

## **International Seminar: Envisioning New Trajectories for Peace in Sri Lanka**

Zurich, Switzerland 7 - 9 April 2006

Organized by the Centre for Just Peace and Democracy (CJPD)

in collaboration with the Berghof Foundation, Sri Lanka

### **Session 8: Re-envisioning Sri Lanka – Lessons learned & Challenges and Opportunities**

#### **Dr. Jayampathy Wickramaratne**

President's Counsel, Sri Lanka, Senior Adviser to Sri Lanka Ministry of Constitutional Affairs & National Integration

#### **Re-envisioning Sri Lanka**

Re-envisioning a country that has been ravaged by war to the extent that we have seen is no easy task but that is a challenge that we must accept. We will, obviously, do that from our own positions and perspectives but if we do honestly believe that Sri Lanka should continue to be a single country in which the different peoples could live together as equals, reconciling the different perspectives should not be impossible.

In my view, the present conflict arose out of our failure to resolve the question of political power. Most of the countries of the world are multi-ethnic. Where a numerically small community is found, the demand of that community is for equality and this demand can be met by suitable arrangements for adequate representation in the legislature and a share of executive power, recognition of cultural identity, use of its language if it has its own, freedom of religion if it has its own and equality in all spheres of life, including education and employment.

When a community lives geographically concentrated, the nature of the demand is different. The mere fact of living together changes the picture. Such a community is not satisfied with equality; it wants to express its cultural identity in political form. The majority does not wish to give up its disproportionate share of political power and hence the conflict. This majoritarianism is universal. In the Soviet Union, the Russians dominated. But when the Union broke up, almost all the new Republics declared themselves to be unitary states, despite the presence of concentrated minorities. Tamil nationalists in Sri Lanka struggle against the unitary state but envision a separate unitary state.

I do not believe in labels. As a constitutional lawyer and draftsman, I would rather labour myself clearly laying down the principles.

Let me first identify the main issues that need to be addressed in re-envisioning Sri Lanka.

- Sri Lanka should continue as one country (Otherwise, we need not be sitting here)
- The right of Tamils in the North and East for self-government
- The unit/s of regional government
- Addressing the concerns of Muslims and Sinhalese in the North and East
- Power-sharing at the Centre
- Equality between Sinhala and Tamil languages
- A comprehensive Bill of Rights
- Supremacy of the Constitution

- Democracy and social justice
- Interim arrangements
- Constitutional safeguards for powers of Regions
- Safeguards against secession.

Sri Lanka that I envision shall be one, sovereign, democratic and secular Republic consisting of the institutions of the Centre and of the Regions. The powers of government shall be clearly laid down. Powers of the Regions shall be extensive and meaningful.

The form of government shall be parliamentary, with two chambers of Parliament.

Elections to the lower house will be on the basis of a mix of first-past-the-post (FPP) and proportional representation (PR). The system shall be so designed to render possible the representation of the various communities according to their national strengths.

Powers of government shall be divided between the Centre and the Regions, with the Centre retaining those powers that are essential for maintaining the unity and sovereignty of the country. This division can be asymmetrical with the North and East having control over more subjects and functions than other Regions. The Centre will not be able interfere with the Regions in the guise of laying down national policy. As far as the North and East are concerned, a concurrent list is not envisaged. But it would be useful to provide for co-operation in areas such as disaster management, contagious diseases etc. The execution of identified central legislation may be handed over to Regions.

Powers of the Centre to intervene in the Regions, in respect of subjects and functions of the Regions, shall be limited to instances where there is a “clear and present” danger to the unity and sovereignty of the country.

The unit/s for the North and East is a difficult issue due to the complexity of the East. The Muslims and Sinhalese fear domination and discrimination in a merged North-East while some Tamils too may want the East to be a separate unit. If the North and East are to be separate, the South would be willing to accept still more powers for those two Regions. Both Regions would have a Tamil majority and this is something that the Tamils should seriously consider.

I suggest an interim arrangement for the North and East for ten years. The North and East will be administered as one unit during that period. The North-East Interim Regional Council would be appointed for the first five years, in proportion to representation in Parliament. The Council will be elected for the next five years. Given that such a Council will be dominated by Tamils, there should be safeguards for the Muslims and Sinhalese. The Constitution Bill of 2000 provided for power-sharing in the executive, parallel consent in the legislature and several other safeguards.

A decision on the merger of the North and East should be based on the will of the people. I am aware of the arguments that have been adduced against a referendum in the East, that the demography has been changed by settlement etc. But the hard fact of the permanent presence of large numbers of Muslims and Sinhalese and some Tamils in the East asserting a separate identity cannot be ignored. My own view is that a ten-year period of working together would offer the different communities a challenging opportunity. A North-East Interim Regional Council could be a model of ethnic harmony and the majority of the people of the East may well want to continue that way.

An alternative to such an interim arrangement is to offer other safeguards in a merged North-East. These can be in the form of sub-regional arrangements for Muslims and Sinhalese combined with power-sharing in the executive, parallel consent in the legislature, cultural councils etc. Pondicherry, Belgium and Northern Ireland offer models from which we can draw.

It is unfortunate that power-sharing at the Centre has not been focused upon adequately. The following are proposed:

- A second chamber of Parliament representative of the Regions with the power to veto legislation relating to specified matters.
- Two Vice-Presidents from communities other than the community to which the President belongs.
- A Constitutional Council with adequate representation of the various communities and regions which will have a say in appointments to national bodies such as the Finance Commission, Public Service Commission, Elections Commission, Human Rights Commission, Languages Commission etc. The Vice-Presidents shall chair the Constitutional Council in rotation.
- Institutions of the State shall reflect the pluralistic character of Sri Lanka.

Disputes between the Centre and a Region shall be settled by mediation and conciliation, failing which a dispute may be referred to a tribunal consisting of a member appointed by the Centre and the Region and a Chairperson appointed by the members.

Sinhala and Tamil shall be official languages with complete parity of status. This is not sufficient. Steps need to be taken to ensure parity in practice.

The Constitution shall have a comprehensive Bill of Rights that guarantees not only civil and political rights but also social, economic, cultural and children's rights. There shall be adequate machinery for enforcement at national and regional level. In addition to the Supreme Court, Regional Courts of Appeal shall have a fundamental rights jurisdiction for enforcement of fundamental rights. Regions may have their own human rights mechanisms.

The supremacy of the Constitution shall be recognized. All actions, of the Centre and Regions, inconsistent with the Constitution shall be void. Courts shall have the power to strike down legislation, both central and regional, violative of the Constitution. All existing laws (except personal laws) shall be read subject to the Constitution.

Amendments of constitutional provisions relating the powers of the Regions shall be entitled to special safeguards. Such an amendment shall apply in a Region only if supported by a majority of MPs of that region and/or approved by the people of the region in a regional referendum.

There shall be adequate safeguards against secession.

I suggest that the Constitution should not stop at recognizing the pluralistic character of Sri Lanka. The Ethiopian Constitution speaks of "the Nations, Nationalities and Peoples of Ethiopia". The Russian Constitution has the phrase "multinational people of the Russian Federation" while China recognizes "nationalities". The United Kingdom, which does not have a written Constitution, recognizes the English, Scots, Irish and Welsh as "nations". We need to be innovative and should not be afraid to do so.

Finally, but not less importantly, Sri Lanka must be a democratic State. A power-sharing arrangement can work only in a democratic set-up. There must be democratic space in the country as a whole as well as in each region.