil and had become partisan in his pronouncements.*”, Bullion, p. 75.

⁹¹ Laksman Kadirgamar was the People’s Alliance’s member of the Parliament and long time advisor to President Kumaratunga. Since 2004 Kadirgamar has been the Sri Lankan minister of foreign affairs.

⁹² The “Sea Tigers” is the LTTE navy unit. The head of the monitoring mission, general Trond Furuhoide, proposed that the Government and the Sri Lankan navy should recognize the Sea Tigers as a de facto naval unit in the spirit of the Ceasefire agreement. The opposition parties have called this proposal “*preposterous*” referring to it as to a sign of siding with the LTTE.

⁹³ Apart from the Norwegian there were representatives of Sweden and Denmark in the Sri Lankan Monitoring Mission.

against any groups. Their only task was to monitor the situation, serve as an immediate facilitator, and be the final authority regarding interpretation of the agreement in case of disputes between the LTTE and GOSL forces⁹⁴.

The set of six peace sessions⁹⁵ between the Government and the LTTE brought many important moments in the history of the peace process, such as creation of the sub-committees dealing with the reconstruction agenda and gaining reliability of the donor countries. Regardless of all the attempts of the Norwegian government, their involvement is still perceived positively by all the Sinhalese representation. The Marxist party, JVP, which is currently the key member of the SLFP led coalition, identifies the Norwegian initiative as 'foreign interference' and is opposed to their further involvement in facilitating the peace process in Sri Lanka.

6.3 Leading economic power – Japan

Japan was the last of the three mediators to enter the peace process negotiations⁹⁶. In 2003 Japan hosted 6th session of the first round of the peace negotiations. It became primarily interested in organizing the financial help for Sri Lanka and is one of the most important donor countries. Japan represents one of the strongest Asian and world-leading economies and is keen on maintaining stability in the Southeast Asia. In the Sri Lankan conflict, the main focus of the Japanese government was answering calls for immediate humanitarian assistance, rehabilitation and reconstruction process. The major contribution of Japan to the peace process was facilitating conferences for donors. The presence (and assistance) of the leading economic power helped with gaining trust of other donors.

⁹⁴ The opposition PA coalition often accused the UNP and Prime minister Wickremesinghe of diminishing the role of the official Government authorities by giving the right of final authority regarding the interpretation of the Ceasefire agreement to the Scandinavian monitors. Kadirgamar talks about “*the jurisdiction of the Courts of Sri Lanka has been ousted on a question so vital to national security and the protection of the territorial integrity and sovereignty of Sri Lanka*” and “*The Norwegian Government has now been cast in the role of a mediator or arbitrator, and the Monitoring Mission has been given the role of a judge, in the resolution of disputes between the parties which is not the basis on which Norwegian assistance was sought in the first place.*”. Source: Kadirgamar’s speech from session of the Parliament on May 8, 2003. Source: the official Government website (www.priu.gov.lk).

⁹⁵ The summary of the six sessions of the peace talks is at the end of this chapter.

⁹⁶ Apart from organizing the international economic aid to Sri Lanka, Japan is one of the three major donors. Together with the Asian Development Bank (ADB) and the World Bank shares in assistance of 74% of all the development aid (ADB – 47%, WB – 19%, and Japan 8%). Source: The Japanese Ministry of Foreign Affairs: Document – Japan’s Country Assistance Program for Sri Lanka.

On the other hand, Japan was not very active in facilitating direct talks between the LTTE and the Government. Such assistance is not the most typical example of the mediation done by a third party. However, this assistance meant immense help to Sri Lanka since the financial help to the country is the most beneficial to heal scars after more than twenty years of the ethnic war. Carnevale defines this type of mediation as a “reward power”. The reward power “involves mediator provision of rewards or benefits in exchange for agreement or compromise”⁹⁷. Japanese initiative to attract countries to fund the rebuilding of Sri Lanka, and especially the Northeast part of the island, works on the same principles. Japan reached a special status in the mediation by providing the Government and the LTTE with financial opportunities. Japan did not act as a classic superpower since it did not use any threats or pressures to achieve the agreement between the parties of the conflict. Instead of being involved in finding a political solution to the long-time dispute, Japan chose to react to the socio-economic side of the conflict. In the statement issued by the Japanese ministry of foreign affairs, Japan’s motivation was defined: “*The promotion of Sri Lanka’s social and economic development through the extension of assistance can greatly contribute to the consolidation of democracy and political stability in the entire South Asia region.*”⁹⁸ Japan has been providing economic aid since 1954 when it started with technical cooperation and provision of yen loans. From the time when Japan began its engagement in the Sri Lankan affairs it has always maintained a politically neutral stance regarding the domestic political affairs. In contrast to allegations of the Norwegian mediation being impartial and too friendly to the Tamil, Japanese have never lost their detachment.

⁹⁷ Carnevale, P., J. Mediating from Strength in Bercovitch, J., ed. (2002): Studies in International Mediation. Palgrave Macmillan, New York, p. 30.

⁹⁸ Source: The Japanese Ministry of Foreign Affairs (www.mofa.go.jp): Document – Japan’s Country Assistance Program for Sri Lanka, p. 10.

Peace talks after signing the Ceasefire agreement (Memorandum of Understanding)

Date, Place:	Discussed topics:	Results:
September 16 – 18, 2002 Sattahip Naval Base, Chonburi, Thailand	<ul style="list-style-type: none"> • Application of the Ceasefire agreement • Humanitarian needs • Future peace talks 	<ul style="list-style-type: none"> • Agreed to establish a joint task force for humanitarian and reconstruction activities
October 31– November 3, 2002 Rose Garden Hotel, Nakhorn Pathom, Thailand	<ul style="list-style-type: none"> • Reconstruction • Rehabilitation • Sinhala community in the Eastern province • Human rights • Communication between the LTTE and the Government 	<ul style="list-style-type: none"> • Agreed to a set of measures to improve the security and human rights situation • Agreed to reconstitute the SLMM Local Monitoring Committees • Agreed to establish direct communication between the commanders of the LTTE and the GOSL Special Task Force • Agreed to establish peace committees (including both local LTTE and GOSL leaders)
December 2 – 5, 2002 Radisson SAS Plaza Hotel, Oslo, Norway	<ul style="list-style-type: none"> • Consolidation of the Ceasefire agreement • Political matters (state structure) • Humanitarian action (situation of children affected by armed conflict) 	<ul style="list-style-type: none"> • Agreed to explore a political solution founded on internal self-determination based on a federal structure within a united Sri Lanka • Agreed that LTTE will accept the right of political groups to carry out political work • Agreed that parties will facilitate restoration and rehabilitation of places of worship in the North and the East
January 6 – 9, 2003 Rose Garden Hotel, Nakhorn Pathom, Thailand	<ul style="list-style-type: none"> • Implementation of urgent humanitarian priorities • Provision of funds by donor governments • High Security Zones • Internal Displaced Persons (IDPs) 	<ul style="list-style-type: none"> • Action plan on resettlement of IDPs and refugees in areas within the High Security Zones • Established the North East Reconstruction Fund (NERF)
February 7 – 8, 2003 Norwegian Embassy, Nordic Embassy Complex, Berlin, Germany	<ul style="list-style-type: none"> • Underage recruitment • Situation at the sea (the Delft islands incident) • Progress in solving the humanitarian situation in the Northeast 	<ul style="list-style-type: none"> • LTTE pledged to stop underage recruitment • Established three committees to monitor the Muslim situation in the Eastern Province • Sought help of international human rights adviser, Ian Martin, to draw up a road map for human rights issues relating the peace process
March 18 – 21, 2003 Hakone Prince Hotel, Hakone, Japan	<ul style="list-style-type: none"> • Power sharing • Improving the security situation • Sea incident from March 10, 2003 • Political matters (federal structure) 	<ul style="list-style-type: none"> • Strengthened the mandate and capacity of the SLMM • Scheduled a special meeting regarding the sea incidents, between senior naval and political representatives • Commitment to develop a federal structure

7. Application of Adjusted Winner to the conflict in Sri Lanka

As mentioned in the above chapters, many mediation attempts trying to solve the ethnic crisis in Sri Lanka have failed. In 1994 President Kumaratunga and her People's Alliance (PA) coalition won the election, promising to solve the ethnic conflict by peaceful means. Nevertheless, the negotiations with LTTE were not successful. Neither party was prepared to compromise on any of the major issues; such as including a level of political autonomy in the Northeast; the LTTE was still fighting for the separate state concept. The Sinhalese public often accused the Tamils of using the time during negotiations to recruit new cadres and to prepare for new fighting. According to Lakshman Kadirgamar, President's advisor, the peace talks in 1994 did not succeed because they did not have "*the 9/11 phenomenon*"⁹⁹. The label "terrorist" did not contain the same kind of negative connotation in 1994/1995 and thus was perceived differently. Under those circumstances the LTTE was not willing to compromise. When the Government brought in international monitors (Canadians, Norwegians, Dutch), Vellupilai Prabhakaran, the Tamil leader, did not grant them entrance to the Tamil controlled areas in the Northeast region. After the failure of the peace talks, both sides resolved to end the conflict by military means¹⁰⁰. LTTE was waiting for the results of the general elections in October 2000. They assumed that if the UNP¹⁰¹ won they could gain more concessions by starting fresh negotiations with the new government¹⁰². The new UNP Government declared that the policy towards the LTTE would continue. When the Tamils' hopes to start peace talks from a different angle failed, they contacted the Norwegian facilitators and approach the Government. On December 24, 2001 LTTE surprisingly proclaimed a unilateral ceasefire. The government did not acknowledge the unilateral ceasefire at that time because they were not prepared for such a step. The peace talks finally recommenced after seven years in February 2002 when the Memorandum of Understanding was signed.

⁹⁹ The interview with Lakshman Kadirgamar, advisor to President Kumaratunga (and current minister of foreign affairs), was published on the Government website (www.priu.gov.lk) under the title: "*Structure of State is most fundamental question*", on September 30, 2002.

¹⁰⁰ In 1999 LTTE carried out an unsuccessful attempt to assassinate the president.

¹⁰¹ United National Party.

¹⁰² Led by the United National Party.

The purpose of this work is to present a plausible illustration of how the Sri Lankan conflict could be resolved by using a new method – the Adjusted Winner procedure. The analysis relies on documents released by the LTTE, the Government of Sri Lanka, the Norwegian Ministry of Foreign Affairs and statements available from past negotiations¹⁰³. In ideal scenario, the point allocation would be based on direct talks with both the LTTE's and the Government's representatives. However such a process was not feasible for the proposal of this Master's thesis. Steven Brams said in one of the many discussions with the author that in such a case, when it is impossible to talk directly to the actors of the dispute or mediators¹⁰⁴, the best way to allocate the points is to interview experts on the region of the conflict. The author interviewed Jan Filipsky of the Oriental Institute by the Academy of Sciences of the Czech Republic and Radek Novotny, Charles University PhD student, who are engaged in research of the conflict in Sri Lanka. The point allocation for the AW procedure is based on talks with those experts and official press releases of the Sri Lankan Government and the LTTE secretariat.

It is important to choose the right period of the conflict for applying the AW procedure. On February 22, 2002, Ranil Wickremasinghe, the prime minister of Sri Lanka, and Vellupilai Prabhakaran, leader of the LTTE, signed the Memorandum of Understanding (MOU), a ceasefire agreement that enabled further negotiations¹⁰⁵. All of the previous peace talks had failed due to a lack of trust between the Tamils and Sinhalese. To avoid general mistrust, the Sri Lanka Monitoring Mission (SLMM) was established to oversee adherence to the MOU in the Northeast of the country. If the Adjusted Winner procedure were to be applied in real negotiations between the Sri Lankan government and the Tamil representatives, the period of time after the signing of the Memorandum of Understanding would be the best suited occasion. The AW application for this paper will thus be placed in this time period.

¹⁰³ Especially the three sessions of the negotiation after signing the Ceasefire Agreement in February 2002, the first round from September 16 – 18 in Sattahip Naval Base, Thailand, the second round in the Rose Garden Resort near Bangkok, Thailand from October 31 to November 3, 2002, and the third round in Oslo, Norway from December 2 – 5, 2002.

¹⁰⁴ The author contacted the Norwegian Ministry of Foreign Affairs to obtain the information necessary for the AW point allocation. However helpful they were in gaining additional documents regarding the conflict in Sri Lanka, the Norwegian diplomats were not willing to release such information needful for the AW procedure.

¹⁰⁵ Ranil Wickremasinghe talked about this in his speech as a first step towards new peace negotiations. *“It should be seen as a reasonable and practical foundation on which a political solution to this seemingly intractable problem can be built upon and not as an end in itself.”* March 5, 2002. GOSL official website (www.priu.gov.lk).

7.1 Players¹⁰⁶

7.1.1 Government of Sri Lanka (GOSL)

When referring to the Government, the author means the Sinhalese representation. It is clear that it is not a sole, hegemonic player, however for the purposes of this analysis the Government represents the opposite of the LTTE, the Sinhalese and the official Sri Lankan representation. In reality the Sinhala community is not united under one party; in fact it suffers from disunity with three major parties¹⁰⁷ competing against each other. The United National Party (UNP) is believed to have a more counter approach towards the peace negotiations. Under their government, major concessions towards the Tamil were made (signing the Memorandum of Understanding). On the other hand the Sri Lanka Freedom Party (SLFP) is less open to compromises and often uses the Sinhalese nationalist as their agenda. President Kumaratunga¹⁰⁸ has been in office since 1994. However this does not guarantee the continuity and consistency of the Government's policy towards the Tamil minority. Since 1994 the President has dissolved Parliament twice (October, 2001, November, 2003). The newly elected parliament declares its intentions to end the bloody conflict in the Northeast region of the island, however the Sinhala party has never been successful. The Sinhala disunity thus negatively affects the whole peace process.

Until 1994 the GOSL was rather reluctant to deal with the ethnic crisis. This was based on active Sinhala nationalism. Every sign of possible decentralization was followed with strong Sinhala uprising and protests. Secondly, the Sinhalese representation is not united, and their image often suffers from political campaigning, corruption affairs¹⁰⁹, and censorship imposed upon the coverage of the conflict in the

¹⁰⁶ For the purposes of this thesis, the AW procedure is only applied to two players. The other minor actor is the Muslim community as the third largest ethnic group on the island.

¹⁰⁷ SLFP - Sri Lanka Freedom Party, UNP – United National Party, and JVP – Marxist People's Liberation Front.

¹⁰⁸ In the Sri Lankan political system the president has a special position. Constitutional changes from 1978 introduced the office of the executive president. The president oversees the executive power, which often clashes with the authority of the prime minister. For instance, when Prime Minister Wickramasinghe signed the Ceasefire agreement with the LTTE leader in February 2002 President Kumaratunga was opposed to it. This was not a very good reflection of the supposed unity of the executive power.

¹⁰⁹ *“Government ministers, businessmen, and army personnel have enriched themselves by knowingly procuring dilapidated military equipment and skimming off hefty commissions; some military officers have even been*

Jaffna region. The Government adheres to the unitary model, which limits its negotiation potential. According to Singer¹¹⁰ the Sinhalese never understood the concept of “federalism” while behind every power devolution effort, they see the potential division of the island. They regard Sri Lanka as their only home, whereas the Tamil inhabit areas in India (state Tamil Nadu). The fear from the influence of the Tamil factor from outside of Sri Lanka plays an important role in the Sinhalese behavior in the conflict. When some concessions are made to the Tamil minority they are often late and thus spoil the perception of the deed. The Government had believed for a long time that the conflict could be won militarily. After signing the ceasefire agreement, the Memorandum of Understanding, on 22 February 2002, the President’s coalition, People’s Alliance (PA), openly criticized the Government for taking too mild an approach during the first peace negotiation in Thailand. Lakshman Kadirgamar, long-time member of the SLFP party and advisor to President Kumaratunga, said in an interview¹¹¹ published on the official government website that the Government acted incorrectly by not taking the initiative in forming the state structure during the first session of the first round of peace talks. By prolonging the time before the debate reached this issue, the Tamil side, according to Kadirgamar, could strengthen its position in the Northeast, which would ameliorate their position for future negotiations of state structure.

7.1.2 Tamils

7.1.2.1 Sri Lankan Tamil vs. Indian Tamil

Ethnically the Tamils in Sri Lanka are divided into two groups – the native Sri Lankan Tamil and the Indian Tamils¹¹². The only feature these two groups share is their language and religion. However, since they are Hindu, the caste system disables the integration of the two groups. The majority of the Indian Tamils were

accused of smuggling for the LTTE. In short, many politicians and military officials consider the war a boon to their careers, and there is consequently a powerful lobby favoring continued war.” DeVotta, p. 187.

¹¹⁰ Singer, M., R. (1992): Sri Lanka’s Tamil-Sinhalese ethnic conflict: alternative solutions: Asian Survey, Vol. 32, No. 8, 712-722, University of California Press.

¹¹¹ The interview is from September 30, 2002.

¹¹² The Indian Tamils came from India to Sri Lanka to work on the tea plantations during the British governance in early 19th century.

plantation workers and was regarded as of the lower caste by the native Sri Lankan Tamil elite. Secondly, the Indian Tamils live mostly in the central hills and in Colombo and its suburbs, while the Sri Lankan Tamils are concentrated mostly in the North and the East of the island. The LTTE aims to address both groups, nevertheless they have not been very successful in getting support from the Indian Tamils. The Indian Tamils tend to prefer cooperation with the national political parties such as UNP and SLFP. The Ceylon Workers' Congress (CWC) gathered the Indian Tamil and exceeded its original purpose as the labor union and became the political voice of the Indian Tamil. The ethnic division of the Tamil minority in Sri Lanka adds to the confusion in the Tamil representation. In the peace talks the LTTE was the representative of the Tamil minority. For the purposes of this work, when referring to the Tamil it is important to keep in mind that this means the Tamil represented by the LTTE¹¹³. It is politically and ethnically unclear, however suitable for the purposes of the Adjusted Winner application.

7.1.2.2 Tamil nationalism

The original cause of Tamil national struggle is Sinhala nationalism, their fight for Sinhala as the sole official language in the island, and the failure of the governmental institutions to protect the national rights of the Tamil minority. Announced Constitutional changes in 1972 gave Tamils some hope - but the results were not positive. Neil DeVotta mentions: "*The 1972 constitution especially had a profound psychological impact on Tamils, because while Sinhalese ethnocentrism had hitherto been advocated through rhetoric, parliamentary bills (which could always be changed by majority vote), and selective practices within the bureaucracies, that ethnocentrism was now constitutionalized.*"¹¹⁴. Reacting to those tendencies, the Tamil groups radicalized. The rejection and dilatory attitude towards moderate Tamils (represented by the Tamil United Liberation Front) during the district council

¹¹³ It has to be mentioned that some disputes exist between the Tamil Tigers representation from North and from East. E. Kaushalyan, the leader of the LTTE in eastern Sri Lanka was shot dead together with four of his bodyguards on February 7. Kaushalyan is the most senior LTTE member killed since the signing of the Ceasefire agreement in February 2002. The LTTE accused the army paramilitaries, however the breakaway LTTE faction under V. Muralitharan command (know as Karuna) claimed responsibility for the killing of the pro Prabhakaran politician. Karuna seceded from the LTTE in March 2004 claiming that "northern" leaders were monopolizing power at the expense of the East.

¹¹⁴ DeVotta, N. (2004): *Blowback: Linguistic Nationalism, Institutional Decay, and Ethnic Conflict in Sri Lanka*. Stanford University Press, Stanford. (p. 167).

discussion created an environment for the younger, more radical generation. In 1970 Tamil youth formed the Tamil Students' Federation, which transformed into the Tamil New Tigers and later in 1976 to the Liberation Tigers of Tamil Eelam (LTTE) under Vellupilai Prabhakaran¹¹⁵. Since then the LTTE has had the strongest position among all¹¹⁶ Tamil groups and the leadership role in the peace negotiations with the government of Sri Lanka. It has to be noted that there are some doubts concerning the political pluralism under the LTTE governance in the Northeast. In May 2003, the representatives of the Eelam People's Democratic Party (EPDP) sent an open letter to President Kumaratunga asking for a guarantee from the LTTE that it would recognize democratic pluralism and the democratic rights of the people in the Northeast¹¹⁷. The members of the Tamil democratic political parties, EPDP and PLOTE, were attacked by the LTTE combatants. The LTTE is very keen on strengthening its role as the Tamil representation and is not tolerant to any kind of opposition coming from the other Tamil parties. The LTTE is not represented in the Sri Lankan Parliament; however in the Government's talks the Tamil parliamentary parties gather in a parliamentary selected committee (Tamil National Alliance, Tamil United Liberation Front) did not meet with any success. Hence, for the purposes of the Adjusted Winner application, LTTE will be regarded as the sole representation of the Tamil minority, and their views will be used while assigning points in the point allocation part of the AW procedure.

The key issue for the Tamils is the level of independence. The moderate Tamil representation in the 1960s enforced decentralization of the island and would have been satisfied only with devolution of central power. However the radicalized youth under the banner of LTTE claimed separation of the northern and eastern Tamil

¹¹⁵ Vellupilai Prabhakaran founded the Tamil New Tigers (renamed to LTTE in 1976) in 1972 when he was 18 years old. He has been the Tamil leader ever since. Prabhakaran, who is widely admired by the Tamil population, managed to turn the LTTE army into a highly disciplined and highly motivated guerrilla force. Under his leadership the GOSL army did not defeat the Tamil guerillas even though they were outnumbered.

¹¹⁶ The other Tamil organizations are the People's Liberation Organization of Tamil Eelam (PLOTE), the Tamil Eelam Liberation Organization (TELO), the Eelam Revolutionary Organization of Students (EROS), and the Eelam People's Revolutionary Liberation Front (EPRLF).

¹¹⁷ The EPDP's official open letter to President Kumaratunga was published on the official GOSL website on May 6, 2003. Apart from request for the LTTE's undertaking of the political pluralism in the Northeast, EPDP asked the president for the return of their weapons. The EPDP's guarding unit handed its arms to the Government forces under the Ceasefire agreement. Due to continuing harassment from the LTTE cadres, the EPDP's members did not feel safe and demanded restitution of its arms' assets.

provinces and creation of the independent state *Tamil eelam*¹¹⁸. Until 2001 the only acceptable solution to the ethnic crisis for LTTE was complete separation and the creation of independent Tamil state¹¹⁹. The turning point came in November 2001 when LTTE announced that they would accept autonomy within the state of Sri Lanka. The LTTE leader, Vellupilai Prabhakaran, declared that the Tamil people “*wanted to live in their traditional lands with peace and dignity, determining their own political and economic life. It is the basic political aspiration of the Tamil people. This is neither separatism nor terrorism. It does not constitute a threat to the Sinhala people.*”¹²⁰ Implying that the separate state was not the only alternative for LTTE was a significant improvement with great potential for the future peace talks and negotiations. This is important for the AW procedure as well because it gives us more space to define the issues of the conflict. The LTTE must first transform from a liberation movement to a political party that can participate in elections and other democratic procedures. The fact that the LTTE have been labeled terrorists led to the end of the peace process which started in February 2002 after the signing of the Ceasefire agreement. The LTTE was not invited to the Sri Lanka donor meeting in Washington on April 14, 2003 by the US government¹²¹ and the Government did not support the Tamil call for the meeting relocation. On the other hand, the Sri Lanka Monitoring Mission (SLMM) reported 1403 complaints against the LTTE for violating the Ceasefire agreement and only 385 complaints against the Government¹²². This is yet another confirmation of the disunity in the Tamil community. On one hand, the moderate part of the LTTE is very supportive of the peace process and adherent to

¹¹⁸ DeVotta talks about the three Tamil generations: “*The first includes older Tamil like Anton Balasingham, who have cohabited with Sinhalese, may speak some Sinhala, and realize that the two ethnic groups can coexist provided that the Tamils are allowed broad devolution. The second generation includes those of Prabhakaran’s age group, who are reaching middle age and may be mellowing in their separatist views. It is remotely possible that this group, too, could be persuaded to settle for a settlement short of dividing the country. The last generation, however consists of young fighters who have known nothing but war and destruction. Having been indoctrinated to hate Sinhalese by the LTTE and suffered persecution by the Sri Lankan armed forces, this group may be the most violently committed to pursuing eelam.*” (De Votta, p. 180).

¹¹⁹ Eelam is term for ‘homeland’ in Tamil.

¹²⁰ Source: Tamil Eelam homepage: www.eelam.com . Press releases 2001: http://eelam.com/freedom_struggle/lte_press_releases/2001/PR20011127.html.

¹²¹ The LTTE was not invited to the donor meeting in Washington due to its ban in the USA. The LTTE has been on the US list of foreign terrorist organizations since 1997. This was not the only reason why the peace talks failed. The Sinhala opposition parties made every effort to jeopardize the negotiations. They accused the Government of politics of appeasement towards the LTTE for considering legalizing the LTTE’s Sea Tigers and allowing the discussion about leaving the High Security Zone in the Jaffna region.

¹²² The report from the SLMM was published in reaction to the Sinhala opposition on the Government official website on April 28, 2003.

the Memorandum of Understanding. The radical Tamil wing, however, does not believe in the peace process and violates everything that has been agreed upon.

7.1.3 The Muslim community¹²³

The Muslim community is not directly engaged in the conflict; nevertheless with 7% it represents the third largest ethnic group in Sri Lanka. The Muslims have played an important role in the country's politics¹²⁴. Until the emergence of the Sri Lankan Muslim Congress (SLMC) in the 1980s, the Muslims had been part of principal political parties. They were represented on all levels throughout the national political spectrum, especially in UNP and SLFP. Secondly, unlike the Sinhalese and Tamils, they base their identity on their religion. The Muslim community¹²⁵ is mostly concentrated in the East (a regional with Tamil majority), hence it must be considered as a potential participant in the discussion. Nonetheless for the purposes of the AW application, the Muslim community will not be regarded as a player¹²⁶ but only as a secondary actor. Respecting the role of the Muslims in Sri Lanka, one of the items will be the Muslim participation in the negotiations.

7.2 Items in Sri Lanka

As mentioned in the previous chapter, it is essential to formulate the issues for the AW procedure in a way that they all could be separable (i.e. winning one issue cannot mean automatic gain of another issue). If this is not feasible the application of the AW procedure to the conflict in Sri Lanka should not be recommended.

¹²³ The Sri Lankan Muslim originally came from Malabar, India. They speak the Tamil language, however their ethnic identity is tied to their religion. The fourth largest religious group on the island is the Christians. Their population includes both Sinhalese and Tamil. Source: DeVotta, N. (1998): Sri Lanka's structural adjustment program and its impact on Indo-Lanka Relations. Asian Survey, Vol.38, No.5, 457-473. University of California Press.

¹²⁴ For instance, the Sri Lankan Muslim Congress caused the fall of the Government by leaving the People's Alliance government coalition in June 2001. The coalition lost its majority with the 11 SLMC MPs. The political crisis led to a vote of no confidence in the parliament. President Kumaratunga suspended the parliament in order to prevent the Government from a certain defeat.

¹²⁵ Muslims in Sri Lanka are Tamil speaking.

¹²⁶ It is possible to apply the AW procedure to the three party negotiations, however it is very difficult when the parties do not share equal positions. "*When there are more than two parties, there is no procedure that will simultaneously satisfy envy-freeness, efficiency, and equability. However, it turns out that it is always possible to find an allocation that satisfies two of the three properties.*" Brams, Taylor, p.84.

These ten issues were chosen based on available statements and propositions¹²⁷ of both parties and the history of the conflict. Secondly, it is essential for a successful mediation to recognize flexibility of each player¹²⁸. For instance the question of transforming the country into two separate states is out of place since the Government of Sri Lanka repeatedly conspicuously articulated that keeping the country of Sri Lanka unified is their number one priority. In Oslo the parties agreed to explore a solution based on a federal structure¹²⁹. This is the furthest into the Tamil request that the Government is willing to go. It defines the range of the item *Level of political autonomy* with maximum for the Tamil being an autonomy status within a federal structure and the maximum for the Government being to keep the unitary structure of the government. The item *Distribution of funds in the Northeast* covers all economic issues since they cannot be separated into individual issues such as control over the donor funds in the Northeast or controlling the economic policy in the Northeast.

The question of human rights is not included in this analysis since both sides agree on protecting human rights. How this will be done is part of the political agenda and hence is included in the item dealing with political representation. One of the prime issues of the conflict in Sri Lanka attracting the international interest is the question of child recruitment by the LTTE cadres. UNICEF has frequently expressed its interests and concerns. The LTTE denies new child recruitment however some reports have proved otherwise¹³⁰. For the purposes of the Adjusted Winner procedure it is hard to put these issues into an item. Both sides repeatedly condemned violating human (and children) rights and come to mutual agreement on these issues in the Memorandum of Understanding. It is the question of adhering to

¹²⁷ One of the most significant propositions was the LTTE proposal to Interim Self-Governance Authority from November 2003.

¹²⁸ Mediation lacking flexibility can hardly be successful. Even a procedure like the Adjusted Winner requires some flexibility from its actors. Stenelo in his work *Mediation in International Negotiations* emphasizes the importance of the flexibility of players. “*The degree of flexibility in the parties’ goal formulation is therefore of central strategic significance to the mediator. In certain respects, the use of ambiguous formulations may certainly help maintain other parties’ expectations, but it also complicates the task of suggesting concrete compromise solutions. This problem is also exacerbated by difficulties in making accurate prognoses.*” Stenelo, L-G, (1972): *Mediation in international negotiations*. Nordens boktryckeri, Molmö.

¹²⁹ The official statement of the Norwegian government after the third session of the first round from December 5, 2002: “*Responding to a proposal by the leadership of the LTTE, the parties agreed to explore a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking peoples, based on a federal structure within a united Sri Lanka. The parties acknowledged that the solution has to be acceptable to all communities*”.

¹³⁰ DeVotta, p. 176.

the ceasefire agreement and basic human rights. Ever since both sides generally agreed on this matter it cannot be an issue for this AW procedure. However questions regarding observance of the ceasefire agreement can occur in the debate during the peace talks. Both parties agree that it is essential to guarantee observance of basic human and children rights; the question is who would be in charge of that in the Northeast – who would be the enforcer and decision-making body (creating the rules) of it in the Northeast. It is not a question of human rights (both parties agree on that) however it is a political question of which agenda would be under the item dealing with the *Level of political autonomy*. The enforcement of it would be under the item *Institutions of Administration of Justice* – whichever party wins this item would be in control of the observance of human rights in the Northeast.

7.2.1

1. Level of political autonomy

This item is unambiguously the prime topic of the entire peace negotiations. At this point, it is clear that the Tamil community ought to receive some level of political autonomy. The question remains of whether it will be included in the autonomy status. That is being discussed in the other items. For the Sinhalese winning this item would mean keeping the level of the Tamil autonomy at the lowest level possible. For the Tamil winning this item would mean reaching the highest level of autonomy possible. That is a state structure which would still be acceptable for the Government, thus it has to be within one Sri Lankan state, i.e. a federal structure or an official autonomy region.

7.2.1.1

Denouncement of independent Tamil state

Some Sinhala voices are calling for a signed testimony from the Tamil leader officially “*accepting a single united country, embracing the entire island*”¹³¹. During the press conference in Thailand (September 18, 2002) the

¹³¹ From Thailand to Tamileelam, Sunday Island, August 25, 2002 by Dayan Javatileka (from GOSL official website, www.priu.gov.lk).

Tamil representative, Anton Balasingham, explained that the Tamils do not operate with the term “*separate state*” – but with the terms “*homeland*” and “*self-determination*” instead. They refer to such structure as a place, where Tamils and Muslims (Next to the Tamil the east region is inhabited with Muslims.) live and enjoy substantial self-autonomy and self-government. The Tamils are declaring their readiness to work out the right political system for everybody. In case this approach does not work, the only other option is to fight for Tamil political independence and statehood. Those are their final goals. The issue of a self-governing authority is a very sensitive one. From the other side, the Sinhalese see the Tamil struggle for self-governance as an attack on their national sovereignty and an attempt to split the island into two countries. The ethnic crisis in the Northeast region has gone too far to neglect the situation. Both parties value this issue and have admitted that it is a central issue, and thus it should be discussed last in the peace talks. Balasingham responded to question about Tamil priorities – “*This problem has to be approached stage by stage and I think we had a very good start where we have not only discussed about the problems of rehabilitation reconstructions, and resettlement of the displaced. But we have also discussed about the possibility of setting up an interim administrative set-up in the course of coming sessions and also we will be able to discuss in the future sessions about the possibility of post-interim administrative set-up, and the core issues will be taken up*¹³²”. The Tamils are seeking legitimacy for their rule over the areas they control. The Tamil proposed interim self-governing authority requires legalizing their governance in the Northeast and removing the terrorist label¹³³. That would mean becoming an equal partner with the Government, which would ease further negotiations. The GOSL is likely to give some level of independence to the Tamils in order to take them away from an initiative for a separate Tamil state. Secondly, it guarantees some kind of “official political representation”. The shift of the struggle away from terrorism and the quest for

¹³² Transcript of the press conference at the end of the first peace talks in Thailand (September 16 – 18, 2002). Published on the GOSL official website (www.priu.gov.lk , September, 18, 2002).

¹³³ The LTTE sought advice from the African National Congress (ANC) on transforming from a military to a political group. As reported on the GOSL official website: “*The Tigers are also said to be keen on sending a delegation to South Africa to study its system of government, having already looked at federal models in Europe*”. This is evidence that the Tamils take the peace process seriously and explore other possibilities to end the conflict by peaceful means. It is important verification that the Tamils are looking into other options than a separate state. (www.priu.gov.lk, March 4, 2003).

the separate state would create a more civil and more manageable debate. Above all the Tamils would officially denounce the quest for an independent country, which would calm the Sinhala extremists too. This would be a step forward, therefore the Sinhalese have begun to reconcile with the Tamils. In the post 9/11 world it is immensely important for the LTTE to lose its terrorist label¹³⁴. Establishing a legitimate self-governing body in the Northeast region which would be accepted as legitimate representation would show the LTTE in a different light with a great possibility of the USA and the UK lifting the ban and erasing the LTTE from the terrorist list¹³⁵. The LTTE negotiators are realistic and see that they have better chances in succeeding with regional autonomy rather than with a separate state. The Government has reconciled with the fact that the situation in the Northeast region has to be solved by compromising on some of the Tamil proposals. In addition, the Tamil have de facto control of the Northeast region, and they are now seeking the approval of de jure control. It would bring them out of international isolation.

7.2.1.2

Federal structure

The word “federation” was first used during the Oslo conference in December 2002. The official statement¹³⁶ of the Norwegian government from December 5, 2002 states: *“Responding to a proposal by the leadership of the LTTE, the parties agreed to explore a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking peoples, based on a federal structure within a united Sri Lanka. The parties acknowledged that the solution has to be acceptable to all communities”*. It is the first time when the word “federal” has been used in any of the statements regarding the Government-Tamil negotiations. Referring to the UN Charter the Tamil argue that they have right to inner self-

¹³⁴ It is important to again mention that the perception of terrorism has changed radically after September 11, 2001 the LTTE has been on the US list of the foreign terrorist organization since 1997.

¹³⁵ In India the LTTE leaders are held responsible for assassination of Rajiv Gandhi in 1991. The LTTE is banned in India and Indian diplomats and officials are not allowed to attend any meetings to which LTTE is a party. A big problem occurred when an Indian diplomat appeared at the opening ceremony of the Sri Lanka Peace Support Conference of Donors in Oslo on November 25, 2002.

¹³⁶ The official statements of the Norwegian government were sent to the author by Ms. Lisa Golden from the Norwegian Royal Ministry of Foreign Affairs.

determination. Their shift from the self-determination to inner self-determination brings immense prospective to the negotiations. Alternatively, the Government is opposed to any notions potentially leading to division of the state. The president's speech on the National Day (February 3, 2003): "*Solution (to the ethnic crisis – author's note) must be sought within a democratic framework, enshrining the indivisibility of the State and the sovereignty of the people.*"

7.2.1.3

Disunity of players

This item is the most affected by the fact that the two players are not monolithic. Despite the unification of the two sides for the purposes of the AW procedure, it cannot be overlooked that various parties in the Government have different attitudes towards the question of Tamil autonomy. The Marxist People's Liberation Front, JVP, is opposed to any concessions to the LTTE. After the election in 2004, JVP is the key coalition partner to SLFP and thus JVP's perception of the peace negotiation paralyses the current Government. On the other hand the UNP government under the leadership of prime minister, Ranil Wickremasinghe, the Government was more open to the Tamil proposals. The heterogeneity of actors of international and political conflicts is a potentially serious threat to the usefulness of the Adjusted Winner procedure. Assigning points to this item is the most difficult in the AW application to the conflict in Sri Lanka. Both Filipisky and Novotny agreed that the topic is the key item. According to the experts, the Government is more likely to assign more points to this item than the LTTE. Firstly, the Government side is represented by both the SLFP and the JVP that are defending the unity of the island with the central power. Secondly, the Government representatives (President Kumaratunga, Prime Ministers Ranil Wickremasinghe (UNP) and Mahinda Rajapakse (SLFP), Lakshman Kadirgamar, political advisor to President Kumaratunga and since 2004 minister of foreign affairs – i.e. "*Turn away from failures and mistakes and to move along the path of reconciliation and reconstruction of a strong and united nation-state*" president Kumaratunga's speech on the Independence Day the

55th anniversary of independence – Feb. 5, 2003.)¹³⁷ repeatedly expressed their determination to keep the unity of the island. If the Government heard all the Tamil claims, the central power would have no authority in the Northeast region. The current status quo with the de facto independent Tamil state in the Northeast is unacceptable for the Government. The Sinhalese hope that future negotiation will set some boundaries and officially acknowledge the sovereignty of the central Colombo government over the whole Sri Lankan territory. The only field which is not being directly discussed is foreign policy, however the Tamils have links to the Tamil communities in Canada, Norway, the United Kingdom, etc. which have the potential to lobby for the benefit of the Sri Lankan Tamil population. On the other hand the LTTE is very keen on losing its terrorist label and therefore is willing to exchange official recognition for the absolute level of autonomy. Respecting all these considerations, the Government assigns 30 points to this item and the LTTE 25 points.

7.2.2

2. Control of Jaffna and Elephant Pass¹³⁸

The Jaffna is a symbol of Tamil statehood with great historical meaning for the Tamil nation. The capital of the Northeast region with the Tamil predominance is planned to be Trincomalee (as a compromise as it lies in between the North and the East however Jaffna remains the Tamil culture center. The region is not economically developed, it has insufficient infrastructure, and it often suffers from drought. After the Indian peace keeping forces left the area in 1990 the LTTE took de facto control over the Jaffna peninsula expelling Sinhalese and Muslim inhabitants. The Sinhalese accused the LTTE of ethnic cleansing in Jaffna. The Government called on the army to settle the situation. In December 1995, after heavy fighting the Sri Lankan

¹³⁷ Source: The official GOSL website, www.priu.gov.lk.

¹³⁸ Kingdom of Jaffna (13th to 16th century) was the cultural center of the Tamil nation. The historical kingdom exceeded the borders of the Tamil controlled area in the North of the island. The most extreme Tamil requests call for an autonomous Tamil state within the borders of the Jaffna kingdom. The Elephant Pass is the strategic road connecting the Jaffna peninsula to the rest of the island. One of the worst events in the history of the city came in 1981. Between May 31 and June 2, Sinhalese radical police and army groups burned the market area of Jaffna, the office of the Tamil Newspaper, the home of the member of Parliament who represents Jaffna, and the Jaffna Public Library. The Tamil community was deeply distressed by the damage of the library. About 95,000 volumes were destroyed, including some culturally valuable, irreplaceable texts.

forces regained the Jaffna peninsula and imposed the military rule. The Government forces controlled schools and the public building, restraining the Tamil influence. Losing Jaffna deeply impacted the LTTE leadership. During the hostilities many refugees left the city, migrating to the IDPs camps in south of the island or to India. The LTTE military authorities planned a number of offensive operations attempting to win the city back. The first successful attempt came in 1998 when the LTTE forces captured the town of Kilinochchi. In April 23, 2000 they launched the operation 'Oyatha Alaigal' ('Unceasing Waves III') and captured a strategic army base at Elephant Pass and a few days later on May 2 the town of Pallai near Jaffna. Capturing the strategic points on the Elephant Pass cut supplies to Government forces in the city of Jaffna. The stalemate was resolved under the Norwegian assistance while signing the Ceasefire agreement in February 2002. In April 2002 the highway to Jaffna was opened for public traffic. Regardless of the easing of the situation and the evident Tamil influence the LTTE did not regain exclusive control of the city. Because of continuing disputes, Jaffna was pronounced a High Security Zone (HSZ). Such status entitles the GOSL army to retain its presence in the region until the final political agreement is settled. The LTTE wants to denounce it as an HSZ and wants the troops to leave. The LTTE's argument is that with the government forces present, it is impossible for refugees and IDPs to return back¹³⁹.

The Tamil assign immense value to the control of the Jaffna and the Elephant pass since losing this item would indicate losing its historical cradle and their national pride. Respecting that, the LTTE allocates 20 points to this item. On the other hand the Government does not have the same interest in this item. Nonetheless the fact that this item is that important for the Tamil enhances the appeal of it for the Sinhalese. The Government assigns 8 points.

¹³⁹ Source: The answer of the LTTE chief negotiator, Anton Balasingham, mentioned conditioning the return of the refugees on the removal of the High Security Zone from the Jaffna region at the press conference in Hakone in April 2003. Published on the official GOSL website (www.priu.gov.lk).

7.2.3

3. Institutions for administration of justice

For the Tamils, winning this item would mean separate institutions for administration of justice in the Northeast region. The situation de facto control exists, however the LTTE desires the official acknowledgment of the status quo. For the Government, it would mean regaining the central control over the judiciary system in the whole country. This item may appear dependent on the issue concerning the political representation, thus the judicial power is one of the basic attributes of statehood of every sovereign state. Nevertheless, for the purposes of this analysis it can be seen as an independent item. Currently, there are independent Tamil courts¹⁴⁰ in the Northeast region. If they were legalized it could be similar to the situation in some federalized countries with regional judicial systems. This topic has not received the main priority in the negotiations and has not been explicitly discussed. For purposes of this analysis, evidence from some specific cases will be used. The most discussed was the question of the Tamil political prisoners¹⁴¹ arrested under the Prevention of Terrorism Act (PTA), a sentence passed¹⁴² on the LTTE leader, Prabhakaran. The Government clearly showed their determination to control the judicial system in the whole country by classifying the military operations undertaken by the LTTE in the past as criminal offences instead of acts of war. Conversely, the Tamils proposed control of the judicial power exclusively in the Northeast region which was not accepted by the Government. The other problem is the nature of the two judicial systems – the official Sri Lankan courts were established after the British model and function under democratic principles. On the other hand the LTTE established courts are based on strong leadership rule with Prabhakaran as the only law making body. The courts in the Northeast are not democratic. Combining the two systems together would not be possible. If the Tamil won this item, the Sinhalese would officially

¹⁴⁰ Anton Balasingham refers to such courts in his answer to a question of Hindu newspaper reporter, V S Sambanthan, at the press conference in Oslo after the third session of the first round of the peace talks. Source: GOSL official website (www.priu.gov.lk)

¹⁴¹ The discussion resulted in a positive outcome: a large number of prisoners were released and 75 of 193 prisoners were released after the talks.

¹⁴² The LTTE leader, Prabhakaran was sentenced to 200 years for serious criminal offences. His actions in the Tamil war against the Government forces were classified as criminal offences and prosecuted under Sri Lankan law.

recognize the current situation of the quasi court system in the LTTE controlled areas. In case the Government gained this item, the Tamil would have to agree with the central court system¹⁴³. Supposing the item has to be divided, the new federal court system would have to be created with all levels compatible.

— Both players are very keen on this item, thus it is not likely to be won by one side. If they were to share portions of this item they could define issues that would be under the competitions of the regional, as the case may be Tamil, courts. For the Government portions – some issues would be under the control of the central courts. The situation would resemble court structure from some federal countries. The Government is determined to keep the unity (respectively regaining the control over state judicial system). On February 24, 2003 Prime Minister Ranil Wickremasinghe said: that “*he envisioned a final political settlement in which Sri Lanka would have one police force, one judicial system and one military force in which Tiger members too would be included*”¹⁴⁴. Winning this item would mean official legitimization of already existing situation for the Tamil community and yet again approval of their independence. Therefore they allocate 18 points to this item and the Government 14 points.

7.2.4

4. Disarmament of the LTTE cadres

The Tamil guerrilla army is structured as a regular army. The Tamil communities living in western countries (especially in Canada) fund the LTTE units. The army supplies are often smuggled on the sea. There have been many incidents violating the clause of the Ceasefire agreement concerning weapon transportation on the sea.

¹⁴³ This hypothetical mediation situation presumes that the both sides are willing to reach the final settlement under the AW procedure.

¹⁴⁴ Source: The official GOSL website (www.priu.gov.lk), February 24, 2003.

The LTTE disarmament issue has been discussed since the first talks in Thailand (16-18. September 2002). The LTTE negotiator, Anton Balasingham, claimed disarmament to be out of question until the needs of Tamil people are satisfied. This is yet another sensitive item. The Tamils consider the ability to have weapons as one of the attributes of their national struggle and their right to self-determination. On the other hand the Sinhalese perceived this as an ongoing threat from the LTTE. The disarmament of the Tamil cadres often seems as the only guarantee to end the military conflict. A significant point is the fact that the Tamils are willing to negotiate about this topic. Balasingham said after the first session of the first round: *"The Question of disarming will not arise until we reach a permanent settlement that will satisfy the aspiration of Tamil people"*¹⁴⁵. The situation did not change even after (in other words the successful) peace talks in Oslo in December. The LTTE severely announced¹⁴⁶ in its statement: *"the disarming of its cadres and decommissioning of its weapons are unacceptable and unrealistic"*. The Tamil representation links this to the question of the High Security Zones. They have been clustered around the Sri Lankan air force base in Point Pedro the only port on the Jaffna peninsula, so that the LTTE artillery cannot reach those targets. The Tamil leadership refused to hand their (the) weapons to the Norwegians since they feel insecure with the establishment of the High Security Zones. Conversely, the GOSL is not pushing this question as its number one priority. The chief negotiator for the Government side mentioned during the Sattahip press conference in September 2002 that the question of disarmament has to wait until the more substantial questions will be solved¹⁴⁷. Stating that the Government does not consider the issue of disarmament as the most important one. It is a very realistic approach; the LTTE would not put down its arms before being granted official autonomy. Supposing the Tamils would win this item, they want to legalize their army and synchronize it with the

¹⁴⁵ Answer of Anton Balasingham, the head negotiator for LTTE in Thailand, at the press conference in Sattahip. Published at the GOSL official (www.priu.gov.lk) on September 18, 2002.

¹⁴⁶ Published on the official Tamil website (www.tamilnet.org) on December 26, 2002.

¹⁴⁷ G.L. Peiris said: *"At the beginning of a negotiating process you do not ask for disarmament. You have to achieve some progress with regard to the substantive issues and decommissioning of weapons and demilitarization would come at a later stage. That is how any realistic, pragmatic negotiating process would be handled."* Transcript of the Sattahip press conference published on the official Government website (www.priu.gov.lk).

official government forces. In reality, it would mean an independent army in the Northeast. It was unthinkable for the Sinhalese to tolerate a second defense force within one unitary state. For the Sinhalese winning this item would mean disarmament of the LTTE cadres. In light of all the available facts it is more important to Sinhalese to win this item. Apart from the fact that it is impossible to have an independent army operating under Tamil command it is essential for the Government to protect Sinhalese interests in the Tamil areas. For all these reasons the Government puts 14 points on this item and the LTTE 10 points.

7.2.5

5. Distribution of funds in the Northeast

Winning this item means carrying out economic policy in the Northeast. Supposing the Government would win this entire item, it would be able to control the economy of the Tamil area centrally from Colombo. On the other hand if the LTTE won this item they could direct the economy of the Northeast, have independent international trade, and receive direct international aid (funds) - hence gaining official economic autonomy (This item is utterly independent of political autonomy). Gaining economic autonomy does not necessary mean gaining the political autonomy. Secondly, this item is linked to the issue dealing with direct economic aid to the Northeast region. After the tsunami at the end of 2005 there are two kinds of economic aid to the Northeast. The humanitarian aid helps the tsunami victims and eases the immediate impact of the catastrophe. However, this item is dealing rather with the reconstruction aid – the resources donated to rebuild the Northeast region after twenty years of war.

Those two items cannot be fully separated, thus they must be put together. Managing humanitarian and reconstruction funds is the first step to controlling the economic situation in the region. It would be impossible to have a functional regional economy without being able to manage those funds¹⁴⁸.

¹⁴⁸ Donor countries such as the United States of America, the United Kingdom, and Japan subsidize the funds. The sub-committee, established in Oslo during peace talks in December 2002, was responsible for allocating

7.2.5.1

Humanitarian and reconstruction aid

The economic policy is a rather important item for both players. The People's Alliance government already tried in 2000 launching funds for the "Triple R" programs to enhance the development of the Northeast. During the last session of the first round of peace talks in Oslo, Norway, in December 2002, the LTTE and the Government agreed to establish sub-committees¹⁴⁹ to discuss sensitive issues such as identifying humanitarian and reconstruction needs in the Northeast and organizing the resettlement of refugees and internal displaced persons (IDPs), and discussing the question of the regime of the High Security Zones. It shows that both sides are aware of the importance of these issues and will not jump into any hasty conclusions. Controlling humanitarian and reconstruction aid and allocating the financial resources in the region is a good starting point for controlling the whole economy of the region. Being able to control business and the economic environment represents an important step towards actual independence for the Tamils. Hence they value pursuing their own economic policy in the Northeast slightly more than Sinhalese value keeping the control over the economy in the Northeast. The Government took an important step towards the Tamils by agreeing on having the Tamil non-governmental organizations, such as the Tamil Rehabilitation Organization (TRO), a significant participant in organizing on the rehabilitation in the Northeast¹⁵⁰. By passing the responsibility on the Tamil organization, the Government shows willingness to share decision-making power in this area. On the other hand, the Sinhalese are still keen on this item since they know that the Tamil, in becoming fully

resources from these funds. All three main ethnic groups were represented in the sub-committee. Establishing such a decision-making body is a fair, yet not permanent solution. The Sri Lanka Peace Support Conference of Donors was held in Oslo on November 25, 2002. During the conference all three main Sri Lankan communities, Sinhalese, Tamils, and Muslims addressed donor countries and reassured them about the stability of the Sri Lankan peace process. 39 donor countries were represented at the conference.

¹⁴⁹ Four Tamils, four representatives of the Government, and a Muslim representative will be in every sub-committee. Source: Transcript of the Press Conference after the Oslo session in December 2002, published on the official website of GOSL (www.priu.gov.lk) on December 5, 2002.

¹⁵⁰ Both Anton Balasingham, chief negotiator for LTTE, and G. L. Peiris, the head of the Government negotiating team, confirmed that the Tamil organizations would be included in implementing development projects in the Northeast. Source: Transcript of the press conference after the third session of the first round of the peace talks in Oslo; answers to a question of the BBC reporter Frances Harrison.

economically independent, can profit from their eminent relations with India and overtake the Government in this matter. Nonetheless, the Government is aware of the fact that it has to abandon some portion of economic control to the Northeast region. Secondly, the donor countries contribute to the funds on condition that the LTTE and the Government observe the Ceasefire agreement and adhere to the peaceful resolution of the conflict. The Government's priority is to meet the expectation. It is easier for the Government to tolerate the already de facto existing economy in the Northeast than to lose its reliability in front of the donor countries. Currently the LTTE imposes additional local taxation on the population in the Northeast. They virtually administer an independent economy. It is immensely important for them to legalize their current status and to gain direct access to assets from the World's Bank fund the North-East Rehabilitation Fund (NERF) that is financed with contributions from donor countries. The question of whether the return of refugees and IDPs is conditioned by the reconstruction of the Northeast it has to be included in this item¹⁵¹. The LTTE values this item with 10 points and the Government values it with 8 points.

7.2.6

6. Control over the shores in the Northeast

This is a sensitive issue. Winning this item means being in control of the shores in the Northeast. The Government is keen on keeping eminent control of all shores of the island. It believes in only one army and thus one navy. Secondly, the Government argues¹⁵² that it would not be beneficial and practical for the security of the country as a whole if the control of its shores was divided between two subjects. The Government sees this item as its vital function and is not willing to subsidize. Contrarily LTTE has its own navy unit, the Sea Tigers, and wants to control the shores in the Northeast. Many Tamils

¹⁵¹ The refugee question is being further discussed as an independent item. However for the purposes of the Adjusted Winner application it cannot exist as a separate item.

¹⁵² Lakshman Kadirgamar, the long time advisor to President Karamatunga, mentions this perspective in several of his speeches. Despite the fact that the UNP does not necessarily share this exact opinion it has to be accounted for in the AW analysis. It was already mentioned that the Government is viewed as a sole player and all the elements of the executive power have to be incorporated (included) in the analysis. The speeches of Kadirgamar were published on the Government's official website (www.priu.gov.lk).

are making their living as fishermen and therefore are immensely interested in keeping the shores in the Northeast to the Tamil. In case the Government regains complete control of the Northeast shores, the fishermen's conditions would not necessarily change. On the other hand, the LTTE presents this item as the fundamental issue for the common Tamil fishermen living in the area.

7.2.6.1

Conditions under the Ceasefire agreement

The conditions of the shores regime were negotiated in both the Ceasefire agreement in February 2002 and in the special agreement modifying conditions of the LTTE sea movement on August 13, 2002¹⁵³. Both sides agreed to end any military operations including offensive naval operations; the LTTE assented to disarmament of their paramilitary group on the sea, and to notify the Sri Lankan Monitoring Mission (SLMM) of any kind of the Tamil movement on the sea (such as sea transport, transport of the LTTE cadres, etc.). The Tamils do not respect the settled conditions, as they violated them several times. The Delft Island incident¹⁵⁴ from February 7, 2003, was one of the main examples of the Tamil non-adherence to the existing agreements. In another incident from March 11, 2003 the Sri Lankan Navy (SLN) caught the LTTE vessel sailing without any flag carrying warlike material. Those incidents indicate that this issue is very sensitive. Both sides express their willingness to control the Northeast shores. It is a vital security interest of both the Government and the LTTE. The incidents on the sea with

¹⁵³ The Agreement modifying conditions of the LTTE sea movement immensely tied the Tamil operations on the sea. The LTTE ships were obligated to report the purpose of movement; point of origin with estimated department, and destination with estimated time of arrival; route; type of vessel; number of LTTE cadres being transported; method of communication with the Sri Lankan Navy (SLN) and the Sri Lankan Monitoring Missions (SLMM); and number of permanent crew members. Such regulations do not allow the LTTE to practice full control over the shores in the Northeast.

¹⁵⁴ "Around mid afternoon yesterday the Sri Lanka Navy had intercepted an Indian-registered trawler manned by three LTTE cadres. The occupants had threatened to commit suicide if apprehended. The Navy then contacted the SLMM. The Nordic monitors inspected the craft confirmed the presence of weapons. The three LTTE men then went on to set fire to the boat forcing the monitors to jump to their safety. The SLMM spokesman said the Monitors found a 23-milimetre anti-aircraft gun, anti-aircraft ammunition and three hand grenades in the boat. The incident occurred a few hours before the fifth session of peace talks were to begin in Berlin." Source: Press release based on the detailed report of the Sri Lankan Monitoring Mission (SLMM) on the GOSL official website from February 7, 2003. It is believed that the weapons were being smuggled by the Tamils hence they were violating the ceasefire agreement.

the Tamil Sea Tigers¹⁵⁵ were some of the reasons causing denouncement of the Ceasefire agreement by the LTTE side in April 2003.

7.2.6.2

Port Trincomalee

Further, problems lie around the utilization of the Trincomalee harbor which, thanks to its great strategic location, has a great military potential. The Government is keen on using the harbor as a naval base, alternatively offering it to its allies, the United States which has eminent interest in building a naval base there. The LTTE's leadership is generally anti American and it strictly opposes the idea of the US naval base in the Northeast. For the Government, losing this item would represent threat to the unity and the security of the island, however their perception of this item is not the same as that of the LTTE. According to Filipsky, the Tamil identify the shores of the Northeast with *eelam*, their homeland. Only the possibility of the US naval base on the soil of the *eelam* forces them to assign more points than the Government – 8 points. The GOSL allocates 6 points to this item.

7.2.7

7. Participation of the Muslims in the negotiations

The Tamils welcome Muslim involvement in the peace negotiations, however they do not see the Muslims as the third party. Gajendrakumar Ponnambalam, Member of Parliament for the Tamil National Alliance (TNA) explained this notion in his speech at a seminar organized by the National Catholic Commission for Justice, Peace & Human Development: *“...there is one position taken by some Muslim political leaders that we have difficulty with, and this is with regard to the insistence of "Third Party" status. The Muslim people must understand that the underlying dynamics that is sustaining the present process is the Military parity that was created on the*

¹⁵⁵ The Sea Tigers are a unit under LTTE leadership. It caused several incidents during the validity of the Ceasefire agreement. The Sea Tigers were caught several times smuggling arms on their vessel and above all did not cooperate with the Sri Lankan Monitoring Mission (SLMM).

*ground. It is this military parity that has translated itself in to the political parity that is evident at the negotiating table. The parity therefore, is crucial if the peace process is to be sustained. The LTTE and the Tamil people are extremely sensitive to this fact, and cannot allow this balance to be upset.*¹⁵⁶

However, the Muslims are not given regular party status. Their participation in negotiations is preferable for Tamils since they share the same goal – devolution of center political power. The Tamils even included the Muslim community in the proposed agreement on Interim Self-Governing Authority (ISGA). This issue is certainly not the most significant one in the negotiations, and both parties are likely to agree on the Muslims taking an active role (without third party status). The GOSL is not against Muslim participation, however they are less enthusiastic and value it only for 5 points. For GOSL the ideal situation would be to fully represent the Muslim community (have them so subjugated that they would trust the GOSL and let them negotiate in their name too). During the talks in Thailand (September 16 – 18, 2002, Sattahip) the leader of the Sri Lankan Muslim Congress, Rauff Hakeem, was in the government delegation (GOSL official website – September 4, 2002) and above all he was the head of Muslim delegation representing the Muslim community. For the GOSL it is more important to be the voice of the Muslim community than to have the Muslims participating in the negotiations. The Muslims also have been opposed to unification of the North and the East into the Northeast from 1987. They suffer from the Tamil predominance in the Northeast region and often express their concerns about their independence¹⁵⁷. The LTTE, on the other hand, is keen on incorporating the Muslims into the Tamil nation due to their language similarity. The LTTE leaders do not want an independent Muslim player since they want to represent the Muslim interests. Winning this item would signify that the LTTE would speak for the Muslim community living in the East and speaking the Tamil language. They assign 3 points to this item. The Sinhalese would prefer to have Muslims on their side rather than them becoming a third party of the dispute. President Kumaratunga emphasized longing for the unity of the

¹⁵⁶ Transcript of the speech was published on the GOSL official website (www.priu.gov.lk) in April 2002.

¹⁵⁷ The Tamil from the eastern part are more open to cooperation with Muslims since they also fear the dominance of the LTTE leaders from the North.

country in her speech addressed to the Muslims during the holy time of the Hadj festival¹⁵⁸. The Government assigns more points to this item since it the Sinhalese want to enhance a competition for the Tamil ambitions. Supposing the GOSL would win this item the Muslims would not become fully-fledge third party of the negotiations, however their arguments would be taken more seriously. The Government allocates 5 points to this item.

7.2.8

8. Organization the resettlement of refugees

Since the beginning of the conflict nearly one million Tamils¹⁵⁹ have fled Sri Lanka and about 800,000 Internal displaced persons (IDPs) were forced to move out their homes to the refugee camps in the south of the island. From those about 250,00 have returned home. The refugees have settled mostly in Canada, the United Kingdom, Australia, Norway, Germany, Switzerland, Denmark, and India have become some of the most significant financial contributors of the LTTE. There are not exact numbers but about 80,000 want to return to Sri Lanka. Prime minister, Ranil Wickremasinghe, said that the Government was prepared to create a safe environment for return but would leave the decision to return up to the refugees¹⁶⁰. Creating the safe living environment has two levels – economical (financing reconstruction of the Northeast) and security (settling the discussion around the High Security Zones Regime - HSZ). The LTTE conditions the resettlement of refugees and IDPs by the removal of the HSZ regime around some strategic points at the Jaffna peninsula. The Tamil argue that the presence of the Sri Lankan army is disabling safe return of the refugees and IPDs. The Government is not willing

¹⁵⁸ The Hajd festival is the traditional Muslim pilgrimage to the holy cities of Mecca and Media. President Chandrika Kumaratunga expressed her wishes for harmony among all nations living in Sri Lanka: *It is certain that our pilgrims will pray for peace and harmony in Sri Lanka and for the prosperity of our motherland, so that no one needs to harm another to establish class or racial differences and that all can live happily in equality as citizens of Sri Lanka*", GOSL official website (www.priu.gov.lk), February 23, 2002.

¹⁵⁹ The number is from a UNHCR survey from server www.srilankatamil.net according to the Tamils Refugees and IDPs started returning to their homes in the North and the East when the situation calmed down after the signing of the Ceasefire agreement. UNHCR stated that only in 2002, more than quarter of million civilians returned home. (Source: Wilkinson, R. (2003): *After the decades of war, Sri Lanka is on the mend: Refugees*, No. 130/2003, UNHCR Media and Public Information Service, Milan.

¹⁶⁰ "The Government will continue with its initiatives in respect of resettlement of displaced persons." Ranil Wickremasinghe addressed a special session at the Japanese Center for Conflict Prevention in Tokyo on December 4, 2002. The official Government's website (www.priu.gov.lk) published the speech.

to negotiate this matter. Both sides showed willingness to solve the economic aspects of the problem by including this issue in the agenda of the sub-committees created at the meeting in Oslo in December 2002. One of the main aims of the sub-committees was to attract foreign donors and ultimately to guarantee them that the funds will be used for humanitarian purposes. The question, which remains, is how the funds will be redistributed and who will be in control of them. The Government has agreed to let the Tamil organizations participate in guiding the direction of the sub-committees. For the LTTE having the Tamil organizations participate in restoration of the country is yet another step in becoming an equal political player to the Government.

However relevant this question is to the analysis of the conflict in Sri Lanka, concluding all the aspects of this item it is evident that it cannot be fully separated from the item of the *Level of political autonomy* (the Tamil condition return of refugees and IDPs by removal of the High Security Zones) and from the item of *Distribution of funds in the Northeast* (funding the return of the refugees to the Northeast appeared on the agenda of the subcommittees dealing with the economic reconstruction of the island). Due to this the item *Organization the resettlement of refugees* cannot be part of the Adjusted Winner procedure. Hence the condition of the removal of the High Security Zones would be part of the *Level of political autonomy* item and the question of the return of the refugees will be part of the item dealing with *Distribution of funds in the Northeast*.

7.2.9

9. Religion (or non-religion) of the state

The conflict between the Tamil and the Sinhalese is not mainly based on religion. Nevertheless, the question of religion played an important role in 1950s when the Buddhist monks launched the “*Sinhala only*” campaign. Buddhism was until 1972 the state religion. After the constitutional changes in May, 1972 it lost its state status. Nevertheless the Sri Lankan constitution declares Buddhism the state support. The Sinhalese feel the need to protect the purity of the Buddhist religion from the Hindu regional predominance. Sri

Lankan Buddhism is unique (the only of its kind in the whole world). Sinhalese nationalists base their national identity on the religion and by protecting the exclusive role of Buddhism in Sri Lanka they protect their own identity. On the other hand, the Tamil national struggle is not based solely on the religion. The LTTE ideology refers its national struggle to many sources such as Lenin's and Trotsky's nation right to self-determination, the UN Charter and the right to self-determination and internal self-determination, and other theories defending a nation's right to its homeland. They are Hindu, however the religion is not their only identification. Secondly, there is 80,5% Hindu in neighboring India which puts them in a different perspective than Sinhalese¹⁶¹. As mentioned earlier, religion is definitely not the key item in the dispute. For the Tamil, winning this item would mean a having better chance resisting Buddhist influence. For the Sinhalese winning this item would imply a higher possibility of keeping a partial Buddhist influence in the Tamil inhabited areas. The Sinhalese are committed to protecting Buddhism in Sri Lanka. The Government values this item for 13 points. Since Hindu is not the only Tamil attribute they assign less, only 3 points to this item.

7.2.10

10. Management of the water resources in the Northeast

This is a minor issue and definitely does not represent the core item in the debate. However it represents a matter in the dispute, which is to be divided between the two parties under the Adjusted Winner procedure. The areas in the north and the east have always been affected by drought and the only alternative water resource; the Monsoon rains have not been sufficient enough. After gaining the independence from the British in 1948, the Government launched several projects to establish reservoirs for growing grain. The original project was to have an agriculture base in the Northeast and to provide the new agriculture land to Sinhalese landless persons. The reservoirs are now on Tamil claimed territory. The LTTE considers the water reservoirs as part of their homeland and desire to be fully in control of the

¹⁶¹ Source: Data based on the census in India from 2001, www.censusindia.net.

waterworks on the Mahaweli Ganga River. On the other hand, the Sinhalese proclaimed the water reservoirs to be for all the citizens of Sri Lanka. In their opinion the Government is entitled to manage them. Nonetheless, the Government position on this item is not very firm. The Tamil see this item as something involving their homeland and hence assigning more, 3 points, while the Government assigns only 2 points.

7.3 Point Allocation

One item has proved to be inseparable from another hence it cannot be used for the AW calculation. The other items are evaluated by the players and a certain value is assigned to each item. The values of each item were assigned after deep discussion of the topic with two admired experts on the conflict in Sri Lanka, Jan Filipisky and Radek Novotny. Each side temporally wins the item to which it placed more points.

The author asked both Filipisky (F) and Novotny (N) to divide the items into three categories based (primary items, secondary items, marginal items) on their importance to the Tamil and the Sinhalese. Additionally, the experts stated which items would be preferable to either side. According to this evaluation and after careful study of the available statements of the Sri Lankan government, the LTTE, and Norwegian Ministry of Foreign Affairs the author assign points for the AW application.

<i>Primary Items</i>	F	N
Level of political autonomy	GOSL	GOSL/LTTE
Control of Jaffna and the Elephant Pass	GOSL/LTTE	LTTE
Institutions for administration of justice	LTTE	LTTE
Disarmament of LTTE	GOSL/LTTE	GOSL

<i>Secondary Items</i>	F	N
Distribution of funds in the Northeast	LTTE	GOSL/LTTE
Control of the shores in the Northeast	LTTE	GOSL

<i>Marginal Items</i>	F	N
Participation of the Muslims in the negotiations	GOSL	GOSL
Management of Water Resources	LTTE	LTTE
Religion or (non-religion) in the Northeast	GOSL	GOSL

7.3.1 Hypothetical GOSL and LTTE's input preferences

<i>Item</i>	GOSL	LTTE
Level of political autonomy	30	25
Control of Jaffna and the Elephant Pass	8	20
Administration of Institutions for administration of justice	14	18
Disarmament of LTTE	14	10
Distribution of funds in the Northeast	8	10
Control of the shores in the Northeast	6	8
Participation of the Muslims in the negotiations	5	3
Management of Water Resources	2	3
Religion or (non-religion) in the Northeast	13	3
<i>Initial point total</i>	100	100

7.3.2 Initial allocation

<i>Item</i>	GOSL	LTTE
Level of political autonomy	<u>30</u>	0
Control of Jaffna and the Elephant Pass	0	<u>20</u>
Administration of Institutions for administration of justice	0	<u>18</u>
Disarmament of LTTE	<u>14</u>	0
Distribution of funds in the Northeast	0	<u>10</u>
Control of the shores in the Northeast	0	<u>8</u>
Participation of the Muslims in the negotiations	<u>5</u>	0
Management of Water Resources	0	<u>3</u>
Religion or (non-religion) in the Northeast	<u>13</u>	0
<i>Initial point total</i>	62	59

7.3.3 Calculated point allocation

The Government's initial point total (62) is greater than that of the LTTE (59). In order to achieve equitability some points must be thus transferred from the GOSL to the LTTE. Comparing the items by their ratios GOSL/LTTE, the item *Level of political autonomy* has the smallest ration (30/25, 1,2). To achieve equability part of that item must be transferred to the LTTE. The portion of the item will come from the following equation.

$$62 - 30p = 59 + 25p$$

$$p \approx 0.05$$

<i>Item</i>	GOSL	LTTE
Level of political autonomy	<u>28,36</u>	<u>1,36</u>
Control of Jaffna and the Elephant Pass	0	<u>20</u>
Administration of Institutions for administration of justice	0	<u>18</u>
Disarmament of LTTE	<u>14</u>	0
Distribution of funds in the Northeast	0	<u>10</u>
Control of the shores in the Northeast	0	<u>8</u>
Participation of the Muslims in the negotiations	<u>5</u>	0
Management of Water Resources	0	<u>3</u>
Religion or (non-religion) in the Northeast	<u>13</u>	0
<i>Initial point total</i>	60,36	60,36

8. The results of the Adjusted Winner procedure

Only the item *Level of political autonomy* of the dispute is going to be divided in between the Government and the LTTE. The LTTE receives about 5% of the value which was assigned to it.

Respecting Bram's thesis that the AW procedure is applicable to any type of conflict the author has some doubts about the efficiency and applicability to the conflict in Sri Lanka. During the analysis under the AW procedure the following quandaries have occurred:

- Troubles while assigning the points due to the disunity of the players.
- Complexity of the items of the conflict.
- Lengthy decision-making process – it took too long (in some cases about a year when the players were sizing up their attitude towards some questions of the conflict)

8.1 Troubles while assign the points due to the disunity of the players

Although it has been stated that for the purposes of the AW application that both parties – the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam will be perceived as two monolithic entities. In some cases it has been nearly unmanageable to see two groups instead of a larger cluster of various factors. The Government side is represented by the United National Party whose peace efforts such as signing the Memorandum of Understanding were often undermined by the opposition parties, the Sri Lanka Freedom Party and JVP. Since these three parties have diametrically opposed goals in resolving the conflict, all their positions should be taken into consideration while assigning the points of input preferences. The author took into account every possible aspect of the various positions, consulted with experts on the region, but nevertheless allocating some points was immensely complicated and the results should not be regarded as an exact outcome. The situation might have been different if the author could discuss the point allocation directly with the Government and the Tamil representatives. However, even in such

case the division of the players into different fractions¹⁶² would prevent an absolute success of the AW application. Bram's and Taylor refer to the Adjusted Winner procedure as to the final solution while the parties are meant to be satisfied with the results (as they received item they preferred – valued the most). Yet, when the players are divided into various fractions and their point allocation is very likely to be undermined from the inside, it is nearly impossible to assign exact values to the chosen items.

8.2 Complexity of the items of the conflict

Some of the chosen issues of the conflict in Sri Lanka are very complex, embracing various small facets. While it is infeasible within the framework of the Master thesis to divide the items into more detailed ones and that simplification may affect the outcome of the analysis. Given more research opportunities (preferably in Sri Lanka) it may be possible to make a more thorough analysis.

8.3 Lengthy decision-making process

The other possible effect on the application of the Adjusted Winner to the conflict in Sri Lanka is the fact that the positions of the players regarding some key items (such as the question of the federal structure, joint control of the assets from the donor fund, the question of the LTTE cadres disarmament) have developed over a long period of time. If the AW procedure was to be applied to the Sri Lankan conflict in reality, it may be difficult since some preferences of the Government and the LTTE may have changed over the course of the negotiations. During the peace process (facilitated by the Norwegian government) both players (and the Government especially) have changed their perspectives on some items. Over the six meetings between the Sinhalese and the Tamil both sides improved their communication and clarified their stances on certain issues¹⁶³. The results of the AW application may be doubted because of this development in the peace talks. The AW results would differ

¹⁶² The official LTTE representation headed by Prabhakaran has opponents among its own people, especially in the East. Nevertheless, besides the internal LTTE opposition, there are many other Tamil organizations who do not perceive resolving the conflict in the same way as the LTTE.

¹⁶³ The cooperation proved to be successful in practical cases such as the creation of the sub-committees dealing with identification of immediate needs for reconstruction of the Northeast and easing the humanitarian situation there.

if the procedure was applied immediately after the signing of the Memorandum of Understanding in February, 2002 or after the Oslo meeting¹⁶⁴.

9. Conclusion

In this thesis project the author claimed the aim of finding new strategies for mediating ethnic and religious conflicts. After gaining better knowledge of the different aspects of mediation in various fields (divorce, labor dispute settlements, business negotiations) it became clear that for the purposes of the Master's thesis it is possible to apply no more than one procedure. The author chose Adjusted Winner for its novelty (the procedure has never been applied to any political conflict in real negotiations and rather few political scientists have carried out a theoretical simulation of the AW application). Secondly, the author's discussions with Steven Brams gave a better understanding of the field of fair division. The possibility to discuss the aims of this work, the AW application to the conflict in Sri Lanka with the inventor of Adjusted Winner was yet another factor that led this thesis in such a direction. The author stayed true to the initial aims described in the project – to find new procedures used in mediating of the divorce, labor, and business negotiations applicable to political conflicts. The original project has been modified and narrowed to just one case study (Sri Lanka) and one procedure (Adjusted Winner)¹⁶⁵. At the end of the work, it is evident that such limitation was very useful for the work. It allowed the author to explain the AW in greater detail and elucidate the roots of the conflict in Sri Lanka. The mediations attempts by India, Norway, and Japan were described for their relevance to the work and later in the conclusion compared to the results of the AW application.

¹⁶⁴ The Oslo round of the peace talks in December 2002 was one of the most successful rounds. Prior to the meeting, the conference of donor countries was held in November 2002. The interest in the process of reconstruction of the Northeast showed the good faith of the donor countries in the peace negotiations in Sri Lanka.

¹⁶⁵ The Czech request for the project modification and change of the title from *Aspects of Mediation in Ethnic and Religious Conflicts: Potential for employing new strategies* to *Mediation in Ethnic Conflict in Sri Lanka: Applying the Adjusted Winner Procedure*.

9.1 Availability of information to assigning value to the items of the dispute

The author was aware of the fact that the information concerning the positions of the parties was not completely available. One of the questions of this work was whether it is possible to successfully simulate the AW application depending only on the experts on the region assigning values to the items. After the application it seems obvious that direct talks with the representatives of the disputants are necessary for a successful AW application. Both experts, Filipsky and Novotny, are the best specialists on Sri Lanka in the Czech Republic. However, their perception of the values of the items of the conflict differed in some cases¹⁶⁶. On the other hand it has to be noted that they do not have any deeper knowledge of the field of fair division and had a hard time seeing the conflict on a theoretical level, unaffected by cultural perception of the region (i.e. It was hard for them to imagine such application actually taking place in peace negotiations between the Government and the LTTE.).

In author's opinion the final results of the Adjusted Winner application would differ from the ones presented in this work if the actual actors in the conflict assigned the values. The situation may be different if the conflict was already terminated and the author was able to gain more information on parties' positions regarding various items. The problem with ongoing conflict is that neither side is willing to share its preferences for the purposes of an academic research. The author contacted both the Government and the LTTE several times, but their replies were always negative. The Norwegian mediator was reluctant in sharing information on the Sinhalese and the Tamil positions towards the discussed items. Secondly, as it was apparent from the six sessions of the peace talks the parties approach on some issues changed over the course of the negotiations. At this point it is appropriate to express skepticism in applying the Adjusted Winner procedure to ongoing conflicts. The outcome is likely to be very exact but without direct talks to the actors it is impossible to prove the exact point allocation which is crucial for the whole application. On the

¹⁶⁶ They agreed on division of the items into three groups (central items, secondary items, and marginal items) however in the case of *Control of the shores in the Northeast* item their opinion on who whose desire to win the item would be stronger varied. In the case of items *Level of political autonomy*, *Control of Jaffna and Elephant pass*, *Disarmament of the LTTE*, and *Distribution of funds in the Northeast*) their answers were not identical (Filipsky assign the same values to *Control of Jaffna and Elephant pass* and to *Disarmament of the LTTE* and Novotny to *Level of political autonomy* and *Distribution of funds in the Northeast*).

other hand while applying the AW to terminated historical conflicts there should be sufficient amount of evidence available for the point allocation.

9.2 Disunity of the players

The author mentioned the division among different fractions within the Tamil and the Sinhalese group. Yet again, it has to be pointed out that the disunity of the players may negatively affect the outcome of the analysis. The creators of the theory, Steven Brams and Alan Taylor, assume that the parties are capable of assigning value to the items according to their true preferences. Brams and Taylor even continue in the discussion by addressing situations when the actors try to guess each others preferences. The problem however lies in the disunity of the actors. The Tamil and the Sinhalese community were perceived as monolithic players for the purposes of this work. Nevertheless it has to be taken into consideration that such thing is in the reality impossible. The lack of unanimity is evident when studying the history of the peace process or the Norwegian mediation attempts. The Sinhalese parties are interdependent (since 1994 the Government is always composed of a coalition) and cannot reach consensus regarding the LTTE and the peace process. The United National Party (UNP) is generally more open to the concessions towards the Tamil but its action were limited (when in power after the general elections in 2001) by the Sri Lanka Freedom Party (SLFP) and JVP opposition. The last SLFP Government formed a coalition with JVP which is categorically against any compromises with the Tamil claims. The Tamil division is seemingly less evident since the LTTE adheres to non-democratic practices and does not tolerate any kind of opposition. Nevertheless the Tamil are still divided. Ethnically, the Sri Lankan Tamil feel superior to the Indian Tamil who came in the 19th century to work on the British tea plantations. Politically, there are Tamil parties who are represented in the Sri Lankan Parliament (Tamil National Alliance, TNA and the Eelam National Democratic Liberation Front, ENDLF) and other Tamil groups (i.e. the Eelam People's Democratic Party, EPDP) who are opposed to the Prabhakaran's totalitarian governance. Respecting the existing division within the Sinhalese and the Tamil group the Adjusted Winner application to the conflict in Sri Lanka seems very surreal. Generally, it appears very complicated to apply the procedure to a conflict where diverse fractions exist within each player. Under such

conditions opposition groups can always doubt the results, hence the resolution would not be definitive.

The effect of the disunity may be reduced over a certain period of time. The peace negotiations facilitated by the Norwegians proved that disputants tend to be willing to compromise after gaining more confidence in the other side. In Sri Lanka some issues which were unacceptable at the beginning were being admitted. Supposing the AW application was accepted in reality and lasted the traditional one session the parties may have some difficulties dealing with the issues.

On the other hand if a mediator assisted in selecting the items and assigning values the period of his/her help during the first session of the official negotiation could be used for the actual AW application. Nevertheless, Brams and Taylor refer to Adjusted Winner as to non time-consuming method. The AW procedure presumes that the point allocation and the whole application would be done within one series of talks. Brams and Taylor do not talk explicitly about the time period necessary for the AW application however it is evident from the used examples that this time period would not be essentially a long, continually developing process. The talks for assigning values could last an indefinite period of time (mediation facilitated by Norway proved that) which would defend the non lengthy goal. Studying the development of the peace process in Sri Lanka it is clear that the relationship between the two parties develops and in the same way their approach towards each item develops. If the AW procedure was applied it would not develop the same way – both parties would miss that period to rethink their approaches.

9.3 Applying the Adjusted Winner procedure to the conflict in Sri Lanka

The AW method is a universal procedure which can be applied to a conflict of any nature. The only question remains whether the application is successful and has the potential of satisfying both parties so that they would not look for an alternative solution and terminate the dispute. In the Sri Lankan case the author sees two major problems with the AW application – not enough information on the Sinhalese and Tamil preferences (mostly because the conflict is still ongoing) and disunity with the Sinhalese and the Tamil groups. The other problem is perception of the third party

(mediator) in Sri Lanka. Supposing the AW method was employed in reality – only a strong (not strong in the sense of international influence, but strong in terms of their perception by the disputants) mediator would be able to enforce the AW usage and adherence of the results. Seeing the conflict from the political perspective (non economic), Norway has been the most successful mediator. The biggest achievement under the Norwegian assistance has been the Memorandum of Understanding (which was still severely criticized by the Government opposition Sri Lanka Freedom Party, SLFP). With all the respects to the Norwegian government and their efforts in the Sri Lankan matter, the author cannot possibly see willingness of applying such novelty method in the mediation as the Adjusted Winner procedure.

Not even the best procedure can guarantee success. If the both sides are not determined to follow the results of the peace talks and enforce its implementations nothing else can be done to create peace. The problem of the peace negotiations in Sri Lanka is that both the LTTE and the Government are not fully committed to compromise on their statuses.

It would be interesting to see the results of the AW application if both parties were willing to allocate their points themselves. The items of the conflict are certain to remain the same unlike the assigned values. With all the respect to the experts assisting the author with the point distribution for the purposes of this work, the AW application can be easily challenged for lacking relevance due to the dearth of information on the Sinhalese and the Tamil positions. The point allocation would not greatly differ, however it would be interesting how the final calculated allocation would differ if the values changed.

9.4 General hypothesis about applying the Adjusted Winner procedure to political conflict

Every political conflict is unique and has different roots and characteristics. It is difficult to make a general statement concerning the AW employment to a political conflict. Based on the experience with the AW application to the conflict in Sri Lanka the author finds four key elements to a successful mediation using the AW method.

- (1) There are not any significant opposition fractions within the different actors.

- (2) Both parties are willing to enter mediation under the AW procedure.
- (3) The mediator is strong enough to ensure that the parties are open about their preferences and assign true values to the selected items.
- (4) The parties are prepared to accept the results of the AW procedure and not to change their preferences over a certain period of time – willing to compromise and are more keen on terminating the conflict than keeping the status quo, a damaging stalemate.

9.5 Comparison of the mediation done by Norway and the results of the Adjusted Winner application

As mentioned earlier, the mediation under Norwegian assistance met the highest accomplishment – stopping the open fighting between the LTTE cadres and the Government forces and facilitating the six rounds of peace negotiations (from September 2002 to April 2003)¹⁶⁷ thus the results of the Norwegian mediation will be compared to the results of the Adjusted Winner application.

9.5.1 Primary items

The AW outcome says that the *Level of political autonomy* will 95% remain in the hands of the Government. It means that the Tamil political representation will not be on the same level as the central Colombo government. The LTTE has accepted throughout the negotiations that they will not secede from the Sri Lanka country and will seek a solution within the framework of one country. In author's opinion the outcome of the AW application would not be satisfactory for the Tamil. The peace talks (September 2002 – April 2003) proved that the LTTE was not willing to make any major concessions regarding this issue. The results of the other primary issues, which were given to the LTTE - *Control of Jaffna and the Elephant Pass* and *Administration of Institutions for administration of justice*, were according to the peace talks tolerated by the Government to be in hands of the Tamil. The Government still values both items, however, and it is evident that the *Control of Jaffna and the Elephant Pass* item was not their key interest and the Government wanted only to

¹⁶⁷ The Japanese mediation efforts met with success as well (addressing donor countries, collecting funds), however the Japanese involvement remained only on the economical and social level without any immense influence on the political negotiations.

ensure the peace and stability in the region before handing it to the Tamil. The item, *Administration of Institutions for administration of justice*, attracts more interest of the Government, but the current status quo in the Tamil controlled territory disables the Sinhalese from regaining control over the institutions of justice in the Northeast. The results of the actual peace talks would not be as specific (everything goes to the LTTE) as the results of AW, however the de facto situation would remain the same. The primary item given fully to the Government, *Disarmament of LTTE*, does not have the similar outcome in the peace talks facilitated by the Norwegian government. Despite the fact that the both sides assign similar value to the item (GOSL 14, LTTE 10) the Government wins the whole item. It is very evident from the peace talks that such result would not be possible if under regular peace negotiations. Even though the LTTE committed to disarmament of its cadres in the Ceasefire agreement it refused to do so unless the conflict is solved and the Tamil community is not endangered by the Sinhalese interests.

9.5.2 Secondary items

Both secondary items, *Distribution of funds in the Northeast* and *Control of the shores in the Northeast* are won by the LTTE. Nonetheless, the actual peace talks do not present such a simple outcome. Both Government and the LTTE agreed in Oslo (December 2002) to share the distribution of funds from the donor countries (they established sub-committee overseeing distribution of assets from the fund). The item *Control of the shores in the Northeast* is more complicated but with regards to the peace talks it cannot be simply given to one side. The outcome of the AW procedure may vary if the author knew the actual preferences of the GOSL and the LTTE, however even despite the fact that the both players assigned very similar values to the item (GOSL 6, LTTE 8) the item was fully given to one side. However, at this point the result of the AW application is very different from the actual outcome of the peace negotiations.

9.5.3 Marginal items

The marginal items were not greatly discussed in the peace negotiations, so it is hard to compare the outcome of the AW procedure with the outcome of the

negotiations. The issues are not core items but represent soft issues which are part of the dispute. The Government won items *Participation of the Muslims in the negotiations* and *Religion or (non-religion) in the Northeast* to which the Sinhalese often referred when justifying their other claims. The LTTE won the item *Management of Water Resources* which it claimed in the Interim Self-Governing, nevertheless, the item was not part of any exclusive talks.

Applying the Adjusted Winner procedure has been an interesting challenge. The outcome, unfortunately, does not represent any breaking point in resolving the political situation in Sri Lanka. Secondly, the chance of applying the AW method to the conflict in Sri Lanka is very marginal. Nevertheless, the author believes in finding new mediation strategies in areas outside the field of politics and this work represents an interesting example of such attempt.

10. Resources

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České resumé – Mediace etnického konfliktu na Srí Lance: aplikace metody *Adjusted Winner*

Autorka si v projektu diplomové práce klade cíl nalézt nové přístupy pro řešení politických konfliktů mezi postupy používanými pro mediaci (*mediation*, zprostředkování řešení) v oblastech, které s politikou nesouvisejí (rozvodová řízení, pracovní a obchodní spory). Při studiu mediačních praktik pro tento typ konfliktů se seznámila s metodou *Adjusted Winner*¹⁶⁸ (AW) politologa Stevena Bramse z New York University a matematika Alana Taylora z Union College. Oba deklarují AW jako univerzální metodu vhodnou pro řešení jakéhokoliv sporu. Jedná se o teorii z oblasti *fair division* (spravedlivé dělení), kde hlavní premisou spočívá v tom, že všechny body sporu jsou rozdělitelné.

Adjusted Winner

Při použití metody AW obě strany sporu (AW jde teoreticky použít i při řešení konfliktu tří stran, metoda ovšem ztrácí jednu ze svých výhod – metoda již není *envy-free* tj. není možné stejnoměrně uspokojit tři hráče) určí klíčová témata (*items*) konfliktu. Mezi tyto body potom strany rozdělují 100 bodů (nebo kterýkoli jiný rovnoměrný počet bodů) podle svých preferencí (tj. čím větší zájem má strana o danou položku, tím větší hodnotu ji připíše). Po přiřazení preference strana dočasně vyhraje téma, kterému přiřadila více preferencí než její protivník. Po této fázi přichází fáze narovnání (*adjustment*). Téma s nejmenším poměrem (poměr preferencí přiřazených od hráčů) je rozdělováno mezi obě strany, dokud není dosaženo rovnoměrnosti. Pro lepší přiblížení metody AW autorka předkládá řešení hypotetického rozvodového řízení mezi Georgem a Christinou za použití této metody. Přitom se věnuje i případům (např. pokud obě strany přiřadí tentýž počet bodů stejnému tématu či pokud je jedna strana oprávněna k většímu podílu na vyrovnání), které nenastanou při aplikaci AW na konflikt na Srí Lance, ale jsou relevantní k pochopení této teorie. V případě, že většina témat je abstraktní povahy, je vhodné se před použitím AW metody dohodnout, co bude zisk jednotlivých témat znamenat.

¹⁶⁸ *Adjusted Winner* znamená *upravený (uzpůsobený) vítěz*. Pojem dosud nebyl přeložen do českého jazyka. Autorka si je vědoma možné lingvistické neobratnosti svého překladu.

Pokud se tedy jedné straně podaří získat téma *Účast muslimů na jednání*, mělo by být předem dohodnuto, co to pro ni bude obnášet. Ve fázi ujednávání podmínek, vybírání témat a připisování preferencí je žádaná pomoc třetí strany. Prostředník může asistovat při dohadování podmínek jednání a stanovit pravidla pro vymezení předmětů sporu, jež jsou abstraktní povahy.

Konflikt na Srí Lance byl vybrán pro účely této práce pro svoji zdánlivou jednoduchost (pouze dvě strany sporu – Sinhálci a Tamilové), nezávislosti na velkých konfliktech a rozdělení současného světa (dichotomie – islámský fundamentalismus a Západní svět) a v neposlední straně pro zjevnou ochotu obou stran řešit spor za pomoci třetí strany.

Konflikt na Srí Lance a zprostředkovatelé

Vzájemná nevraživost mezi většinovou sinhálskou populací a tamilskou menšinou přerostla v občanskou válku v roce 1983. Eskalace byla výsledkem radikalizace tamilského vedení (nejsilnějším se stalo hnutí Tamilských tygrů v čele s autoritářským Vellupilaiem Prabhakaranem) a vleklé protitamilské kampaně sinhálských nacionalistů (nejvíce se angažovali buddhističtí mniši a představitelé místních samospráv).

Hned od počátky ostrého konfliktu angažovali tři zprostředkovatelé (mediators). Indie (regionální hegemon) se ujala role zprostředkovatele v roce 1985. Po selhání diplomatických jednání Indie vyslala mírovou misi (IPKF). Vojenská intervence ovšem velmi poškodila její důvěryhodnost jako mediátora. Nejúspěšnější třetí stranou bylo bezesporu Norsko¹⁶⁹. Bylo povoláno v roce 1998 po ztroskotání jednání iniciovaných vládní koalicí People's Alliance v roce 1995. Norsku se podařilo úspěšně navázat kontakty s úzkým vedením Tamilských tygrů (lidé okolo Vellupillaie Prabhakarana). Zvláštní zmocněnec Norska, Eric Solheim, byl pro své dobré vztahy

¹⁶⁹ Norsko je z hlediska klasifikace mediátora malý stát – tj. stát, který nemá vlastní globální či regionální (regionální ve smyslu místa, kde daný konflikt probíhá) zájmy, ani není výrazně spjat s žádnou ze stran konfliktu či nemá zájem využít svoji angažovanost pro získání vlastních zájmů.

s vůdcem LTTE¹⁷⁰ často obviňován ze strany SLFP (Srílanská strana svobody) z podjatosti vůči Tamilům. Největším úspěchem norského působení na Srí Lance bylo podepsání příměří, tzv. Smlouvy o porozumění (*Momorandum of Understanding*), v únoru 2002 a zastavení bojů. Aplikace AW je zasazena do tohoto období, kdy byly obě strany jednoznačně nejvstřícnější k vzájemným kompromisům. Třetím prostředníkem bylo Japonsko (ekonomická velmoc), jehož asistence byla omezena na zajištění ekonomické pomoci a angažování se v zajištění obnovy země. Japonsko je i za těchto podmínek uváděno jako třetí strana, neboť je nutné nezužovat konflikt pouze na politickou rovinu.

Záměry aplikace AW

Autorka si kladla za cíl zjistit, zda metoda *Adjusted Winner* je použitelná pro řešení konfliktu na Srí Lance, potažmo pro řešení politických sporů obecně. Již na počátku analýzy si je vědoma, že vnitřní rozštěpenost obou stran konfliktu, Sinhálců a Tamilů, může negativně ovlivnit výsledek. Jedním z cílů této práce je zjistit, do jaké míry má tato nesourodost vliv na aplikovatelnost AW teorie. Druhým problémem je nedostupnost informací ohledně preferencí jednotlivých stran. Přes veškeré pokusy nebylo možné získat vyjádření jak od zástupců Tamilských tygrů, tak od zástupců srílanské vlády. Norsko coby zástupce zprostředkovatelů vyhovělo žádosti ohledně poskytnutí dokumentů, na druhou stranu ovšem odmítlo poskytnout jakékoli informace týkající se preferencí LTTE a vládní strany. Po konzultaci s autorem metody, Stevenem Bramsem, se autorka rozhodla požádat experty na Srí Lanku o ohodnocení jednotlivých témat¹⁷¹. Již při charakteristice jednotlivých stran konfliktu je zřejmé, že tyto dva tábory nejsou monolitní. Pro účely aplikace AW, je LTTE (*Liberation Tigers of Tamil Eelam*) považováno za reprezentanta zájmů Tamilů. Ve skutečnosti ovšem existují opoziční skupiny, které nesouhlasí s Vellupillaiem Prabhakaranem a jeho monopolizací reprezentace tamilských zájmů. Shoda nepanuje ani v táboře Sinhálců. Pro účely této práce jsou Sinhálci označováni jako *Vláda*. Toto označení má pouze podtrhnout protiváhu LTTE při mírových jednáních.

¹⁷⁰ Tamilští tygři za svobodný Ílam, Liberation Tigers for Tamil Eelam, LTTE.

¹⁷¹ Autorka spolupracovala s Janem Filipským z Orientálního ústavu při České akademii věd a s Radkem Novotným z Filozofické fakulty Univerzity Karlovy v Praze.

Sinhálská reprezentace sice funguje na demokratických principech, na druhou stranu je ale velmi polarizovaná. United National Party (UNP) je nejvstřícnější k požadavkům Tamilů. Za jejich vlády byla v únoru 2002 podepsána výše zmíněná smlouva o příměří (*Memorandum of Understanding*), která připravila podmínky pro následná mírová jednání. Smlouva byla značně kritizována ze strany Sri Lanka Freedom Party (SLFP, toho času v koalici pod názvem People's Alliance) a jednoznačně odmítána JVP (radikální levice). Postoj vlády k mírovým jednáním je přímo závislý na tom, jaká politická strana je u moci, popřípadě kdo s kým tvoří koalici. Kontinuitu nezajišťuje ani Chandrika Kumaratunga, která vykonává funkci prezidentky od roku 1995, neboť je spjata s SLFP. Přes veškeré pokusy odprostit se od nejednotnosti jednotlivých aktérů, byl nesoulad při připsování preferencí k jednotlivým tématům evidentní.

Témata (*items*) konfliktu

Hlavními body konfliktu bylo určeno deset témat (*Míra politické autonomie 1/1* – Level of political autonomy, *Kontrola Jaffny a Sloní stezky 1/2* – Control of Jaffna and Elephant Pass, *Vykonávání jurisdikce 1/3* – Institutions of administration of justice, *Odzbrojení jednotek LTTE 1/4* – Disarmament of the LTTE cadres, *Rozdělování finančních zdrojů na Severovýchodě*¹⁷² *1/5* – Distribution of funds in the Northeast, *Kontrola pobřeží na Severovýchodě 1/6* – Control over the shores in the Northeast, *Účast muslimů na jednání 1/7* – Participation of the Muslims in the negotiations, *Organizace návratu uprchlíků 1/8* – Organization the resettlement of refugees, *Vliv náboženství 1/9* – Religion or {non religion} of the state, a *Správa vodních zdrojů 1/10* – Management of water resources in the Northeast). Pro účely aplikace se ukázalo být použitelných pouze devět. Téma *Organizace návratu uprchlíků (8)* se prokázalo být neoddelitelné od tématu *Distribuce finančních fondů na Severovýchodě*¹⁷³ (5). Vládní strana plně získala tři témata (*Odzbrojení jednotek LTTE, Účast muslimů na jednání, a Vliv náboženství*), o nejžádanější položku (*Míra politické autonomie* – obě strany připsaly nejvíce preferencí, Vláda 30 a LTTE 25) se strany sice podělí, ale LTTE připadne pouze 5% (1,36) z hodnoty kterou jí připsala.

¹⁷² Severovýchodem se rozumí oblast pod správou LTTE.

¹⁷³ Pro účely AW aplikace je klíčové, aby byla jednotlivá témata sporu naprosto oddělitelná. Výhra jednoho tématu nesmí být podmíněna výhrou jiného či naopak.

Ostatní témata podle AW připadají Tamilům. Srovnáme-li výsledky s mírovými rozhovory od podepsání smlouvy o příměří v únoru 2002 do krachu jednání v dubnu 2003, některé tendence jsou podobné (např. Vláda neustoupila Tamilům v otázkách odzbrojení).

Výsledek aplikace AW

Autorka došla k závěru, že aplikace AW na konflikt na Srí Lance je při existenci následujících faktorů těžko schůdná:

- Připisování preferencí k jednotlivým tématům velmi komplikuje rozštěpenost stran. V případě Vlády mají některé strany (JVP a UNP) diametrálně odlišné názory na postoj k LTTE.
- Výsledek může být zpochybněn na základě nedostatečného podložení přiřpsání preferencí oběma stranami (vyjádření LTTE ani vládní strany nebylo možné získat), což je do jisté míry způsobeno aktuálním pokračováním konfliktu. Aplikace AW je obecně jednodušší, pokud se jedná o spor již skončený. V takovém případě je možné srovnat výsledky se závěry jednání, získat přesnější informace o preferencích stran, a aktéři jsou sdílnější ohledně svých postojů.
- Témata konfliktu na Srí Lance se ukázala být spleťtá, v některých případech vzájemně provázaná (*Organizace návratu uprchlíků*). Komplexnost a široké vymezení témat může do jisté míry negativně ovlivnit výsledek.
- Vlastní proces vyjednávání byl poměrně dlouhý, Tamilové i Sinhálci byli ochotni uchýlit se ke kompromisům a ústupkům až po delší sérii vyjednávání. Pokud by byla metoda AW použita ve skutečnosti, delší rozhodovací doba by mohla negativně ovlivnit výsledek. Postoj vlády se přitom může změnit při každé obměně vládnoucích stran.

Autorka vyvodila čtyři obecné závěry pro aplikaci Adjusted Winner na politické konflikty. Užití metody má šanci na úspěch pokud: (1) neexistují žádné výrazné opoziční frakce uvnitř jednotlivých stran, (2) obě strany souhlasí s vyřešením konfliktu za pomoci AW, (3) mediátor je silný, tj. jeho autorita není zpochybnována a nakonec

(4) oba hráči jsou rozhodnutí dodržovat výsledky AW. V případě Srí Lanky byl mírový proces přerušen pro porušování dohody o příměří radikálními frakcemi v táborech obou aktérů (incidenty „Mořských tygrů“¹⁷⁴, nacionalistické postoje JVP a zpochybňování mírového procesu ze strany SLFP), metoda AW má velmi malou šanci na reálné využití v této oblasti. Z teoretického hlediska to byl zajímavý pokus o nalezení nového postupu pro řešení konfliktu na Srí Lance, respektive modelového mezinárodně-politického sporu.

¹⁷⁴ *Mořští tygři* (Sea Tigers) jsou námořní jednotkou Tamilských tygrů.

Thesis project

Title – Aspects of Mediation in Ethnic and Religious Conflicts: *Potential for employing new strategies.*

Introduction

After the collapse of the bipolar system, the number of ethnic and religious conflicts increased. The international system was unable to prevent the outbreak of new conflicts. I believe that both theorists (academics) and empiricists (politicians) should pay more attention to studying new approaches of accommodative strategies in conflict management such as bargaining and mediation.

In my Master thesis, I plan to study that special aspect of conflict resolution: the art of mediation, with a special focus on behaviourist aspects of the process, and the availability of approaches from the theory of organisational behaviour. I believe that the structure of a state or an international subsystem can be equated to the structure of an organisation or a company. One of the main aims of this project is to examine whether knowledge of mediating in this area is applicable in the mediation of ethnic and religious conflicts.

For purposes of this work mediation is defined as:

A process of conflict management, related to but distinct from the parties' own efforts, whereby the disputing parties or their representatives seek the assistance, or accept an offer of help from an individual, group, state or organization to change, affect or influence their perceptions or behavior, without resorting to physical force, or invoking the authority of the law¹⁷⁵.

Special attention will be given to studying empirical sources. I plan to contact the Federal Mediation and Conciliation Service (USA, www.fmcs.gov/internet) to collect information on their research and surveys of labor mediation and collective

¹⁷⁵ Bercovitch, J. *The structure and diversity of mediation in international relations*, edited by J. Bercovitch and J. Rubin, 1-29. New York: St. Martin's, 1992.

bargaining. This knowledge will be compared with the theory of strategies in mediation of religious and ethnic conflicts. The Organization for Security and Cooperation in Europe and The Office of Secretary General of the United Nations will be contacted as well for any documents, which would provide empirical examples to support theoretical knowledge about behavior and the characteristics of mediators. To demonstrate theoretical approaches and findings I will examine two conflicts – religious conflict in Northern Ireland and ethnic conflict in Sri Lanka. While the main focus will remain on mediation; additional information will be included to provide sufficient background on different influences in the conflicts. When discussing special aspects of diverse strategies in mediation, examples of other conflicts can be used in addition. However, the mediation of conflicts in Northern Ireland and Sri Lanka will be the main analysis of the theoretical finding.

Since the vast majority of available sources and documents, as well as the field terminology, are in English, this project will be written in English. Secondly, I wish to continue studying conflict resolution and mediation, and a Master thesis written in English would help me to further achieve that goal.

Structure

Brief history and background of mediation of international and ethnic conflict

Mediation Process – basic framework, structure

Mediator

3.1 Identity and Characteristics of the Mediator –mediators from various conflicts (ethnic, religious, labor management).

3.2 Mediator's Behavior

Mediation Environment

Examples of mediator's behavior in Northern Ireland and Sri Lanka

Strategies of Mediation

4.1 Strategies in ethnic and religious conflicts

4.1 Communication-facilitation strategy

4.2 Procedural strategy

Directive strategy

Strategies for mediating conflict in Northern Ireland and Sri Lanka

- 4.5 Possibility of implying new strategies in mediation of international and ethnical and religious conflicts.
5. Outside factors influencing the process of mediation.
6. Characteristics of conflict and its parties and their influence on mediation.
7. Conclusion

Questions

To what extent are strategies from different fields of mediation applicable to other fields of mediation?

Is the combination of various techniques effective?

Can strategies from labor mediation and community disputes mediation be employed in the mediation of ethnic and religious conflict?

What are the greatest impacts on a positive outcome of mediation?

Primary sources

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The Strategic Management Journal

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Věc: Žádost o změnu projektu a názvu diplomové práce

Dovoluji si zažádat o změnu projektu, respektive názvu diplomové práce. Ústřední myšlenka diplomové práce je nalézt nové metody zprostředkování (mediation) pro řešení konfliktů v oblasti mezinárodních vztahů. Při výzkumu a shromažďování informací na toto téma jsem narazila na metodu *Adjusted Winner*, která je v současnosti v praxi převážně používána při řešení rozvodů a obchodních sporů. Po bližším seznámení s touto metodou a jejím autorem¹⁷⁶ jsem se rozhodla použít ji pro účely své diplomové práce. Metoda mě velmi zaujala, a zároveň přesně splňovala můj hlavní záměr (tj. nalézt procedury v praxi používané pro řešení jiných než politických sporů). Na počátku jsem si ovšem nebyla plně vědoma rozsahu, který bude tato analýza vyžadovat. Dnes již vím, že je nereálné v rámci jedné diplomové práce aplikovat *Adjusted Winner* na původně dva plánované konflikty, Srí Lanku a Severní Irsko. Diplomová práce bude obsahovat pouze analýzu etnického konfliktu na Srí Lance s použitím metody *Adjusted Winner*. S ohledem na tuto skutečnost považuji za vhodné změnit název své práce z *Aspects of Mediation in Ethnic and Religious Conflicts: Potential for employing new strategies* na *Mediation in Ethnic Conflict in Sri Lanka: Applying the Adjusted Winner Procedure*.

Martina Klimešová

¹⁷⁶ Metoda *Adjusted Winner* byla vynalezena Stevnem Bramsem, profesorem politologie na New York University a matematikem Alanem Taylorem z Union College.