

THE PROPOSED INTERIM SELF-GOVERNING AUTHORITY

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The peace process has come up against a wall of obstruction. The arithmetic of party affiliation of Members of Parliament (even allowing for a degree of fluidity in party loyalties) plus the lack of UNF-PA cooperation has ensured that no solution to the constitutional crisis is imminent. It appears that the PA considers that it would be political suicide to offer parliamentary cooperation that would enable the UNF to gain from any required constitutional amendment – as did the UNP when it was in the opposition. Thus, in terms of a legislative breakthrough, the UNF has no credible offer, and the LTTE has nothing to look forward to in the near future, unless the latest developments lead to a national government or other transformation of UNF-PA relations; if that happens, some sections of this paper would need to be re-written.

Granted that no dramatic breakthrough is imminent, do the LTTE proposals indicate possibilities of such developments in the future? There have been conflicting interpretations of the Thimpu Principles (do they favour internal or external self-determination?), but the developments in Oslo and Tokyo are less ambiguous in their focus. The Tokyo Declaration “commends both parties for their commitment to a lasting and negotiated peace based on a federal structure within a united Sri Lanka.” Earlier, in Oslo, “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 had to be acceptable to all communities.” The Oslo Agreement goes further to renounce violence and to affirm respect for human rights, democracy, rule of law and ethnic harmony. Do the LTTE proposals fall within those parameters, or do they signal a departure? What would be the best approach to the proposals? Many of the clauses permit multiple interpretations. These could be seen as obstacles with dangerous potential, or as openings facilitating re-definition and progress towards sustainable peace.

If the assumption is made that the LTTE is unreformably fascist, negotiations would be meaningless and war may be inevitable. But if a return to war is ruled out as unacceptable, there is no alternative to re-activating the stalled peace process. Significantly, for the first time, the LTTE has gone beyond rhetorically re-affirming general principles to formulating and submitting specific proposals. On the extent of the territory to be administered by the interim authority and the duration of the interim period there seem to be no fundamental conflicts between the UNF and LTTE proposals, but on other issues the UNF proposals are predictably minimalist and the LTTE proposals maximalist. This is certainly

so in respect of the powers to be devolved and the LTTE role within the Authority. The most positive approach would be to see these as the first bids in what would inevitably be a long, hard bargain.

Status-Quo

It is possible that the present no-war-no-peace situation, with UNF-PA maneuvering for political advantage, and the armed forces-LTTE maneuvering for military advantage may continue. This could be tolerable to the UNF since it currently enjoys the advantages of holding office. It could also be tolerable to the PA in that it could possibly be entertaining hopes of coming into office through engineering a collapse of the UNF government. But for the LTTE, a long extension of the status quo would be intolerable. On the one hand, its resources and the capacity and will of its cadres to successfully resume battle may erode. On the other, the long suffering population of the North and East are anxious that physical security should be guaranteed through a secure peace agreement and, further, that they too should be able to access a share of the socio-economic development that may become available to those elsewhere if the no war situation continues. A necessary (though not sufficient) condition for these aspirations is that a workable, mutually agreed interim administration is installed. Thus, in the absence of a satisfactory interim administration, the no-war-no-peace situation is likely to become increasingly unstable – hence the urgency.

Apart from the transient perspectives arising from the fact that currently the UNF holds office and the PA is in the opposition, the differences between the perceptions of the UNF and the PA leadership on either the interim administration or the eventual solution may be marginal in comparison either to internal differences within the UNF and the PA, or to the perceptions of the LTTE. The UNF government made certain proposals in July-August in respect of the interim administration, and the LTTE made counter-proposals in October. Resolving the LTTE-UNF differences will be very difficult, more so because of the internal differences within the UNF, and also because the PA holds an effective veto on the solution. Thus negotiating an agreement on this issue, i.e., on the Interim Self-Governing Authority (ISGA), will have no assurance of a successful outcome.

Hopefully, at some stage in the negotiations the UNF and the PA may be motivated to cooperate at least to the extent of agreeing on broad principles governing negotiations with the LTTE on the ISGA and other critical issues. Even if this happens, progress will not be

easy. Several components in the current proposals will be clearly unacceptable to both the UNF and the PA. But do they give a clue as to whether eventual compromise and consensus is possible? We need to examine the proposals, item by item, after first looking at the (UNF) government proposals.

The government proposals

The Sri Lanka Government's Interim Administration Proposals, July/August 2003, to which the LTTE responded in October 2003, are more general and much less detailed than the LTTE proposals. The differences in scope and detailed modalities, which "shall be subject to discussion between the Parties," relate to the areas of police and security, land, and revenue.

The government proposal refers to "the understanding between the Parties during plenary sessions of negotiations that a Muslim delegation should be accommodated when issues of concern to the Muslim population are being deliberated," and goes on to specify that, "A Muslim delegation must participate in the discussions relating to the establishment of a provisional administrative structure for the Northern and Eastern Provinces; and that it should be open to the SLMC to submit a separate proposal pertaining to the establishment of the above mentioned structure."

The government proposal is for "a Provisional Administrative Council" composed of nominees of the government, LTTE and SLMC, with a majority for the LTTE but with weighted representation for the Muslims and Sinhalese.

There will either be two Chairpersons, one nominated by the LTTE and the other by the Government from among the Members of the Council, both holding veto powers; or one elected Chairperson with the support of a majority of the representatives of the Muslim and Sinhalese communities needed for decisions affecting their communities.

The Chief Executive will be a Special Commissioner appointed by the government with the consent of the majority of the Council.

Eight District Committees appointed by the Council are proposed, each reflecting the ethnic composition of the District and chaired by a Council Member, with the District Secretary (Government Agent) as the Secretary and Chief Executive Officer. District Sub-Committees, appointed by the District Committees with the concurrence of the Council, are also proposed for sub-divisions of the Districts.

Three special subject-specific Committees, each with not more than Four Council Members of whom one will chair, are also proposed, as follows:

- a) An Economic Affairs Committee
- b) An Infrastructure Committee
- c) An Essential Services Committee

The arrangement is envisaged to "be in operation for a limited period as agreed by the parties, however, subject to the arrangement being reviewed by the parties every six months."

The LTTE's Proposals for an Interim Self-Governing Authority

Preamble

This is mostly well drafted and broadly acceptable except in the following respects:

- i) There is no reference to the concerns of the Muslims of the North and East, or to the need to engage their leaders in working out the structure of the ISGA – unless "the right to participate in the formulation of their role in the ISGA" is interpreted broadly to include the above.
- ii) There is no reference to the need to engage the PA in working out the structure of the ISGA.
- iii) The underlying assumption that "the Ceasefire Agreement, including the role of the Sri Lanka Monitoring Mission (SLMM), and the establishment of SIHRN and the North East Reconstruction Fund (NERF)" may override the Constitution in establishing the ISGA is flawed. Though the Sri Lankan Tamils, who were virtually excluded from the drafting of the 1972 and 1978 Constitution may be justified in rejecting them, the Government of Sri Lanka cannot disregard constitutional provisions. That this dilemma cannot be resolved without the concurrence of at least the PA has not been acknowledged.

1. Interim Self-Governing Authority

The proposal envisages ISGA control of the entirety of the five Northern and three Eastern districts till a final negotiated settlement is reached.

Perhaps this is as it should be, subject to the understanding that it is an interim arrangement, the participation of the Muslims is interpreted broadly as indicated above, and also adequate space is provided for the participation of the Sinhalese of the North and East. Any re-grouping of the districts and divisions or other re-demarcation of the boundaries will require extensive, politically sensitive negotiations, and the establishment of the ISGA cannot await the completion of such negotiations. A time frame (contained within the life time of the ISGA) could be set for these negotiations which could be conducted by a team selected by consensus from among the Tamil, Muslim and Sinhalese leaders of the North and East.

2. Composition of the ISGA

The proposal is for the LTTE to have an absolute majority but for Muslims and Sinhalese also to be represented; and for the ISGA to

elect a Chairperson/Chief Executive who will have unfettered power to appoint (and to revoke the appointment of) a Chief Administrator.

Tamils constitute over two-thirds of the proposed ISGA territory, and are entitled to have an absolute majority in the body (as conceded in the central government proposal), but it will help if the Muslims and Sinhalese are overrepresented in proportion to their numbers (as suggested in the central government proposal). Further, there should be appropriate geographical distribution. For the system to work, the Tamil members should be acceptable to the LTTE, the Muslim members to the SLMC (this is conceded by the central government but the LTTE nearly refers to appointment by "the Muslim community in the North East") and there should be UNF-PA concurrence on the Sinhalese members (this is not conceded by either centre or the LTTE). It might be possible to negotiate a consensus on this basis.

Regarding the appointment of the Chief Executive and deputies, it may be best for the appointments to be subject to endorsement by consensus within the ISGA so as to ensure that the Muslims and Sinhalese have a say; if there are differences of opinion, a compromise should be sought. The central government proposal is for the appointment to be made by the centre with the concurrence of the ISGA, but so long as consensus within the ISGA is prescribed, there should be no objection to the appointment being made by the ISGA. In line with the central government proposal, consensus within the ISGA may be interpreted as requiring not only an absolute majority but also a majority among the Muslim and Sinhalese members.

The administrative cadres at every level, in the region, districts and localities, should reflect the ethnic composition of the population served. The central government too should accept this principle.

All ISGA decisions including appointments should be by consensus, with an institutional mechanism in place to resolve differences if a compromise cannot be reached. On most matters a consensus should be possible. It is on this understanding that the following comments are formulated.

3. Elections

The proposal is for the ISGA to function till an Agreement is reached or till the expiry of five years, whichever is earlier, and for elections to be held thereafter.

The proposal is unexceptionable, subject to the assumption that the Election Commission is appointed by consensus within the ISGA.

4. Human Rights

These rights are asserted with commendable clarity.

What could be suspect is the implementation mechanism, which hinges on a Human Rights Commission appointed by the ISGA. However, this proposal is welcome, subject to the Human Rights Commission being appointed by consensus within the ISGA, with the further provision for appeals to the Human Rights Commission of Sri Lanka.

5. Secularism

This is asserted as applicable to the North East.

This is commendable.

6. Prohibition against Discrimination

It is sought to entrust this task to the ISGA.

There should be express provision for complaints that cannot be resolved at a lower level to ultimately reach the Human Rights Commission of Sri Lanka.

7. Prevention of Bribery and Corruption

It is sought to entrust this task to the ISGA.

Perhaps there should be a Commission to Investigate Allegations of Bribery and Corruption appointed by the ISGA, with provision for appeals to the Sri Lanka Commission to Investigate Allegations of Bribery and Corruption.

8. Protection of All Communities

This principle is asserted.

This is commendable, with the proviso that the relevant laws, regulations, rules, orders and decisions should be subject to action in courts of law.

9. Jurisdiction of the ISGA

It is sought to establish ISGA control of governance in the North and East.

The legal and administrative authority conferred on the ISGA will be time bound within the interim period, unless duly revalidated before the expiry of that period. As proposed, these should be negotiated with the central government. They should also be subject to the various reservations specified above.

10. Separation of Powers

It is sought to establish special institutions for the administration of justice.

Provided the regional courts come under the jurisdiction of the Sri Lankan courts at the apex, the proposal is broadly acceptable, subject to negotiations with the central government on the details, and the various reservations specified above.

11. Finance

It is sought to establish ISGA control over Finance.

The proposal is broadly acceptable, subject to negotiations with the central government, which has a legitimate monitoring interest.

12. Powers to Borrow, Receive Aid and Trade

It is sought to assign these powers to the ISGA.

The proposal is broadly acceptable, subject to negotiations with the central government, which has a legitimate monitoring interest.

13. Accounting and Auditing of Funds

It is sought to establish ISGA control over accounting and auditing.

The proposals are broadly acceptable, subject to negotiations with the central government, which has a legitimate monitoring interest.

14. District Committees

It is sought to establish District Committees under ISGA leadership and direction.

The proposal is broadly acceptable, subject to the requirement that the membership of each District Committee should (as proposed by the central government) broadly reflect the ethnic composition of the population of that district. It should be helpful to accept the central government proposal that the Principal Executive Officer and the Secretary at the district level should be, ex-officio, the District Secretary (Government Agent). In turn, the ISGA should be consulted in respect of all appointments and transfers of District Secretaries, Divisional Secretaries and Grama Niladharies in the North and East.

15. Administration

It is sought to establish ISGA control over the administration.

This is acceptable, subject to the requirement set out in 2. above that the administrative cadres at every district and locality should reflect the ethnic composition of the population served.

16. Administration of Land

It is sought to establish ISGA control over all land that is not privately owned.

This should be negotiated with the central government, and guidelines worked out covering the entirety of the island, with particular attention to the need to protect various reservations, to replant destroyed forests, and to ensure that settlement/ resettlement schemes do not adversely affect the security, identity and welfare of the local population.

17. Resettlement of Occupied Lands

It is sought to reclaim, for the local population, the lands occupied by the armed forces of the centre, and to secure compensation for past dispossession.

There is a good case for adequate compensation, but there are security constraints that may inhibit a total evacuation by the armed forces. This should be negotiated with the central government with a view to securing a compromise.

18. Marine and Off-Shore Resources

It is sought to establish ISGA control over these resources.

This should be negotiated with the central government with a view to reaching a compromise that would take account of both equity and environmental considerations.

19. Natural Resources

It is sought to establish ISGA control over these and the benefits derived from them.

This should be negotiated with the central government with a view to reaching a compromise that would take account of both equity and environmental considerations.

20. Water Use

It is urged that the centre and the ISGA should ensure that the river waters are equitably shared in terms of internationally recognized principles.

This proposal is unexceptionable.

21. Agreements and Contracts

It is suggested that future agreements falling within the jurisdiction of the ISGA should be with the ISGA, which should be consulted on any changes to existing agreements.

This is unexceptionable.

22. Settlement of Disputes

It is suggested that to resolve disputes that cannot be resolved by any other means, a three-person Arbitration Tribunal should be

established, with one nominee from the centre, one from the LTTE, and the Chairperson jointly appointed by the two Parties or by the President of the International Court of Justice.

This is essential and acceptable, subject to the qualification that the nominee of the LTTE to the Arbitration Tribunal should receive endorsement by consensus within the ISGA.

23. Operational Period

It is suggested that this will extend till a government for the North-East, pursuant to a permanent negotiated settlement, is established in terms of this Agreement. However, if no settlement is reached by the end of four years, the negotiations will continue and extend

to "adding, clarifying and strengthening the terms of this Agreement."

This is unexceptionable.

Conclusion

The gap between the UNF and LTTE proposals in respect of the interim administration is large but not inherently unbridgeable. But vital pre-conditions are two more difficult divides, viz. UNF-PA and LTTE-SLMC. In effect, the two-party agreement will have to progressively transform into a four-party agreement. This cannot be achieved instantaneously, but the no war-no peace situation cannot hold indefinitely. Time is of the essence. ■

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