

The views and opinions of those living in the North, particularly in Jaffna, are not generally communicated to people in the South. This is true of all shades of opinions-whether LTTE or anti-LTTE, or expressions of persons in civil society. Their absence from the discourse in the South encourages the persistence of stereotypical attitudes to the ethnic problem as well as to Tamils themselves; Tamils are either members or sympathisers of the murderous LTTE or simply dumb and frightened, in the latter case devoid of any political weight.

This is not good for the understanding that we wish to see developing between these two ethnic communities. In an endeavour to fill at least a small part of this vacuum, we publish three articles conveying some sense of the political and social picture as seen from a Jaffna perspective.

The first is the text of a speech delivered by Mr. V. Rudrakumaran, a lawyer living in the USA, at a seminar organised by the Christian Michelsen Institute in Bergen, Norway in March 1996. This speech has received some attention as indicating current political thinking within the LTTE.

THE CONTOURS OF A NEGOTIATED POLITICAL SETTLEMENT

As we are all aware, the recent escalation of violence on the island of Sri Lanka has caused great dismay and alarm. The mounting loss of innocent lives, resulting from the Navaly Church bombing, the Nagarkovil School bombing, "Operation Sunshine", the Colombo bank bombing and the Kumarapuram massacre among the many tragedies has demonstrated that the strategy of "peace through war" is not only untenable but immoral. As the United Nations Secretary-General pointed out in his statement issued on the first of February 1996, the bombing incident in Colombo highlights "the need to find an early negotiated political solution to the conflict in Sri Lanka". Any lasting resolution of the conflict has to be based on the real situation in the island of Sri Lanka. The response of the Tamil people after the politics of exclusion by all Sinhala Governments since independence is a realization that their lives and their interests can only be protected by collectively asserting their aspirations in the form of nationhood. In the last democratic elections held in 1977, the Tamils voted for an independent state for Tamils. Since then they have not only asserted their right to nationhood, but have paid for it, and still are paying for it in blood, toil, sweat and tears.

Conflict resolution should be based on such values as human dignity, respect for humanity and equality, among others. Unfortunately, in Sri Lanka one of the parties to the conflict, the Sinhala establishment as represented by the Sri Lankan Government, persistently denies these values when dealing with the other party to the conflict: the Tamil nation represented by the Liberation Tigers of Tamil Eelam (or LTTE).

The characterisation of the Tamil Nation's striving to be responsible for its own affairs and to take its destiny in its own hands as a "Terrorist Problem" is an implicit yet nonetheless glaring denial of the dignity of the Tamil nation. These must be a recognition that the discrimination, deprivation, exclusion from political representation and the power processes as well as the physical insecurity inflicted upon it have forced the Tamil nation to seek a political space of its own.

The brutalisation and alienation of the Tamil Nation by the oppressive Sinhala government is much older than the LTTE. Decitizenization of substantial Tamils occupying the hill country, long before the birth of any Tamil resistance and long before any of the member of the LTTE was born is a clear indication that Sinhala racism is the fundamental problem in Sri Lanka, not the Tamil resistance. As one federal judge in the United States observed, the LTTE arose as a result of the Sri Lankan Government's attempt to reduce Tamils to second class citizens or even non-entities. And as Sri Lanka's foreign minister Mr. Lakshman Kadirgamer aptly put in his speech at the Asia Society in New York in April 1995: "LTTE is fighting for a cause in which they believe, and there are historical precedents for it, and there is a historical genesis for what they are doing". The cause of the conflict lies not in "terrorism", but in the brutalisation and alienation of the Tamil nation by the Sinhala establishment.

President Chandrika Kumaratunge's recent polemical stipulation of LTTE's laying down of arms as a precondition for future negotiations, is a manifestation of the government's insistence on denying equality to the Tamil Nation. The Tamils constitute "people" under international law and are thereby entitled to exercise the right of self determination and, as a corollary the right to engage in armed campaign. This is in accordance with the General Assembly Declaration of Friendly Relation Among States (G.A.Res: 625) which is considered as a customary international law.

For a successful negotiated outcome both parties should proceed on a principle of fairness and free will. A nation cannot negotiate when it is under occupation. One cannot negotiate under duress. Even the most basic contractual law prohibits it, let alone its being at the level of nations a violation of the right to self-determination. A negotiated settlement that is gained through coercion only serves to perpetuate and institutionlise the conflict in such a way that "peace through war" will become part of the way of life.

A wholly different constructive element is necessary for a truly successful negotiated settlement. The international community has requisite ability to facilitate the peace process and should play a vital

role in it. Moral support of the international community for the victim of aggression will prevail upon the aggressor to seek a resolution that takes into account the needs and interests of both parties. Unfortunately, in Sri Lanka we are witnessing a phenomenon in which the victim is brutalized, then blamed. This is due to the powerlessness of the Tamil people viz. a their access to the media.

Due to the censorship instituted by the Sri Lankan Government truth itself has become a victim. Therefore, international opinion regarding the conflict in Sri Lanka is fundamentally biased, and the international community has so far been disinclined to show sympathy for the Tamil victimisation. For example when the peace process on the island collapsed, the blame was put on LTTE. Now as one diplomat observed, when negotiations collapse the blame usually rests on the withdrawing party, especially when it is a non state entity. If the withdrawing party is unable to explain its action because of its powerlessness and lack of access to the media, however it has no choice but to bear the brunt of the criticism.

The fact that the Sri Lankan Government was escalating its military might even as the talks were in progress, the fact of LTTE's insistence that the urgent day to day problems of severe food, medicine and fuel shortages be given priority, the fact LTTE's proposals to address four situations of paramount importance out of which three were related to civilian life, the fact that LTTE withdrew from the negotiations in conformity with its three weeks notice, whereas the Agreement required only a 72 hour notice are all relevant to forming a correct opinion about LTTE's behavior but none of them were brought to the international community's attention as a result of the Tamils' lack of media access. On the other hand, the lifting of the flood embargo, a belated fulfillment of the state's moral and legal obligation to its citizens, are viewed as a major concession on President Chandrika's part. This is largely due to the manner in which this event was represented in the media. When LTTE explicitly announced its willingness to consider a political arrangement short of an independent state, their act of good will was not appreciated by the international community because it had not been adequately covered in the media.

The same asymmetry in the two parties access to the media results in an effective and swift response by the international community when certain actions are attributed to the LTTE without proof, whereas sheer silence or indifference occur in response to massacres committed by the Sri Lankan Government such as Navalay church bombing, school bombing and recently the Kumarapuram massacres. The illusion shared by many today, that President Chandrika's devolution package is a panacea for the national conflict in Sri Lanka, is also the product of a well-orchestrated media campaign by the Sri Lankan Government. It is very sad that many "bought" the spurious package without the benefit of a detailed analysis of its contents. It is therefore necessary to examine whether the devolution package indeed provides for meaningful power sharing between Tamils and Sinhalese on the island of Sri Lanka and whether it is adequate to guarantee the physical security of the Tamil population.

It is said in the media and even in some academic circles that the proposal, even though by name is called a devolution package, in reality it embodies a federal formula.

The core of federalism is division of power. In other words non-centralisation is the key principle of federalism. Non-centralisation is not synonymous with either decentralisation or devolution. Decentralisation or devolution presupposes a higher authority which chooses to devolve its power. As Daniel Elzar, an expert on federalism, observes the government that can decentralise or devolve can also re-centralise if it so desires. Hence in decentralized systems the diffusion of power is actually a matter of chance, not right and as history reveals in the long run, it is usually treated as such. Devolution implies a hierarchy, a pyramid of government where power flows downward from top, whereas non-centralisation requires that there can be no single centre, but rather a dispersal of power among a number of centres that must co-ordinate their activities and policies with one another in order to make the entire policy work. "In any hierarchy, the top is expected to have more authority and power than the middle or the bottom, which contradicts the basic principles of federalism".

Moreover, the implications to the effect that there exists a legitimate higher authority in Colombo is false both historically and legally. Consequently, the very notion that power somehow "devolves" from Colombo to the Northeastern Region fails to withstand rational scrutiny.

Another important feature of federalism is over representation of the constituent unit in the centre so as to enable the unit to participate effectively in policy making and government. Kumaratunga's proposals are completely devoid of any such power sharing arrangement. As the title and the substance of the "Devolution Proposals" reveal beyond any doubt, what is proposed is not anything that resembles federalism even remotely. The other question is whether Kumaratunga's proposals allow Tamils to have a last word in the determination of its own destiny. The question before us is whether under the proposed polity in the island of Sri Lanka the Tamils indeed have sufficient say in matters affecting their national existence.

It should be observed at the outset that the Sri Lankan government's attempts to undermine the LTTE and to impose the devolution package upon the Tamils is a clear violation of the Tamil's right to self determination. The devolution package has not been presented to the LTTE and the Government has publicly stated that it will not talk to the LTTE. The first step for negotiated settlement is that the Government should recognize the LTTE as the sole legitimate representative of the Tamils and start to learn to deal with them. Even if the devolution package is implemented with participation of the LTTE there is nothing to prevent the provisions from being undone unilaterally by the sheer Sinhala majority.

The Sinhalese in Sri Lanka constitute not only a numerical but also permanent political majority. While it is true that under proportional representation, no single political party will enjoy a two-third majority in Parliament, the combined Sinhala political parties will

nevertheless always enjoy at two-thirds majority. Furthermore, constituting 74% of the entire population, the Sinhalese are able unilaterally to modify or abrogate the whole body of the present proposals. It should be remembered that the Sinhala Only Act, the 1972 Constitution and the 1978 Constitution were adopted over the objections of the Tamil nation.

Political scientists and constitutional lawyers have translated these concerns and ideals into an institutional concept known as Consociational Democracy defined by concurrent majorities and power sharing at the centre.

In Belgium, under the 1970 constitution the cabinet must consist of equal numbers of Dutch speaking and French speaking ministers. In the Netherlands Antilles, in order to moderate the separatist tendency of Aruba, an over-representation of Aruba in the Federal Chamber was introduced, coupled with a two-third majority for constitutional change.

The significance of constitutional arrangements is recognised in the U.S. brokered agreement for Bosnia-Herzegovina. According to the Agreed Basic principles, two thirds of the members of the proposed parliament and the proposed presidency will be elected from the territory of the Bosnian Croatian Federation and one third form the territory of the Republic Srpska. All parliamentary actions will be by majority vote provided that the majority included at least one third of the votes from each entity. Similarly it is also proposed that all Presidential decisions will be taken by majority vote, provided however, that if one third or more of the members disagree with the decision to be disruptive of a vital interest of the entity or the entities from which the dissenting members were elected, the matter will be referred immediately to the appropriate entities' parliament. In any such parliament any conference, the dissenting position gets two-thirds of the votes, then the challenged decision will not take effect.

In Mrs. Kumaratunga's proposals, the concepts of concurrent majority rule and power sharing at the centre are conspicuous by their very absence.

Mrs. Kumaratunga's proposal's life span will be solely dependent upon Sinhalese benevolence. The lessons of history and basic prudence do not allow the Tamils to put themselves in such a vulnerable position, especially after the sacrifice of so many lives. History will not forgive us if we do. Thus, if the "Devolution Proposals" truly become a step towards terminating the conflict, it must go beyond the present proposals' provisions for a concurrent majority rule and parity at the centre.

Kumaratunga's proposals also rupture the territorial integrity of the Tamil homeland. The proposals state that the currently North Eastern province will be re-demarcated.

The "Devolution Proposals" are silent about specific changes that the boundaries of the devolved unit will undergo. By contrast with Belgium where the established boundaries can only be changed by a special two-thirds majority vote in parliament combined with a

majority of votes within each linguistic group, the boundaries that will be established for the Northern and Eastern regions will be liable to unilateral alterations by the Sinhala dominated centre.

Thus it is not only enough that the Northern region should comprise the existing Northern and Eastern provinces, but also provisions must be made that the region's boundaries may not be changed without the consent of the respective Council.

It is important to bear in mind that the conflict in the island of Sri Lanka was not caused by the way that power was distributed between the centre and the regions. Indeed, as Prof. K.M. de Silva of the University of Peradeniya observed recently, there was no enthusiasm for devolution in the Sinhalese areas of the country. The current Sri Lankan representative to the United Nation, Hon H.L. de Silva, observed that the "federal system is much too expensive a luxury for a small state. A unitary system makes for the avoidance of unnecessary expenditure and consequent waste, prevents the duplication of establishment cost that is necessarily involved when creating regional governments with recruitment machinery... a two tiered government structure may be too great a burden for such a state". This view was corroborated by the economist and banker, Dr. N.U. Jayawardena.

The crux of the matter is that the island of Sri Lanka is inhibited by least two distinct nations, the Sinhalese and the Tamils. The Muslims have a separate identity though they have not made a claim for nationhood. The current conflict has resulted from exclusion of the Tamil nation by the Sinhalese from the political power process. Unfortunately, the Colombo political establishment lacks the courage or candor to admit this truth. The denial and deception on the part of Colombo political establishment are not merely self defeating but they hinder all prospects for a negotiated settlement that will squarely address the cause of the conflict. Recognition of this simple truth, namely that the island of Sri Lanka is inhibited by two nations who have the right to nationhood will help the parties to address the cause of the conflict fairly and squarely.

Recently in addressing the conflict in Bosnia Herzovinia, the US administration rejected so-called Vance-Owen plan, which would have devolved power from the center; instead it proposed a settlement which took into consideration that the Bosnian conflict is not about the distribution of power between the center and the periphery, but rather a struggle for political power and territory. It proposed that "Bosnia and Herzegovina will consist of two entities, the Federation of Bosnia and Herzogovina and the Republic of Srpska".

It is refreshing that there is a growing awareness of the true cause of the conflict on the part of the Colombo establishment. The Island newspaper carried an editorial which suggested that the Sri Lankan government should confine the regional councils to the North and East only. Even if the Colombo political establishment lacks integrity to treat the conflict as one of a national nature, and insisted on dealing with it by way of a "Regional" formula, it must acknowledge that the North Eastern is not just another council but an entity whose

function it is to protect and promote the aspirations of the Tamil nation. This involves an asymmetrical relationship of the kind that is prevalent in many parts of the world. Asymmetrical relationship between Quebec and the rest of Canada was instituted by the British North American Act, and envisaged in the Meech Lake Accord and the Charlottetown Accord.

Asymmetry normally applies to three aspects of a federation, namely to the Constituent unit, to Jurisdiction and to representation at the centre. Even through the form of asymmetry with respect to the Constituent unit is indeed envisaged by Mrs. Kumaratunga's devolution package, it provides for no jurisdictional or representational asymmetry.

The issue of asymmetry is of utmost importance and entails significant practical consequences concerning the nature of the settlement the "Devolution Proposals" seek to effect. The proposals provide for the establishment of the conference of chief ministers which is to be vested with considerable authority. Lacking asymmetrical provision, the North Eastern Council will be confined to the status of yet another ordinary body alongside the Eight Sinhala Councils. In other words the Tamil dominated North East Council will be reduced to a permanent minority among those entities, which will effectively bar the North Eastern Council from effective participation in the power process. Therefore, asymmetry should be regarded as an indispensable first step toward any meaningful settlement. The proposed Northern Council must be much more than an ordinary regional council; it must genuinely express, enact and represent the aspirations of the Tamil Nation. Any thing less than that is heresy and stands no chance.

When the political proposals were converted into legal formulation, changes were created, so that the already defective proposals were made even more untenable. These changes included the role of Buddhist clergy in the political affairs of the country which sounds a death knell to secularism and caters to the growing Buddhist fundamentalism in the island of Sri Lanka; dissolution of the regional council under the guise of a direct threat to the unity of the country. There is a saying in my language that "Kaluthai theinthu Katterumbu snathu". If I put it in English, the devolution proposals which initially was a donkey on translation to legal formula, become an ant.

The changes that have been made to the package follow the pattern of deals made to Tamils historically where every agreement is either abrogated or changed, and points to a fundamental problem in Sri Lanka. The fundamental problem facing Mrs. Kumaratunga is that the Sinhala establishment does not want to give any power to Tamils. Since it cannot be presented to international community the government goes through a public relations exercise which in effect makes the government position dishonest.

As the current situation demonstrates, a negotiated settlement may

become feasible only with active participation of the international community. The rationale is that the distrust between two parties is too deep, as such effective communication is impossible in the absence of an international mediator. LTTE has consistently said that it welcomes international mediation. But unfortunately recently the Sri Lankan foreign minister said, even after loss of 50 000 people and the fact that the conflict has gone on for 12 years, they are mature enough to resolve the conflict. This is a childish and unfortunate attitude; for the government to assume this kind of attitude and arrogance will only serve to perpetuate the conflict.

It is high time the international community becomes aware of its moral responsibility in this regard. The Tamils' behaviour in the conflict grows out of real conditions. It should be remembered that they have been living in a continual state of war for over ten years now. It should also be recognised that the Tamils are deprived by the Sri Lankan Government of the most essential, most elementary rights and dignities. It should be borne in mind that unlike the Sri Lankan Government, LTTE which currently administers a de facto state does not have the luxury of an apparatus to rely on.

A recognition of the above realities along with the moral incentives that the international community has at its disposal will enable it to exercise influence over the parties and the final outcome of the conflict. Supplying the Sri Lankan Government with more aid than it had asked for and remaining passive observers of the Sri Lankan Government's calculated genocidal attacks, while at the same time maintaining a critical and hostile attitude towards the victim, are not policies that add to the dignity of the victim, are not policies that add to the dignity of the international community or contribute toward a peaceful resolution. The victims' faith in the International Community's dignity, of goodness and justice should not be betrayed.

The argument that state to state relations take precedence over relations with non-state entities does not really hold water. International law and international relations have long recognised that non-state entities are legitimate actors in international life. The recognition of human rights is one example where priority is assigned to non-state entities, over states. With all this in mind, the international community should reconsider its attitude towards LTTE's legitimate campaign and find a new course of action with respect to the conflict in the Island of Sri Lanka.

As I have attempted to demonstrate the imperatives pointing in this direction are above all of a moral nature. On the legal side of the issue, it is essential to recognise that since self-determination is a legitimate and internationally legal right, LTTE in charge of a de facto state, has every right to be treated as a government. Negotiation toward the conflict's resolution should thus be conducted on what amounts to an intergovernmental basis. The international communities' efforts in trying to bring about peace in the Island of Sri Lanka will be repaid if it tries to create incentives for both parties to reenter negotiations with the above realisation in mind. ■