

# Sri Lanka - Tamil Eelam: Getting to Yes

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Sathyam Commentary, 26 October 2006

[<http://www.tamilnation.org/saty/061026gettingtoyes.htm>]

*Prefatory Note to Third Revision:* "Sri Lanka - Tamil Eelam: Getting to Yes" was first published on New Years Day, 1999 and revised an year later on 25 May 2000. Six years later, it is perhaps opportune to return to the same theme. Much has happened since 1999. But not much has changed. The conflict in the island of Sri Lanka continues and the words of Roger Fisher remain relevant -

"...One thing we know for sure: if the conflict is continuing, whatever we have been saying and doing so far has not worked..." - *Roger Fisher, Elizabeth Kopelman & Andrea Kupfer Schnieder, in Beyond Machiavelli : Tools for Coping With Conflict 1994*

As in 1999, so too seven years later in 2006, the question remains whether two peoples sitting together as equals can agree upon political structures which secure the equality of each people and which address not only the aspirations but also the concerns, the fears, and the apprehensions of each..

In the end, it is for the Tamil people and the Sinhala people to be unafraid to have a continuing, open and honest conversation with each other and in this way help mobilise a critical mass of people committed to secure justice and democracy - a democracy where no one people rule another. An independent Tamil Eelam may not be negotiable but an independent Tamil Eelam can and will negotiate. Tamils who today live in many lands and across distant seas know only too well that sovereignty after all, is not virginity. But if the people in the island of Sri Lanka are not persuaded by all that has happened during the past several decades, then yet again conflict resolution will take the form of war - directed to change minds and hearts. And then the role of symposiums and 'peace talks' may (in the words of Clement Atlee) prove m-i-n-i-m-a-l.

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## **Introduction**

During the past two decades and more, there has been no shortage of expressions of concern at the heavy toll in human suffering caused by the conflict in the island of Sri Lanka. Conflict resolution 'specialists' appear, non governmental organisations undertake behind the scene 'proximity talks', 'facilitators' surface and international calls are made for 'peace', but these efforts have dragged on without much success. At the same time there has been no shortage of conferences, seminars, and symposiums on the way forward. We have had many. A recent effort was the International Seminar Envisioning New Trajectories for Peace in Sri Lanka organized by the Centre for Just Peace and Democracy (CJPD) in collaboration with the Berghof Foundation and held in Zurich in April 2006. Some may wonder whether to continue to do the same thing and expect different results is rational.

Ofcourse, Sardar K.M.Pannikar's remarks in Principles and Practice of Diplomacy in 1956 remain relevant even today:

" It must be remembered that in international affairs things are not often what they seem to be... Behind a smokescreen of hostile propaganda, diplomatic moves may be taking place indicating a better understanding of each other's position..."

Nonetheless, the fundamental reason for the failure of past attempts to resolve the conflict may be attributed to the diametrically opposed nature of the goals that each party to the conflict seeks to achieve. These goals may be simply stated.

The Liberation Tigers of Tamil Eelam seek to establish an independent Tamil Eelam state. The Sri Lanka government is intent on securing the territorial integrity of the Sri Lanka state.

The LTTE is committed to securing independence for the people of Tamil Eelam. Sri Lanka is committed to securing rule by the majority within the confines of the existing state.

Stated in this way, the conflict may appear to be insoluble. Something will have to give. Squaring the circle may seem impossible. How then is the conflict resolution process to be taken forward?

### **To label a conflict resolution process as a 'peace process' may well cloud our thinking**

At the outset, we may need to be mindful that to label a conflict resolution process as a 'peace process' may cloud our thinking. A 'peace process' suggests that somehow everything will be solved when 'peace' is secured. We all love peace. But peace comes in many different forms. We have the peace of the graveyard as well. If it was simply peace that the Tamil people wanted they may have been well advised to willingly submit to alien Sinhala rule - many years ago.

"The would be conqueror is always a lover of peace, for he would like to enter and occupy our country unopposed. It is in order to prevent him from doing this that we must be willing to engage in war and be prepared for it." - Clausewitz quoted in *Philosophers of Peace and War, edited by Professor Gallie*

In truth, a conflict resolution process is about resolving the conflict which led to the war. The conflict was anterior to the war. The conflict that is sought to be resolved is not the war. In fact, the war itself was an attempt to resolve a conflict which had not been amenable to resolution by peaceful means. In this sense, war is a part of the conflict resolution process - a war persuades parties to reconsider their earlier positions and hopefully, move them to settle their differences.

"..The fundamental meaning of war is that it is the expression of a difference of opinion. The object of war must therefore be defined as follows: the object of war is to change the enemy's mind. This simple and almost platitudinous statement is of supreme importance and a failure to remember it has led to the most deplorable efforts..." - *Sir Stephen King-Hall in Defence of the Nuclear Age*

In a conflict resolution process, both the political and the military go hand in hand. Clausewitz was right to say that war is a continuation of politics by other means. So too was Lenin when he inverted the aphorism and declared that politics is a continuation of war by other means. And Walter Kemp too was right to conclude in 1999 -

"...many peace agreements are fragile and the 'peace' that they create is usually the extension of war by more civilised means... A peace agreement is often an imperfect compromise based on the state of play when the parties have reached a 'hurting stalemate' or when the international community can no longer stomach a continuation of the crisis. A peace process, on the other hand, is not so much what happens before an agreement is reached, rather what happens after it... the post conflict phase crucially defines the relationship between former antagonists..." - *Walter Kemp, Organisation for Security and Co-operation in Europe, reviewing 'After the Peace: resistance and reconciliation' by Robert L.Rothstein, 1999*

Sri Lanka President Chandrika Kumaratunga described her 1995 genocidal onslaught on the Tamil people as a war for peace. She was wrong not because it was not a war for peace. It was a war for peace. She was wrong because the peace she sought was the acquiescence of a conquered Tamil people to rule by an alien Sinhala majority within the confines of a single state.

Again, even during a ceasefire, the threat of a return to war underpins the so called 'peace process'. In January 2006, the US Ambassador in Colombo made one such threat. He declared -

"Through our military training and assistance programs... we are helping to shape the ability of the Sri Lankan Government to protect its people and defend its interests..... If the LTTE chooses to abandon peace....we want it to be clear, they will face a stronger, more capable and more determined Sri Lankan military. We want the cost of a return to war to be high."

The US Ambassador clearly regarded his intervention as a part of the 'peace process'. Minds are changed not only through dialogue but also through the threat of war. It may be unfortunate but in the world in which we live, the political, the economic and the military often go hand in hand.

We need, therefore, to strip ourselves of the 'peace' rhetoric adopted by the 'international community', facilitators and international non government organisations. If it is said that the path to peace is peace, it may be said with equal validity that the path to peace is also war.

The bottom line is that a conflict will be resolved only if we honestly pay attention to the deep felt differences which had given rise to the war in the first instance - deep felt differences which has led so many to give their lives and give of their lives. We need to address the conflict which had not been amenable to peaceful resolution and which had led to war. Peace is not the goal of a conflict resolution process - it is simply a result which flows from securing justice and democracy.

### **Justice, Democracy & International Law**

But what do we mean when we say 'justice' and 'democracy'? The words are beguiling enough, but 'justice' and 'democracy' mean different things to different people. Faced with finding answers, it is not surprising that we sometimes turn to international law and international normative standards. The result is that each party to the conflict then claims to have international law and international standards on its side.

The LTTE relies on the political principle of self determination and contends that this political principle, which is rooted in the democratic right of a people to rule themselves, is also a legal right in international law. But Sri Lanka, on the other hand, relies on the international law principle of the territorial integrity of existing states and asserts that the Tamil people already have the right to self determination because Tamils in the island enjoy the democratic right of universal franchise, within the framework of a Constitution which protects human rights. The LTTE replies that the practise of 'democracy' within the confines of a unitary state has led to rule by a permanent, alien, Sinhala majority.

International law experts are then drawn into the debate and the differences are refined - and 'shaded'. But the debate concerning the applicability of principle of self determination to 'peoples' within existing states, continues unabated. For Hector Gros Espiell 'the right of peoples to self- determination exists as such in modern international law' and the 1998 Barcelona UNESCO Conference declared that 'the principle and fundamental right of self-determination is firmly established in international law'. But Halim Moris raised the question whether 'self determination was an affirmative right or mere rhetoric' and has rightly asked that 'if self-determination is an internationally recognized principle, why does it not apply to the people of West Irian, East Timor, Tibet, Kashmir and other territories, as it has been applied to other colonial territories?' Rupert Emerson too was right to wonder whether "all too often self-determination is a right to be defended in lofty terms when it is politically advantageous and to be rejected when it is not" .

Wolfgang Danspeckgruber rationalised the political imperatives and declared in 2002 that "in light of the decreased readiness to recognize new states in the emerging international system it is ...important to offer new concepts ..." and the Carnegie Project on Complex Power Sharing and Self Determination declared in the same year

"... Self-determination is one of the most important principles of contemporary international law ... Equally important is respect for territorial integrity and political unity of states.. A balance has to be struck between them...This project will present and analyse novel ways of overcoming apparently insoluble self determination conflicts through complex power sharing arrangements concluded and implemented with international involvement."

Faced with reconciling the inalienable right of a people to self determination with the territorial integrity of existing states, attempts were made by some to evolve the concept of 'internal self determination'. The example of South Africa is sometimes cited as the way forward.

"The right of the South African people as a whole to self determination, as manifested in this constitution, does not preclude, within the framework of this right, recognition of the notion of the right of self determination of any community sharing a common culture and language heritage within a territorial entity in the Republic or in any other way, determined by national legislation." (*Article 234 of the South African Constitution*)

This attempt was then resisted by those who insist that self determination, if it is to mean anything at all, must mean exactly what it says - self determination means a people have the right to themselves freely choose their political status and that includes the right to secede, if they so choose. A people cannot be told: "You have the right to freely choose your political status, but you may exercise it only in the way we tell you i.e. within the territorial entity of the existing state".

Again, the constitutionalist who propounds the theory of 'internal' self determination, is compelled to confront the political reality of the power that flows through the barrel of the gun when asked: who will control the army within an 'internal self determination' dispensation? The words of John Stuart Mill, uttered 125 years ago may help to focus minds:

"Free institutions are next to impossible in a country made up of different nationalities... Above all, the grand and only effectual security in the last resort against the despotism of the government is in that case wanting: the sympathy of the army with the people. Soldiers to whose feelings half or three fourths of the subjects of the same government are foreigners, will have no more scruple in mowing them down, and no more reason to ask the reason why, than they would have in doing the same thing against declared enemies.(*John Stuart Mill: Considerations on Representative Government. London 1872*)

In truth, even a constitutional right of secession is nothing without the force of arms to back it. After all, Joseph Stalin's oppressive rule of the nations of the Soviet Union flourished under a constitution which proclaimed the right of each federal unit to secede.

## International Law & Politics

International law itself is largely dependent on state practice. After all, for many centuries, international law had denied the right of a colonial people to freedom. Eventually, colonial rulers weakened by two world wars (significantly enough, wars between themselves), were no longer able to impose their rule and the political principle of self determination began to gain reluctant recognition in international law. The truth is that even Mahatma Gandhi did not found India's struggle for freedom on the 'international law principle' of the right to self determination. If he had, he may have been met with the objection (in the 1930s) that no such general principle existed in international law.

Indeed, the British left India in 1947, not because they had suddenly awoken to the righteousness of India's struggle for freedom - and recognised the legal principle of self determination. Labour Cabinet Minister, Sir Stafford Cripps intervening on behalf of the UK government in the debate in the British House of Commons on the grant of independence to India was brutally frank -

"...The Indian Army in India is not obeying the British officers. We have recruited our workers for the war; they have been demobilised after the war. They are required to repair the factories damaged by Hitler's bombers. Moreover, they want to join their kith and kin after five and a half years of separation. Their kith and kin also want to join them. In these conditions if we have to rule India for a long time, we have to keep a permanent British army for a long time in a vast country of four hundred millions. We have no such army...." *Labour Cabinet Minister, Sir Stafford Cripps quoted in 'The Freedom Struggle and the Dravidian Movement' by P.Ramamurti, Orient Longman, 1987*

The remarks of Chief Justice P.B. Chakrabarty of Calcutta High Court, [who had also served as the acting Governor of West Bengal] concerning his meeting with Lord Atlee underline the political reality.

"When I was the acting Governor, Lord Atlee, who had given us independence by withdrawing the British rule from India, spent two days in the Governor's palace at Calcutta during his tour of India. At that time I had a prolonged discussion with him regarding the real factors that had led the British to quit India. My direct question to him was that since Gandhi's "Quit India" movement had tapered off quite some time ago and in 1947 no such new compelling situation had arisen that would necessitate a hasty British departure, why did they have to leave? In his reply Atlee cited several reasons, the principal among them being the erosion of loyalty to the British Crown among the Indian army and navy personnel as a result of the military activities of Netaji [Bose].

Toward the end of our discussion I asked Atlee what was the extent of Gandhi's influence upon the British decision to quit India. Hearing this question, Atlee's lips became twisted in a sarcastic smile as he slowly chewed out the word, "**m-i-n-i-m-a-l!**" " *Chief Justice P.B. Chakrabarty of Calcutta High Court, who had also served as the acting Governor of West Bengal quoted in Ranjan Borra, "Subhas Chandra Bose, the Indian National Army, and the War of India's Liberation," Journal of Historical Review, no. 3, 4 (Winter 1982)*

The political reality is that international law of self determination followed upon the success of struggles for freedom - and not the other way around. It is therefore not altogether surprising that even 12 years after India's independence, the UN General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples 1960 which recognised that the right of self determination was now a legal principle, failed to win the support of 9 countries viz: Australia, Belgium, Dominican Republic, France, Portugal, Spain, Union of South Africa, United Kingdom, and United States (each of whom abstained).

And we find that those who abstained from voting on the UN General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples 1960, are now engaged in attempts to limit the legal right of self determination to those earlier colonial struggles. Compelled to reconcile themselves with the success of the colonial struggles for freedom, these countries now propound the theory of 'internal' self determination and seek (in the name of stability) to preserve the territorial boundaries of the patch work states of the fourth world. The shared need to protect existing state boundaries leads them to find common cause with those to whom the colonial ruler had transferred power.

### **Armed Resistance, Terrorism & International Law**

If the international law of self determination relates to the legality or otherwise of the ends sought to be achieved by the struggle for Tamil Eelam, the international law of armed resistance and terrorism relate to the legality of the means adopted by the struggle. Here too both the LTTE and Sri Lanka claim that international law is on their side.

The LTTE contends that Sri Lanka's resort to arms to quell a struggle for self determination is unlawful. Sri Lanka asserts that it is entitled, in law, to use armed force to secure its territorial integrity.

The LTTE replies that its own resort to arms is lawful because it was a last resort against the oppressive rule by a permanent Sinhala majority within the confines of an unitary state - and points out to government sponsored pogroms in 1958, 1961, 1974 and 1977 and again in 1983 and refers to the conclusion of Paul Sieghart in 1984

"Communal riots in which Tamils are killed, maimed, robbed and rendered homeless are no longer isolated episodes; they are beginning to become a pernicious habit."  
*Paul Sieghart Q.C. in his Report of a Mission to Sri Lanka on behalf of the International Commission of Jurists and its British Section, Justice, March 1984,*

The LTTE then points out to the series of broken pacts and refers to the conclusion of Professor Marshall Singer in 1995

"...One of the essential elements that must be kept in mind in understanding the Sri Lankan ethnic conflict is that, since 1958 at least, every time Tamil politicians negotiated some sort of power-sharing deal with a Sinhalese government - regardless of which party was in power - the opposition Sinhalese party always claimed that the party in power had negotiated away too much. In almost every case - sometimes within days - the party in power backed down on the agreement..." *Professor*

*Marshall Singer, at US Congress Committee on International Relations Subcommittee on Asia and the Pacific Hearing on Sri Lanka November 14, 1995*

It points out that the Sixth Amendment to the Sri Lanka constitution outlawed the parliamentary political struggle for a separate state and that this was an additional justification for recourse to the armed struggle.

The LTTE asserts that there is an armed conflict in the island to which the Geneva Conventions apply, that Sri Lanka has committed gross and systematic violations of the humanitarian laws of armed conflict and genocide, and contends that this is state terrorism.

Sri Lanka insists that the conflict is simply an internal disturbance, within its territorial boundaries, refuses to formally recognise the applicability of the international humanitarian law of armed conflict and refuses to acknowledge, for instance, that it is obliged (by that law) to take prisoners of war. Sri Lanka argues that the resort to arms by the LTTE constitutes terrorism. It points out to violations by the LTTE of the humanitarian law of armed conflict. And in 1998 Sri Lanka proscribed the LTTE by recourse to Emergency Regulations under the Public Security Act (though this was later rescinded in 2002 as a prelude to the Norwegian sponsored peace talks).

The United States has listed the LTTE as a terrorist organisation. The United Kingdom followed suit in 2001. And the European Union and Canada followed in April 2006. But in each case, the categorisation was made by the executive wing of the government concerned. And the laws under which the executive wing so decided, precluded the courts from themselves finding, on the facts, whether the LTTE is a terrorist organisation or not.

Though judicial review is not excluded, such review of the action taken by the executive wing is limited to determining whether the executive had acted arbitrarily or wholly unreasonably. And, the courts in the U.S.A., in Canada (and, for that matter, in the United Kingdom) have always shown a great reluctance to interfere with executive discretion in the area of 'claimed' national security.

Courts take the view that where 'national security' is threatened, executive discretion relating to the very life of the nation is involved and this is not a matter where the judiciary should supplant the view of the executive. It is said that the Constitution has empowered the executive (and not the judiciary) to decide matters relating to national security. Again, it is urged that the information on which the executive acted, cannot be made available to a court, to be tested by cross examination and a decision made according to law - because to do so would be to put at risk the national security apparatus of the state, which must function in secrecy.

These are admittedly procedural questions. But it is procedural law that creates the frame within which justice may be done. It has been rightly said that 'procedural law is not the humble hand-maiden of substantive law but that it appears as an arsenal on the frontier of the Constitution to secure the efficacy of the rights of man in all that touches justice'. Procedural law is civilisation's substitute for private vengeance and self-help. Where procedural law prevents Courts from examining all the facts and



determining for themselves whether the categorisation of an organisation as a terrorist organisation is lawful then we fail 'to secure the efficacy of the rights of man in all that touches justice' and we undermine that which is 'civilisation's substitute for private vengeance and self-help'.

Again, even apart from the procedural question, there remains the substantive question: what is terrorism? Is it that there are no circumstances under which a people ruled by an alien people can, in law, resort to arms to secure freedom? If there are such circumstances what are the circumstances? Do we not deliberately obfuscate when we conflate the words 'terrorism' and 'violence'? The war against Hitler was violent but it was not terrorism. Again, presumably the war against Saddam Hussein was violent but it was not 'terrorism'. Do we pay attention to the conclusion in the Oxford Concise Dictionary of Politics (2nd edition) that terrorism is a

".. term with no agreement amongst government or academic analysts, but almost invariably used in a pejorative sense, most frequently to describe life-threatening actions perpetrated by politically motivated self-appointed sub-state groups. But if such actions are carried out on behalf of a widely approved cause, say the Maquis seeking to destabilize the Government of Vichy France then the term 'terrorism' is avoided and something more friendly is substituted. In short, one person's terrorist is another person's freedom fighter."

Or do we share the view of expressed in April 2004 by Agner Fog in "Why terrorism doesn't work" -

"...Since there are more than a hundred different definitions of terrorism... we have to admit that the concept of terrorism is a rhetoric device used for condemning one's enemies rather than a scientifically definable category.."

But at the same time, do we disregard the words of Mira Banchik in International Criminal Court & Terrorism -

"Statements like "one man's terrorist is another man's freedom fighter" hinder the accomplishment of reaching a useful, and much needed, definition of terrorism. They have become a cliché and an obstacle to efforts to successfully deal with terrorism. If nothing else, these statements lead to the questionable assumption that the ends justify the means."

Having said all that, since 'terrorism' is a word used in legal instruments, the rule of law demands a definition - otherwise we will enter the arena of arbitrary decision making reminiscent of the times when equity was measured by the length of the Lord Chancellor's foot. And that would be to adopt an Alice in Wonderland approach to the law and follow in the footsteps of Humpty Dumpty -

"'When I use a word,' Humpty Dumpty said in a rather scornful tone, 'it means just what I choose it to mean, neither more nor less'. 'The question is,' said Alice, 'whether you can make words mean so many different things'. 'The question is,' said Humpty Dumpty, 'which is to be master - that's all'. " (*Lewis Carrol - Through the Looking Glass, c.vi*)

Let us then return to the question: what is terrorism? There is a need to make two matters clear at the outset.

The first is that in international law, terrorism is concerned with acts committed during peace time and not with acts committed during an armed conflict. Acts of terrorism are the peacetime equivalents of a war crime. Deliberate attacks on civilians, hostage taking and the killing of prisoners in a 'peace time' situation are terrorist acts. But in an armed conflict situation these same acts are war crimes and breaches of the Geneva Conventions.

The second is that terrorism is concerned with means and not with ends. The ends may be laudable but the means that are adopted may be terrorism. A state which seeks to secure its stated aim of 'democracy' by killing civilians and prisoners, as Pinochet attempted in Chile, commits acts of terrorism. Again the alleged actions of Al Queda in targeting civilians would amount to acts of terrorism if the actions were in a non armed conflict situation. If the same acts were committed during a war they would amount to war crimes.

The view of terrorism expert A. Schmid in a 1992 report for the then UN Crime Branch makes good sense.

"If the core of war crimes - deliberate attacks on civilians, hostage taking and the killing of prisoners - is extended to peacetime, we could simply define acts of terrorism as 'peacetime equivalents of war crimes'."

And in the end all good law is sound common sense. If then acts of terrorism are the peace time equivalent of war crimes, how do we determine whether that which exists in Sri Lanka is a 'peace time' situation or an 'armed conflict' situation? What is an armed conflict? Article 1.1 of Protocol II of the Geneva Conventions provides that conflicts

"which take place in the territory of a High Contracting Party between its armed forces and **dissident** armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol"

are armed conflicts covered by Protocol II to the 1949 Geneva Conventions. The LTTE is an organised armed group, under responsible command, exercising such control over a part of the island of Sri Lanka so as to enable it to 'carry out sustained and concerted military operations'. On these facts, it is self evident that the conflict between Sri Lanka and the LTTE is an armed conflict within the meaning of the Geneva Conventions. The conflict in the island is not as sometimes claimed by Sri Lanka simply an 'internal disturbance'. Article 1.2 of Protocol II to the 1949 Geneva Conventions provides that the

'Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts'

Again, it is self evident that the conflict in the island of Sri Lanka, which has admittedly extended for a period of more than 15 years can hardly be described as a riot, or a series of isolated and sporadic acts of violence.

Reason suggests therefore that the branding the LTTE as a 'terrorist' organisation has more to do with the strategic interests of the countries concerned than with the provisions of international law. We may want to join with Dr. Johan Galtung, founder of the International Peace Research Institute, Oslo, Dr. Hans R. Klecatsky, Professor of Public Law, former Minister of Justice of Austria, Dr. Auguste-Raynald Werner, Professor em. of International Law and Permanent Representative of the I.P.O. to the United Nations in Geneva. and many others and call for 'the liberation of political language along with the liberation of peoples'

"...The peoples of the world are engaged in a fundamental series of struggles for a just and peaceful world based on fundamental rights now acknowledged as sacred in a series of widely endorsed international legal conventions.... It is a cruel extension of the terrorist scourge to taunt the struggles against terrorism with the label "terrorism". We support these struggles and call for the liberation of political language along with the liberation of peoples. Terrorism originates from the statist system of structural violence and domination that denies the right of self-determination to peoples..." - *The Geneva Declaration on the Question of Terrorism, 1987*

### **We need to go beyond international law in our search for justice and democracy**

International law (and state practise) will ofcourse, make its slow (and measured) progress to clarifying these issues relating to self determination, armed resistance and terrorism. At the same time we may need to recognise the truth of the assessment made by Dr Colin J Harvey in September 2000

"International law is political. There is no escape from contestation. Hard lessons indeed for lawyers who wish to escape the indeterminate nature of the political. For those willing to endorse this the opportunities are great. The focus then shifts to interdisciplinarity and the horizontal networks which function in practice in ways rendered invisible by many standard accounts of law. This of course has important implications for how we conceive of law's role in ethnic conflict. We must abandon the myth that with law we enter the secure, stable and determinate. In reality we are simply engaged in another discursive political practice about how we should live..." *(Dr Colin J Harvey, Assistant Director, Human Rights Centre, School of Law, Queen's University of Belfast in Ethnic Conflict Research Digest (ECRD) Volume 3, Number 2 September 2000)*

The political reality is that the claims of the Tamil people and the Sinhala people for justice and democracy, will not be determined by an international court of competent jurisdiction - because no such court exists. In any case, non state nations do not 'become' states as a result of a binding judgement delivered by a court of law on the legality of their claims. It was perhaps this, which led James Crawford, currently Whewell Professor of International Law in the University of Cambridge to comment in 1979:

"Traditionally, the criteria for statehood have been regarded as resting solely on considerations of effectiveness. Entities with a reasonably defined territory, a permanent population, a more or less stable government and a substantial degree of independence of other States have been treated as States. Other factors, such as permanence, willingness to obey international law, and recognition, have usually been regarded as of rather peripheral importance." (*James Crawford - The Creation of States in International Law - Clarendon Press, Oxford, 1979*)

A defining characteristic of a state is that it enjoys a monopoly of legitimate coercive power within its territorial boundaries. History shows that states have acquired this monopoly of legitimate coercive power, by political struggle (often armed struggle) and not by judgements of courts of law. The countervailing claims of the parties to the armed conflict in the island of Sri Lanka will not be decided in the playing fields of the courts of justice in New York, New Delhi nor for that matter at the sessions of the United Nations Commission on Human Rights (now the Human Rights Council).

Sufficient has been said to show that we need to go beyond international law in our search for common ground in the conflict in the island of Sri Lanka. That is not to say that an appeal to law, justice and equity does not influence. It does influence because it is also an appeal to the essential goodness in people, to their humanity. It is therefore, an appeal not without inherent power. But, it will not be out of place to remind ourselves of something that Martin Woolcott said in 1993 -

"....Nobody involved in this war, in fighting it or in trying to stop it, was born yesterday. What matters most in any agreement, is territory, what matters secondly is international legitimacy, what matters thirdly are constitutional arrangements and what matters least are human rights provisions..." (*Martin Woollacott writing on the conflict in Bosnia in the Guardian, September 1993*)

Neither the Sinhala people nor the Tamil people were born yesterday.

### **BATNA - Best Alternative to a Negotiated Arrangement**

If recourse to international law will not resolve the conflict in the island of Sri Lanka, we may also need to learn from the failures of 'peace' talks from Thimpu to Oslo. Those who do not learn from the past are condemned to relive it - until they learn.

Some acronyms help to focus minds on the obvious. BATNA is one of them. It was coined by Roger Fisher, the best selling author of *Getting to Yes*. BATNA stands for the **B**est **A**lternative to a **N**egotiated **A**rrangement. A party to a conflict will negotiate in good faith only if it believes that such negotiations will yield a result better than its BATNA. Otherwise, it will simply use the negotiation process to either reduce its opponent's BATNA or increase its own BATNA.

The Northern Ireland peace process serves as an useful illustration. For the United Kingdom, its '**B**est **A**lternative to a **N**egotiated **A**rrangement', was to continue facing IRA attacks in the mainland, including London and Manchester with rising insurance premia and the costs of maintaining a military presence in Ulster. If this BATNA was preferable to anything that was achievable at the negotiating table, then the UK would

have insisted that the Northern Ireland question was an internal matter and would have continued to rely on its armed forces to annihilate the IRA. Again for the Sinn Fein, its 'Best Alternative to a Negotiated Arrangement' was to continue with the effort to rid Northern Ireland of British rule and of the better equipped and stronger British Army. If this BATNA was preferable to anything that was seen as achievable at the negotiating table, then Sinn Fein may have yet participated in the talks, but not in good faith.

Each party will need to determine for itself whether its BATNA is preferable to anything that may be achievable at the negotiating table. This means not only that each will need to make a careful assessment of each others BATNA but also an equally careful assessment of the spectrum of possible solutions which may be achievable in a negotiating process. It is only then that each may be able to make an informed decision on the question whether its BATNA is preferable to anything that may be achievable at the negotiating table.

If a party takes the view that its BATNA is preferable to anything that may be achievable at a negotiating table, then the talking process will be a sham and simply a 'tactic'. The talking process will be used by that party, simply to justify and secure legitimacy for the stand that it has already taken - and reduce its opponent's BATNA.

### **Thimpu talks**

That which happened, at Thimpu in 1985 is illustrative. At Thimpu, the Tamil militant movement secured a measure of legitimacy by participating in direct talks with a specially appointed Minister of the Sri Lanka government. Significantly, the Tamil delegation declined to submit any constitutional proposal for the resolution of the conflict. They feared that to have done so would have meant a disavowal of the demand for an independent Tamil Eelam state and that such disavowal would be used by Sri Lanka to undermine the struggle for which so many had given their lives. The Tamil delegation suggested instead a framework for talks which have now come to be known as the Thimpu principles i.e.

recognition of the Tamils of Ceylon as a nationality  
recognition of the existence of an identified homeland for the Tamils in Ceylon  
recognition of the right of self determination of the Tamil nation

The Tamil delegation called upon Sri Lanka to submit proposals which recognised these principles. The Sri Lanka government by making proposals on the basis of establishing District Councils, sought to create the impression that it was acting 'reasonably', but without causing prejudice to its own objective of securing the territorial integrity of the Sri Lanka state and rule by the majority at the centre. Its concern was that any relaxation in central control will lead to eventual separation - sooner rather than later.

Both Sri Lanka and the Tamil militant movements were reluctant participants in the Thimpu 'negotiating' process. In truth, there were no negotiations, but set speeches delivered 'at' one another. The parties to the talks had been frog marched to Thimpu under pressure from Rajiv Gandhi's India. Perhaps, not unnaturally, each party directed its efforts to ensure that when the talks failed, the other party would be

blamed for the breakdown. In this way, each sought to ensure that the renewed resort to arms by each, would secure added support.

### **Premadasa Talks & Kumaratunga Negotiations**

It was the same process that was played out again during the Premadasa talks in 1989/90. At an International Alert sponsored seminar in Switzerland in 1996, Bradman Weerakoone who had functioned as Presidential Adviser to Sri Lanka President Premadasa was forthright in his comments about the talks:

"Premadasa realised that 'the moment of truth' would arrive when the last of the IPKF soldiers left the North East. Who would fill the law and order gap thereafter? The Sri Lanka army, who had been in barracks for the years since July 1987, or the LTTE 'boys' who had been preparing themselves for the 'liberation of their motherland' ... (Premadasa's) final option could have been straight out of Machiavelli or more likely Kautilya. That was that after the IPKF was out of the country he would turn the refreshed and renewed Sri Lankan forces on the weak LTTE, rout them completely, eliminate Prabhakaran and re-establish law and order, good governance, peace and prosperity over the North East and the whole of Sri Lanka... I am inclined to think that in his final grand design this last option would have been very appealing... Why were.... critical political issues left to drift and not addressed in the decisive and speedy manner that was one of Premadasa's characteristics? I am now increasingly inclined to the view that he simply did not want to do so."

President Kumaratunga was equally frank about the 1994/95 negotiations when she declared truthfully on 20 August 1995:

"I have studied and acquired considerable knowledge on guerrilla warfare when I was a student in Paris, and we knew how they would behave. We conducted talks on the basis that the LTTE would not agree to any peaceful settlement and lay down arms." (*Sinhala owned Sri Lanka Sunday Times, 20 August 1995*)

Later, she talked of 'devolution' and waged war for 'peace' to 'militarily weaken' the LTTE - if necessary, by attacking the Tamil civilian population and in this way reduce LTTE's BATNA i.e. its ability to resist the Sri Lanka armed forces. The LTTE, by its determination sought to demonstrate that the Tamil armed resistance cannot be destroyed and that the mounting cost of the war will continue to weaken Sri Lanka's material resources and the man power of its armed forces and so reduce Sri Lanka's '**Best Alternative to a Negotiated Arrangement**' i.e. to carry on the war. And it is important to recognise that it is this which led to the Norwegian Peace Process.

### **Norwegian Peace Process - the beginnings**

What had changed from 1996/1997 to 2002 was the balance of power between the LTTE and Sri Lanka.<sup>1</sup> The meetings of the LTTE and Sri Lanka with the Norwegian mediators started in 2000 and were the direct result of the military victories by the LTTE in 2000 commencing with the fall of Elephant Pass in April 2000. The US Under Secretary of State, Thomas R. Pickering's visit to Sri Lanka and his comments at the Press Conference in Colombo on 29 May 2000 reflected the impact of the LTTE victories.

**Q:** Ms. Vandana Chopra, VOA: Does the United States want India to go in for military intervention?

**A:** Pickering: I think that's a situation in which India has already made clear its position -- that it doesn't intend to. And I think, as I said a moment ago, we defer to India as a country of regional **consequence** to make its own decisions on these issues.

**Q:** Mr. Dilip Ganguly, AP Colombo Bureau Chief: If it comes to evacuating the (Sri Lanka) troops-- in the event it happens -- will the Indian assistance be forthcoming? Did you get that idea?

**A.**Pickering: I have the impression that the Indians are prepared to be helpful, provided that **both** parties are prepared to provide security assurances that the Indians will not become a party to fighting by doing so. And I can understand India's concern about not wanting to become a third party in the conflict, if I could put it that way. "

The US based Centre for Strategic & International Studies commented in June 2000

"The dramatic advance of the Liberation Tigers of Tamil Eelam (LTTE) into the Jaffna peninsula, the heart of the Tamil area, is a shattering blow for Sri Lanka's President Chandrika Kumaratunga and **raises concerns of regional instability for India.**"

In October 2000, Miriam Young, of the US based Asia Pacific Center for Justice and Peace added

"...it would be helpful for the U.S. to find a way to open a channel of communication with the LTTE, as it has done with other guerrilla groups in the past. The willingness of many countries to concur with the Sri Lankan government's demonization of the LTTE will not lead to an environment conducive to negotiations, and Washington should avoid such a one-sided approach..."

At the same time the offensive by the LTTE had taken its toll on the LTTE itself. It may not have had sufficient human resources to re capture the entirety of the Jaffna peninsula and more importantly hold it in the face of future attacks by Sri Lanka with possibly Indian intervention.

This was the background in which the LTTE leader met with the Norwegian Peace envoy in November 2000 and the LTTE called for de escalation of the armed conflict. This was followed by a proposal for Memorandum of Understanding presented by Raymond Johansen, Norwegian Deputy Minister of Foreign Affairs, to Mr.V.Pirabhakaran, Leader of LTTE.

But even at that time Sri Lanka refused to enter into a ceasefire. Sri Lanka Foreign Minister, Lakshman Kadirgamar famously remarked in December 2000-

" As the Foreign Minister of Sri Lanka, I do not welcome statements made by people outside the country, even though they come from very friendly countries, prescribing remedies for our problem....The LTTE are not babies conducting a war by accident, but are capable of coming for talks while continuing fighting.."

Clearly Sri Lanka at that stage took the view that it had a better alternative than to negotiate. In the early hours of the morning on the 24th April 2001, thousands of Sri Lankan troops of the SLA's 52, 53 and 55 Divisions, in a major show of strength, supported by heavy artillery, multi-barrel rocket fire and aerial and naval bombardment, launched a major offensive assault against the LTTE positions in southern Jaffna. The offensive was repulsed by the LTTE and the Sri Lanka army suffered yet another major debacle. And on 24 July 2001, the LTTE launched a massive attack on Katunayake Airport which destroyed 18 aircraft and the government estimated the initial damage cost at 539.3 million US dollars.

On 6 November 2001, Sri Lankan Foreign Minister, Mr. Lakshman Kadirgamar who had earlier said that he did not 'welcome statements made by people outside the country...prescribing remedies for our problem' now blamed 'a lack of political will for the collapse of a bid by Norway to end his country's 18-year ethnic war.' On 9 November 2001, he said that the military operation, launched against the LTTE in April, was a mistake which had caused a set-back to the Norwegian- facilitated process for peace talks. He did not elaborate on whose mistake it was - and how it had come about.

Meanwhile, defections by Ministers in her Cabinet, resulted in President Kumaratunga's SLFP led government losing its majority in Parliament and in the ensuing general election in December 2001, a new government led by the United National Party with a mandate to end the war and a new Prime Minister was elected. The debacle suffered by the Sri Lanka army in April 2001 (coming on top of the earlier Elephant Pass loss) and the successful LTTE attack on Katunayake forced a rethink and 'prompted' the new (West leaning) UNP government to reciprocate the offer made by the LTTE and enter into a Ceasefire. The Ceasefire was signed between the LTTE and new Government in February 2002.

Sri Lanka was forced to the negotiating table because the Sri Lankan army had suffered severe defeats and could no longer exercise effective control of the Tamil homeland. And Sri Lanka was facing financial bankruptcy. Various estimates put Sri Lanka's military expenditure to around Rs. 55 billion. Prime Minister Ranil Wickremasinghe was to remark jokingly later that the LTTE had captured weapons from the Sri Lankan armed forces which Sri Lanka had purchased on credit - and that Sri Lanka was still paying for those weapons!

### **Norwegian sponsored Peace Talks & its Collapse**

The Peace Talks which commenced in Thailand in September 2002 was a further illustration of operation of the BATNA principle. Sri Lanka could no longer carry on the war without more extensive support from the outside world. And that support came with a price tag - and that was to fall in line with the foreign policy dictates of those from whom you seek support.

As for the LTTE it did not have the cadres and the material resources to carry forward its military campaign and capture and hold Jaffna. At one level, it is true to say that it was because the LTTE was strong that Sri Lanka agreed to a ceasefire. At the same time it is also true that the LTTE was not strong enough to continue with the war and that is why the LTTE agreed to ceasefire.



And at that stage, the best alternative to both Sri Lanka and to the LTTE was to agree to 'negotiate'. And that is why they agreed to the Ceasefire. As the saying goes, it takes two to tango.

But each of the parties to the conflict came to ceasefire with different ends in mind. Sri Lanka was seeking to use the 'peace process' to secure continued rule by a permanent Sinhala majority within the confines of the Sri Lankan state and the LTTE was seeking to use the 'peace process' to advance its struggle for an independent Tamil Eelam.

Given this it was not surprising that something had to give. And it did. The 'negotiations' which commenced in September 2002, collapsed seven months later in April 2003 with the LTTE suspending its participation. The collapse showed yet again that a party to a conflict will negotiate in good faith only if it believes that such negotiations will yield a result better than its BATNA i.e. its **Best Alternative to a Negotiated Arrangement**.

The decision to hold the Donors Conference in New York (where the LTTE was banned) and the plan to require the LTTE to start decommissioning its arms led the LTTE to conclude that further negotiations would not yield a result better than its BATNA.<sup>2</sup> In this instance, for the LTTE, the **Best Alternative to a Negotiated Arrangement** for the time being was not armed conflict but a continuation of the ceasefire in a 'no war, no peace' situation. And the resulting 'shadow war' continues to the present day and has gathered momentum (and lost much of its shadowy character) since the election of Sri Lanka President Mahinda Rajapakse.

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### **What lessons can we learn from the failures of the 'peace talks' from Thimpu to Oslo?**

What lessons can we learn from the failures of the 'peace talks' from Thimpu to Oslo?

One major lesson that we can learn is that a 'gradualist', step by step process masked as a 'confidence building' has not worked. Unless we have agreement in clear terms as to end goals, even where one side makes 'concessions', the other side will perceive the shift as simply a tactic to regroup and that in reality there is no shift in the final goal. Efforts are then made by each party to secure that any interim 'arrangement' that may be agreed upon does not provide a platform for the other party to achieve its long term goals. The fate that befell the "interim self governing authority"(ISGA) proposal by the LTTE is a case in point. Each side questions the good faith of the other and accusations are made that the other side cannot be trusted. The history of earlier broken pacts and negotiation break downs is then regurgitated to buttress the allegations of bad faith and the attempt to resolve the conflict ends in the same way as the earlier efforts - in failure.

We cannot go forward by being clever. Resort to subterfuge brings a similar response from the other side. Peter Senge in his foreword to Adam Kahane's "Solving Tough Problems" wrote -

"...Few of us do not shudder at the prospect of a continuation of today's escalating reliance on force... We are unable to talk productively about complex issues because we are unable to listen. ... Listening requires opening ourselves. Our typical patterns of listening in difficult situations are tactical, not relational. We listen for what we expect to hear. We sift through others' views for what we can use to make our own points. We measure success by how effective we have been in gaining advantage for our favored positions. Even when these motives are covered by a shield of politeness, it is rare for people with something at stake truly to open their minds to discover the limitations in their own ways of seeing and acting.

Opening our minds ultimately means opening our hearts. The heart has come to be associated with muddled thinking and personal weakness, hardly the attributes of effective decision makers.. The path forward is about becoming more human, not just more clever. It is about transcending our fears of vulnerability, not finding new ways of protecting ourselves. ...because the only progress possible regarding the deep problems we face will come from opening our minds, hearts, and wills.

In Tamil too the word 'manam' - 'மனம்' straddles both mind and heart. We cannot dig deep with the mind alone. We need our heart as well.

"..The strong man holds in a living blend strongly marked opposites. Not ordinarily do men achieve this balance of opposites. The idealists are not usually realistic, and the realists are not usually idealistic. The militants are not generally known to be passive, nor the passive to be militant. Seldom are the humble self assertive or the self assertive humble. But life at its best is a creative syntheses of opposites in fruitful harmony.... We must combine the toughness of the serpent and the softness of the dove, a tough mind and a tender heart..." *Martin Luther King Jr. in A Testament of Hope : The Essential Writings and Speeches of Martin Luther King, Jr*

The path forward is not about being clever. It is about being more human. We need to dig deep to find common ground. The Tamil people and the Sinhala people need to talk to each other. And we need to listen to each other. Each people will need to genuinely listen, not only to the other's aspirations but perhaps more importantly to their genuine fears, legitimate concerns and vulnerabilities.

### **Need to look beyond stated positions to the interests of the parties to the conflict**

The story about the two professors Ury and Fisher is a not unfamiliar to many. It is a story. There were these two professors in a room. One wanted the windows open and the other wanted the windows closed. So there was this big dispute about open - and close. Ury insisting that the window be open and Fischer saying no, it must be closed. The conflict went on for sometime and Fisher eventually said let us sit and talk about this. The response he got was "What is there to be talked about - I want the window open, you want it closed. So what is there to talk about?" . And then Fisher asks, 'Yes, OK - but why is it you want the windows open?' So, behind your stated position what is your interest?. And Ury replied 'I want it open because I like the fresh air and the breeze and so on.' Ury then asked 'Yes, but, then why do you want it closed?' Fisher replied 'Because papers are flying around, I cannot control it.'

And then the two of them jointly started examining ways in which they could get a win-win solution so that Ury could have the fresh air and Fisher would not have his papers flying about. They discussed the idea of positioning the tables differently, then putting up screens and so on and so forth. But the point of the story was not so much about the end result – it was about the fact that the two parties to a conflict were able to jointly engage in a dialogue and the synergy that was created resulted in solutions which neither of them may have thought of on their own.

To point out all this is to, hopefully, build a platform for meaningful dialogue from which we may go forward. The political reality is that any peaceful attempt at conflict resolution will need to secure a win-win result. However 'win-win' is not some modern day mantra which when repeated often enough brings peace. The Tamil claim for independence and Sri Lanka's insistence on its territorial integrity appear mutually exclusive. How then do we move towards a win-win result?

In the case of the conflict in Sri Lanka we may want to look behind the stated positions of the LTTE and Sri Lanka. Stated positions do not materialise from thin air. Behind the stated positions of the parties, are the interests that these stated positions are intended to secure. There is a need to understand these interests.

We cannot reach a win-win result without first understanding what 'win' means to the other party. Each party to the conflict needs to understand the genuine interests that the other party seeks to protect. This may take time, care and patience but clearly there is a need for each party to understand the other before attempting to make itself understood. It is only when each party to the conflict acquires a clear understanding of the interests that the other party seeks to protect that the parties can together move to examine a win-win resolution of the conflict.

Once these interests are clearly understood, the reasoning that led to the stated position may have to be revisited with a view not to judge but to discuss new frames. A win-win approach may then be directed to create, in a step wise fashion, structures where the actual interests of each party - without exception, and without compromise - may be secured. A win-win solution is not a half way house where neither side wins. A win-win solution is directed to secure the interests of both parties - after all, that is why it is a win-win solution, and not a lose-lose solution or a lose-win solution.

Any Tamil who seeks to persuade the Sinhala people of the justice of the Tamil cause must first genuinely try to understand the reasons for the stand taken against Tamil Eelam by successive Sri Lanka governments and by the Sinhala people. By the same token, any Sinhalese who seeks to persuade the Tamil people of the justice of the Sinhala stand must first genuinely try to understand the reasons for the demand for Tamil Eelam by the Liberation Tigers of Tamil Eelam and the Tamil people.

Here there is a need to avoid the trap of separating the Sri Lanka government from the Sinhala people and the LTTE from the Tamil people. The Sinhala people are not a foolish people misled by designing politicians and political bhikkus. The Sinhala people are as foolish as any other people. And, like any other people, they create their leaders and are responsible for the actions of their leaders. Political leaders are not parachuted from the stratosphere. They grow from the ground. The same is true of the Tamil people. Again, the Sinhala people are not an evil people. They are as evil

and as good as the Tamil people, or for that matter any other people. And, not much is gained by either party demonising the other.

### **A need to understand Sinhala interests**

Why then are the Sinhala people determined to resist any attempt to divide the country? From time to time, several reasons have been given and it is useful to examine these reasons, not so much with a view to 'judging' whether these reasons are 'just', but with a view to understanding the underlying interests which the Sinhala people seek to protect and the real concerns which have led successive Sinhala dominated Sri Lanka governments (without exception) to resist the demand for Tamil Eelam.

1. Sri Lanka is a too small a country to be divided
2. Tamil Eelam will have control of more than 50% of the island's sea shores and more than 30% of the land in the island
3. The discrimination that the Tamils claim to have suffered was simply taking away the privileges they had enjoyed under the British
4. The Tamil people do not want Tamil Eelam, it is only a few terrorists and fanatics who want it
5. Historically, there is no Tamil homeland - the Sinhala people lived in the north and east as well
6. The Tamil can go to Tamil Nadu but the Sinhalese have no land other than Sri Lanka
7. The Tamils are invaders and immigrants and cannot claim a part of the country - they are not the 'original' people
8. Tamil Eelam will link with the Tamils in the plantations and invade parts of the South
9. Tamil Eelam will be a first step towards a pan Tamil state including Tamil Nadu
10. An independent Tamil Eelam state will threaten the existence of the Sinhala Buddhist nation

This list of reasons is not meant to be exhaustive. However, the list may be sufficient to reflect some of the stated concerns that the Sinhala people may have in relation to the demand for Tamil Eelam.

It may be instructive to examine these reasons and determine whether they reflect an actual interest that the Sinhala people seek to protect or whether they are simply intended to serve as useful debating points in a positional propaganda war.

Take for instance the 'reason' that Sri Lanka is too small a country to be divided. The fact is that there are many countries which are smaller than Tamil Eelam - and the Sinhala people are well aware of that fact. The real question is not whether Sri Lanka is 'too small' to be divided, but what are interests of the Sinhala people that would be put at risk, if such division took place? Would a smaller Sri Lanka put at risk the economic well being of the Sinhala people and if so how may that well being be protected? Again, would a smaller Sri Lanka put at risk the security of the Sinhala people and if so how may that security be protected?

The concern about control of 50% of the island's sea shores and 30% of the land must be considered in the light of the fertility of the land in the south and centre of the island, the tea, rubber and coconut plantations in the south and the urban development of the capital, Colombo and the Western Province. The truth is that the equities in terms of economic resources are weighted heavily in favour of the Sinhala south. But, again, these are not facts unknown to the Sinhala people. What are the interests of the Sinhala people that would be put at risk if 50% of the island's sea shores and 30% of the land mass was in the control of Tamil Eelam? Can the percentages be made subject to negotiation? Again, is it a matter of economics or security - or both?

The argument that the Tamils do not want Tamil Eelam ignores the mandate that S.J.V.Chelvanayagam received from the Tamil people in 1975 and his short but historic statement on 7 February 1975:

"Throughout the ages the Sinhalese and Tamils in the country lived as distinct sovereign people till they were brought under foreign domination. It should be remembered that the Tamils were in the vanguard of the struggle for independence in the full confidence that they also will regain their freedom. We have for the last 25 years made every effort to secure our political rights on the basis of equality with the Sinhalese in a united Ceylon."

"It is a regrettable fact that successive Sinhalese governments have used the power that flows from independence to deny us our fundamental rights and reduce us to the position of a subject people. These governments have been able to do so only by using against the Tamils the sovereignty common to the Sinhalese and the Tamils."

"I wish to announce to my people and to the country that I consider the verdict at this election as a mandate that the Tamil Eelam nation should exercise the sovereignty already vested in the Tamil people and become free."

It also ignores the fact that at the 1977 general elections, the Tamil United Liberation Front won a mandate for Tamil Eelam. The arithmetic of that mandate is not the real issue. The fact is that the present armed conflict exists because the Sinhala people do not want Tamil Eelam - and are prepared to lose Sinhala lives to secure that objective. Again, these are facts which are not unknown to the Sinhala people. The real question that may need to be addressed is: what are the interests that the Sinhala people are prepared to defend with their lives?

It should now have become apparent that the real concern that the Sinhala people have is that an independent Tamil Eelam may become a focus for a powerful pan Tamil nationalism and that this will threaten the very existence of the Sinhala Buddhist nation in the island.

Admittedly, the Sinhala people have their roots in the island of Sri Lanka - and they have no other land which they can claim as their own. Furthermore, the Sinhala people are a minority in the region. This is a demographic fact. This demographic fact is compounded by the memory of rule of the Sinhala people by Tamil kings. The last King of Kandy signed his surrender to the British in Tamil (and not in Sinhalese) and reportedly the British secured the support of Sinhala feudal lords to overthrow the King who had come from South India.

We cannot go forward by dismissing the fears of the Sinhala people as 'irrational' or by suggesting that they are simply the handiwork of corrupt Sinhala politicians or 'evil' Buddhist priests. Nor should these fears be dismissed simply as a consequence of the 'Maha Vamsa' mind set.

After all, why was it that the Mahavamsa came to be written in the way it was - and not in some other way. The story about Dutugemunu reflected a certain existing political reality - it did not 'create' that political reality out of thin air. The fears of the Sinhala people spring from geography and history and, more importantly, are related to today's demographic reality in the Indian region. The existence of one million Tamils in the plantations in central Sri Lanka and more than fifty million Tamils (separated by a mere 20 miles of water) in Tamil Nadu is no Mahavamsa myth.

The truth is that the modern Sinhala Buddhist national identity grew in opposition to British rule. But as the Sinhala people built that identity and traced their origins to their own roots, it also separated them from the Tamils who spoke a different language, traced their history and culture to different origins.

"Nationalism ... is an act of consciousness .. the mental life of man is as much dominated by an ego-consciousness as it is by a group consciousness. Both are complex states of mind at which we arrive through experiences of differentiation and opposition, of the ego and the surrounding world, of the we group and those outside the group" (*Hans Kohn: The Idea of Nationalism , A Study of its Origins and Background. New York. 1944*)

Again, the Sinhala Buddhist national identity is not simply a function of economics, as some Sinhala Marxists would have it.

"Nationalism has proved an uncomfortable anomaly for Marxist theory and precisely for that reason, has been largely elided, rather than confronted. How else to account for the use, for over a century of the concept of the 'national bourgeoisie' without any serious attempt to justify theoretically the relevance of the adjective? Why is this segmentation of the bourgeoisie - a world class in so far as it is defined in terms of the relations of productions - theoretically significant? (*Benedict Anderson - Imagined Communities, Reflections on the Origin and Spread of Nationalism - Verso, 1983*)

"Like religion,..or any other great emotive force, nationalism is ambivalent, and can escape very completely from a prescribed political channel. Even in its origins, it was a complex phenomenon, deriving both from the solidarity and from the divisions of society... " (*Anthony D Smith (Ed) Nationalist Movements - Article by V.Kiernan - Nationalist Movements and Social Classes*)

The question that any meaningful attempt at conflict resolution will need to address is whether securing an undivided Sri Lanka is the only way in which the real concerns of the Sinhala people may be protected.

### **And a need to understand Tamil interests**

Let us now turn to the reasons that the LTTE and the Tamil people advance in support of their demand for an independent Tamil Eelam. Because as much as it is important

for the Tamil people to understand the interests that the Sinhala people seek to protect, equally, in so far as the Sri Lanka government and the Sinhala people are concerned, there is a need for them to understand the reasons which led the Tamil people to demand Tamil Eelam and to take to arms to secure it. Some of the reasons that have been advanced from time to time include the following:

1. Plantation Tamils were disenfranchised to weaken Tamil influence in the legislature
2. The Sinhala Only Act discriminated against Tamils in respect of language and diminished their employment prospects
3. The Tamil homeland was subjected to state sponsored Sinhala colonisation
4. Tamil areas have not received resources for economic development
5. When Tamils protested against discrimination, genocidal attacks were launched on them
6. Sinhala Buddhist fundamentalism has led Sinhala political leaders to break agreements and pacts.
7. The Tamil people are ruled by a permanent alien Sinhala majority.
8. Tamils are a different people, with a different language and trace their origins to different historical roots, and they have lived in the island for as long as or longer than the Sinhala people
9. If democracy means rule of the people by the people, then no one people may rule another
10. Continuance within the Sri Lanka state will lead to the destruction of the Tamil Eelam nation

Again, though these reasons are not intended to be exhaustive, the list may be sufficient to reflect some of the stated concerns that the Tamil people have in relation to continuing to live within the confines of the existing Sri Lankan state. Once again, it will be useful to examine these reasons and determine whether they reflect an actual interest that the Tamil people seek to protect or whether they are simply intended to serve as useful debating points in a hypothetical 'court of justice'.

It is true that the Tamil people seek to secure their language and employment rights. It is true that they seek to prevent state colonisation of their homeland. But, they seek to do this, in order that they may protect their separate identity as a people. The Tamil struggle is not about discrimination but about freedom from alien rule by a permanent Sinhala majority within the confines of one state. It is this permanent Sinhala rule which is evidenced, for instance, by the fact that in Sri Lanka, for five long decades since 1948, we have always had a Sinhala Buddhist as the executive head of government.

The question is not even whether Sinhala rule was oppressive (though, in fact it was). If the question was 'oppressive Sinhala rule', the answer would be benevolent Sinhala rule. There may have been some who regarded British rule as benevolent, but this did not prevent the struggle for freedom from alien rule. It is as a free people, that the togetherness of the Tamil people rooted in an ancient heritage and a rich language will find vibrant expression. It is as a free people that they will be able to nurture the growth of their children and their children's children to the fullness of their potential.

The bottom line is that the struggle of the Tamil people is about their democratic right to rule themselves - and it is this right that they seek to protect. If democracy means the rule of the people, by the people and for people, then equally, no one person may rule another.

**A Need to Think out of the Box...**

In an important sense, the interest that each party to the conflict in the island seeks to protect is the mirror image of the interest of the other party. The Sinhala people seek to secure their national identity against a Tamil majority in the region. The people of Tamil Eelam seek to secure their own separate national identity within the island of Sri Lanka. The Sinhala people fear rule by a dominant Tamil majority in the region. The people of Tamil Eelam fear rule by the Sinhala majority within the island of Sri Lanka.

The question is whether the two peoples sitting together as equals cannot agree upon political structures which protect each of their interests. Faced with diametrically opposed positions, it is easy to conclude that the only way out is to explore the whole area in the continuum between 'Independent Tamil Eelam' at one end and 'Unitary Sri Lanka' at the other end. This then is the path of district councils, provincial councils, regional councils, the unit of devolution, the extent of devolution, federalism, and confederation - a path which ended in failure, time and again.

- the box -								
Independent Tamil Eelam		Federation like Canada	Federation like US		Significant Devolution to Provincial Councils		Regional Development Councils	Unitary Sri Lanka
	European Union	Confederation like Switzerland		Federation like India		Modest Devolution to Provincial Councils	Very moderate Devolution like UK	

We need to think out of the box. No state is 'totally' independent. We live in an inter-dependent world. But, inter-dependence comes after independence from alien rule, not before. Associations such as the European Union are associations of independent states. Such associations do not represent a stage before independence and they rightly belong to the left of "Independent Tamil Eelam" A figurative representation more in accord with reality would be:

outside the box -		- the box -						
	<b>Independent Tamil Eelam</b>	Federation like Canada	Federation like US		Significant Devolution to Provincial Councils		Regional Development Councils	Unitary Sri Lanka
European Union		Confederation like Switzerland		Federation like India		Modest Devolution to Provincial Councils	Very moderate Devolution like UK	



A meaningful negotiating process will need to address the question of working out a legal framework for two free and independent peoples to co-exist - a legal framework where they may pool their sovereignty in certain agreed areas, so that they may co-exist in peace. There may be a need to telescope two processes - one the creation of an independent Tamil Eelam state and the other the terms in which an independent Tamil Eelam state may associate with an independent Sri Lanka, so that the national security of each may be protected and guaranteed. Sovereignty, after all is not virginity.

Admittedly, the negotiating process may be complex but if Germany and France were able to put in place such 'associate' structures despite the suspicions and confrontations of two world wars, it should not be beyond the capacity of Tamil Eelam and Sri Lanka to work out structures, within which each independent state may remain free and prosper, but at the same time pool sovereignty in certain agreed areas. In the case of Europe, the European Union evolved over a number of years and was underpinned by NATO and Marshall Aid. In the case of the conflict in the island of Sri Lanka, there may be a need to secure the support of both India and the United States to provide the necessary underpinning. And here, it becomes necessary to face up to the strategic interests of the international actors in the conflict in the island of Sri Lanka.

### **The International Frame of the Conflict in the island of Sri Lanka**

In an important sense for the past 25 years and more, it will be true to say that two conflicts have raged in the island of Sri Lanka. One is the conflict between the Tamil people and the Sinhala people. And we have already examined the interests behind their stated positions. The second conflict is the conflict between New Delhi and Washington - and it is to this conflict that we must now turn. We need to examine the interests behind the stated positions of the US and India. We need to do so despite the apparent preference of the US as well as India to advance their interests by asserting that they are disinterested good Samaritans concerned simply with bringing peace to a troubled island. But the facts belie these assertions.

We need to address the strategic interests of the US and India because the political reality is that a conflict resolution process in relation to the Tamil Eelam-Sri Lanka conflict will not succeed without resolving the US-India conflict in the Indian Ocean Region. What are the facts?

The election of the West leaning Sri Lanka J.R. Jayawardene in 1977 and the disenfranchisement of the Sinhala Opposition leader Srimavo Bandaranaike a couple of years later, led New Delhi to train and support Tamil militant groups in the late 1970s and early 1980s. New Delhi did not create Tamil resistance to alien Sinhala rule but it exploited the struggle for Tamil Eelam to destabilise Sri Lanka and move Sri Lanka back into the Indian orbit. Jyotindra Nath Dixit, Indian High Commissioner in Sri Lanka 1985 /89, Foreign Secretary in 1991/94 and National Security Adviser to the Prime Minister of India, 2004/05 was open and frank on Indira Gandhi and India's motivations in 1983 -

"...Tamil militancy received (India's) support ...as a response to (Sri Lanka's).. concrete and expanded military and intelligence cooperation with the United States,

Israel and Pakistan. ...The assessment was that these presences would pose a strategic threat to India and they would encourage fissiparous movements in the southern states of India. .. a process which could have found encouragement from Pakistan and the US, given India's experience regarding their policies in relation to Kashmir and the Punjab.... Inter-state relations are not governed by the logic of morality. They were and they remain an amoral phenomenon.....

(One of the factors which influenced Prime Minister Indira Gandhi) was the visits of US General Vernon Walters to Colombo in October 1983 and then again in 1984. Walters was a senior figure in the US strategic and intelligence establishment. Walters had followed up the first visit to Colombo with a visit to India also... He was known to be the subterranean architect of many of the anti-Indian aspects of US policies on matters of India's national security. Walters gave detailed information to Mr Jayewardene about India providing training and other logistical facilities to Sri Lankan Tamil separatists in India. He also agreed to act as an intermediary between Sri Lanka and Israel to ensure Israeli arm supplies and intelligence support to the island nation. The quid pro quo suggested by Walters was that Sri Lanka should provide strategic intelligence gathering facilities against India in the proposed Voice of America broadcasting station to be established in that country. Walters also agreed to facilitate the employment of British mercenaries and Pakistani military officers to support and assist Sri Lankan security forces. India had confirmed information about the discussions Walters had on Sri Lanka, both in Colombo and in Washington. This certainly did not improve Mrs Gandhi's mood or attitudes on the Sri Lankan situation.

I must also mention that General Vernon Walters found both Mr Parthasarthy and Mrs Gandhi's Principal Secretary Dr P.C. Alexander rather "difficult and unsatisfactory", according to his assessment conveyed to Sri Lankan leaders. One is not surprised because General Walters with his sense of self-importance must have been reduced to a state of unpleasant shock that some odd Indian natives should see through his motivations, and could tell him that India would not be taken in by his sophistry and that we had assessed his mission precisely for what it was in terms of the facts gathered on what he was doing in Sri Lanka...To sum up, General Walters' shuttle diplomacy only heightened tensions and generated an adversarial relationship between India and Sri Lanka. Perhaps that was the predetermined purpose of his activities at that point of time. .."

The Indian support for Tamil militancy in the early 1980s elicited a belligerent response from the then Sinhala Prime Minister Ranasinghe Premadasa in June 1984 in the Sri Lanka Parliament:

".. Indira Gandhi should not play hide and seek with Sri Lanka. If Mrs.Gandhi wants to invade Sri Lanka and conquer this country, let her do so openly".

In 1987, Indian Prime Minister Rajiv Gandhi felt that India's strategic objectives were secured by the Indo Sri Lanka Accord and the Exchange of Letters between him and President J.R.Jayawardene. The exchange of letters ensured that "Trincomalee or any other ports in Sri Lanka will not be made available for military use by any country in a manner prejudicial to India's interests", and that "Sri Lanka's agreement with foreign broadcasting organisations will be reviewed." Prime Minister Rajiv Gandhi declared in the Indian Parliament in early November 1987:

"The Indo Lankan agreement would also meet some of our important security concerns and ... therefore the Government of India is fully committed to the full implementation of this agreement" (*New Life*, 13 November 1987)

The circumstance that the 1987 Indo Sri Lanka Accord (and Indian armed intervention in the island) did have the overt support of the US was intriguing. On the surface, it was surprising that the US supported an Accord which called for the dismantling of the Voice of America installations in the island and increased potential Indian influence in the Indian Ocean - an Accord which was hailed by Rajiv Gandhi as having secured India's strategic interests in the region. Was the US actually supporting a resolution of the conflict which secured New Delhi's hegemony? The events after the induction of the IPKF in 1987 exposed the political reality.

The US appears to have taken the view that India's overt involvement was a way of ending the less manageable covert support that India had extended Tamil militancy during the period 1981 to 1986. The US was mindful that should India's influence in the island tend to become stabilised, President Jayawardene (who for many years was called 'Yankee Dick' by his political opponents) and US supporters in the Sri Lanka cabinet (like the then Sri Lanka Prime Minister Premadasa and National Security Minister Lalith Athulathmudali) could always be encouraged to delay or even sabotage the implementation of crucial terms of the Accord.

In the event, the arrest of top ranking LTTE leaders including Kumarappa and Pulendran did provide National Security Minister Lalith Athulathmudali with that opportunity. His insistence (backed by President Jayawardene) that the arrested LTTE leaders should be brought to Colombo for questioning despite the amnesty proclaimed in the Indo Sri Lanka Accord, forced Prime Minister Rajiv Gandhi to choose - and Rajiv Gandhi chose to support Sri Lanka (in an attempt to salvage India's role in the region). The subsequent suicide of Kumarappa, Pulendran and others was the final straw that broke the fragile peace that the Accord had secured.

Many may conclude that Rajiv Gandhi was entrapped in the snare that had been laid for him (not by President Jayawardene but by the United States) and in the end succumbed to forces bigger than those that India could manage. A US diplomat once remarked to a Tamil activist in Washington in 1984 "You know, India is not a super power - it should not try to behave like one."

Eventually a West leaning Sri Lanka President Premadasa (who was a significant absentee at the signing of the Indo-Sri Lanka Accord) demanded the removal of the IPKF from Sri Lanka and in that way ended that particular Indian adventure. New Delhi's attempts to hang on with Varadaraja Perumal failed. The exchange of the letters between Sri Lanka President Premadasa and Indian Prime Minister Rajiv Gandhi in 1989 showed the extent of the acrimony.

"...It has been our practice to maintain the confidentiality of official correspondence particularly between Heads of State or Government, unless otherwise agreed upon. However, the gist of your messages to me was more often than not made available to the media before they reached me. Now I find that all our recent correspondence has been officially made public by the Sri Lankan Government. I may thus be constrained to depart from tradition by authorising this communication being made public, after

you receive it." *Prime Minister Rajiv Gandhi to Sri Lanka President Premadasa, 4 July 1989*

That was twenty years ago. Since then much has happened but not much has changed. The twin issues of Trincomalee and US broadcasting stations on Sri Lanka soil continue to divide India and the US. Here Dharmaratnam Sivaram's study in 2005 of US Strategic Interests in Sri Lanka remains essential reading for anyone concerned to understand US actions in relation to the conflict in the island.

"..Central to the US strategic objective in Asia is the desire to "preclude the rise of a regional or continental hegemon." The objective is considered important for two main reasons:

- To prevent the United States from being denied economic, political and military access to an important part of the globe.
- To prevent a concentration of resources that could support a global challenge to the United States on the order of that posed by the former Soviet Union." *US Strategic Interests in Sri Lanka - Taraki, 30 July 2005*

Stated broadly, US foreign policy is directed to build on its current position as the sole surviving super power and secure a unipolar world (with a 'multi polar perspective' - a la Condoleezza Rice) for the foreseeable future. And this means, amongst other matters, preventing the rise of independent regional hegemons. On the other hand, the central plank of New Delhi's foreign policy is to deny any independent intermediary role to extra regional powers in the affairs of the Indian region and also to further the emergence of a multi lateral world. In this latter objective, New Delhi may count on the 'calibrated' support of the European Union, Russia, China and Iran amongst others.

Given the difference in the end goals that US and India have, it should not be surprising if the policies of the United States and New Delhi in relation to Sri Lanka and the LTTE are not always congruent. But that is not to say that the United States will not cooperate with India. It will. It will seek to cooperate 'as a super power' - and the US believes that it has sufficient instruments in its armoury to do just that. One such instrument is the Norwegian sponsored Peace Process. This explains the consistently enthusiastic support that the Peace process has received from the United States and the more muted (and calibrated) support from India.

This also helps us understand the covert operations of RAW in Tamil areas in the island of Sri Lanka and the material support extended by India to Sinhala governments and Sri Lanka political parties. In the 1980s, RAW gave covert material and financial support to the Tamil militants to secure the same end - Indian hegemony in the Indian Ocean region. It appears that New Delhi's interests remain permanent, though its 'friends' may have changed from time to time. Because New Delhi does not have the clout of a super power, it seeks to manage the Tamil struggle to progress its own ends by infiltrating the Tamil struggle - both in Tamil Eelam and abroad. That is what it did in 1980s and that is what it is doing today.

Today, both India and the US state openly that they are intent on securing the territorial integrity of Sri Lanka. They do not do so because of some generalised statist disdain for the emergence of new states. Did the international community have

the same 'statist disdain' in the case of Croatia? Or for that matter in the case of Latvia, Lithuania and the Ukraine? The reason is to be found in the specific strategic concerns the US and India in relation to the Indian region. And we need to understand the inter play if we are to progress the conflict resolution process in Sri Lanka.

Why is it that New Delhi is against the emergence of an independent Tamil Eelam? It was the threat of 'politico-strategic pressure' by the US (and Pakistan) which led India to see an independent Tamil Eelam as a threat to its territorial integrity and for Dixit to conclude-

" It was.. my considered opinion that the LTTE's insistence on the creation of a separate Tamil state in Sri Lanka, based on ethnic, linguistic and religious considerations, would have far-reaching negative implications for India's unity and territorial integrity..."

And here let us be clear. The threat was the potential rise of Tamil separatism in Tamil Nadu per se (by itself) but the threat that such potential may be used by the United States as a 'politico-strategic pressure' point to secure US foreign policy objectives. This bears emphasis.

New Delhi was not unaware that despite the support that the Tamil Eelam struggle received from some Tamil leaders from Tamil Nadu from time to time, caste divisions and parochial loyalties within Tamil Nadu had prevented the rise of any serious separatist threat in Tamil Nadu itself. Periyar had failed to deliver on the promise of Dravida Nadu and Annadurai and the DMK gave up the demand in 1961. Again, New Delhi had every reason to have confidence in the influence it wielded within Tamil Nadu through a centralised administrative service and expanded economic links across state boundaries whilst at the same time nurturing Tamil language and culture through the symbolism of a Tamil linguistic state. New Delhi has always recognised that without US and foreign involvement, separatism within its boundaries can be managed. The real concern that India has is that an independent Tamil Eelam may become a staging post for the US "given India's experience regarding their (US & Pakistan) policies in relation to Kashmir and Punjab".

New Delhi was not persuaded by LTTE protestations to the contrary.

"..We have no objection whatsoever to India's strategic aspirations to establish her status as the regional superpower in South Asia. We always functioned and will continue to function as a friendly force to India. We would have extended our unconditional support to the Indo-Sri Lanka Accord if the Agreement was only confined to Indo-Sri Lanka relations aimed to secure India's geopolitical interests..." - *Tamil National Struggle and Indo Sri Lanka Accord paper presented by the Political Committee of the LTTE at the World Tamil Conference in London, 30 April 1988*

New Delhi was not persuaded not because it did not trust the LTTE - after all if it was a question of trust, New Delhi may have explored entering into appropriate treaties with an independent Tamil Eelam to secure and enforce India's strategic interests. New Delhi was not persuaded because even a trusted friend may not continue in office. New Delhi was not unmindful of that which happened to the friendly Mujib

Abdul Rahman in Bangladesh. There was also a further and more important concern - and this was crucial.

Support for an independent Tamil Eelam would lead Sri Lanka to align itself even more closely to the United States and thereby enhance US presence in the Indian region rather than reduce it. New Delhi's foreign policy was therefore directed, (at every stage during the past 30 years, since the advent of the President Jayawardene to power in 1977) to secure a friendly Colombo government. In Chandrika Kumaratunga (with her left of centre politics), New Delhi believed that it had found the right partner - and this belief may be held more firmly by a Congress (I) led government than by a BJP one. New Delhi may be less sure with President Rajapakse with his greater reliance of the JVP.

If these are some of New Delhi's concerns, what are the concerns of the US? What then are the reasons for the US to oppose the emergence of an independent Tamil Eelam? What are the interests behind the stated position?

"..Central to the US strategic objective in Asia is the desire to preclude the rise of a regional or continental hegemon. The US seeks to do this by, among other things, propagating the impression of and/or by actually developing close relations with, India. **Eventually convince New Delhi that its interests are best served by letting the US look after the overall strategic stability of the subcontinent.**" *US Strategic Interests in Sri Lanka - Taraki, 30 July 2005*

The US seeks to adopt a gradualist approach to relations with India and is at all times more than mindful of the opportunities afforded by the huge Indian market. It also sees India's usefulness in the broader balance of forces in the world - in particular the Muslim world and China. Stated broadly, US foreign policy is directed to build on its current position as the sole surviving super power and secure a unipolar world (with a 'multi polar perspective' - a la Condoleezza Rice) for the foreseeable future. The US is concerned to have New Delhi's support in relation to the conflict in the island. But at the same time the US is unwilling to give New Delhi a free hand because to do so may create a regional hegemon. US fears that support for the establishment of an independent Tamil Eelam may lead New Delhi to take the view that the US is building a 'strategic pressure point' and New Delhi may then be less willing to support US initiatives for instance in relation to Iran, on nuclear non proliferation and the opening up the Indian market to foreign investment. And China has shown that it is no longer a distant bystander. The uneasy power balance in the Indian Ocean region must be assessed in the light of

"...two geopolitical triangles juxtaposing on the Indian Ocean's background: **U.S.-India-China relations** and **China-Pakistan-India relations**. In this complicated geopolitical configuration, New Delhi is not simply a partner of China or the United States: India is emerging as a major power that follows its own grand strategy in order to enhance its power and interests..." *India's Project Seabird and the Indian Ocean's Balance of Power - PINR, 2005*

The US and India may find common cause in weakening the LTTE - but they seek to weaken it in such a way that thereafter each of them may successfully secure their own strategic interests. And herein lies the conflict - and the difficulty.

New Delhi will not support a resolution of the conflict which secures US hegemony in the island. And so it will seek to create Tamil dissidents and build support among them as a way of keeping its foothold in the island. It sought to do so with TELO, it sought to do so with EPRLF and Varadarajah Perumal, it sought to do so with EROS, it sought to do so with Amirthalingam, and now it seeks to do so with Karuna and Anandasangaree.

It is within the interstices of this international frame that the struggle of the people of Tamil Eelam to be free from alien Sinhala rule continues under conditions of excruciating agony and suffering. And it is this same international frame which Sinhala Sri Lanka seeks to use to continue its genocidal onslaught on the Tamil people.

### **Way Forward...**

If this broadly is the international frame of the conflict in the island, the question that both Washington and New Delhi may want to address is whether the approaches they have adopted in relation to the conflict in the island of Sri Lanka will lead to a resolution of the conflict between their own strategic interests (in the context of the two geopolitical triangles juxtaposing on the Indian Ocean's background: U.S.-India-China relations and China-Pakistan-India relations) - and whether there is a need to re-evaluate those strategic interests. An exploration of these strategic interests may also serve to show that the struggle for an independent Tamil Eelam, is not in opposition to many of the underlying interests of the parties concerned with the conflict in the island - and that includes Sri Lanka, India, the European Union and the United States. The struggle of the people of Tamil Eelam to be free from alien Sinhala rule is but a step in the growth of a larger unity. In the end, national freedom can only be secured by a voluntary pooling of sovereignties, in a regional, and ultimately in a world context.

"...The United States has an opportunity make Sri Lanka a model and help it to evolve, by negotiating, two autonomous democratic political structures within a system acceptable to both parties, where ethnic communities can coexist peacefully on the Island. The US should be firm in its message to the government and the opposition, that if negotiations are not forthcoming immediately, they should be prepared to conduct a referendum of the Tamil people in Sri Lanka. This can be done with the assistance of the United Nations similar to the referendum in East Timor. Thus, in the absence of a negotiated settlement, the Tamil people could determine whether they want a confederation or a separate state as endorsed by the Tamil people in the last democratic elections held in 1977 in the north and east of Sri Lanka...." *US Congressman Brad Sherman, 1 September 2000*

And so in 2006, the question remains whether two peoples sitting together as equals can agree upon political structures which secure the equality of each people and which address not only the aspirations but also the concerns, the fears, and the apprehensions of each.. In the end, it is for the Tamil people and the Sinhala people to be unafraid to have a continuing, open and honest conversation with each other and in this way help mobilise a critical mass of people committed to secure justice and democracy - a democracy where no one people rule another. An independent Tamil Eelam may not be negotiable but an independent Tamil Eelam can and will negotiate.

Tamils who today live in many lands and across distant seas know only too well that sovereignty after all, is not virginity. But if the the people in the island of Sri Lanka are not persuaded by all that has happened during the past several decades, then yet again conflict resolution will take the form of war - directed to change minds and hearts. And then the role of symposiums and 'peace talks' may (in the words of Clement Atlee) prove m-i-n-i-m-a-l.

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#### **Footnotes**

1. see Dr.Sumanasiri Liyanage's well researched contribution (from a Sri Lankan perspective) on 'What led to the Cessation of Hostilities?' at International Seminar: *Envisioning New Trajectories for Peace in Sri Lanka*, Zurich, April 2006.

2. see K. Vinothini in 'Too much, too fast or a peace trap?' at International Seminar: *Envisioning New Trajectories for Peace in Sri Lanka*, Zurich, April 2006.