

## The EU's CONTRIBUTION TO THE PEACE PROCESS A Sinhala Perspective

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When the Tamil Centre for Human Rights (TCHR) suggested that I come half way round the world from Australia to Brussels to address you for 15 minutes, I thought that they had taken leave of their senses. They added that I should present a "Sinhala Perspective". This I'll be glad to do but there is a problem. I am sure you would have accessed the numerous papers published by me over the past 20 years and realised that I do not subscribe to the Sinhala ethno-religious chauvinism that has consumed my ethnic group.

The first question is whether I am qualified to present a "Sinhala Perspective" – even an unusual one. I must deal with this because the Sinhala Government-controlled media and Sinhala "patriots" have claimed that I am a "Tamil Tiger Terrorist" – a comment made about this very meeting. Yes, this meeting, organised by the TCHR which was officially accredited to the UN World Summit on Information Society (WSIS), which took place in November 2005 in Tunisia. This was supported by 191 members of the UN *including Sri Lanka*.

### 1. Am I a Tamil?

No I am not. I am a Sinhalese, in fact, the cousin of the outgoing Sri Lankan President, Chandrika Kumaratunga whose father, S.W.R.D. Bandaranaike was my father's first cousin (and my tennis partner!). This can easily be checked – most simply by contacting the former President, which you have my permission to do.

### 2. Am I a Tiger?

No I am not a Tiger (Tamil or otherwise). I am neither pro-Tiger or anti-Tiger. I am, however, unashamedly 'Pro- the-Tamil-minority', in their struggle to exist with equality, dignity, safety and without discrimination in the country of their birth. I have opposed the Sinhala ethno-religious chauvinism of a succession of Sinhala governments since Independence (and even prior to that) - this destructive attempt to turn multiethnic, multilingual, multireligious, multicultural Sri Lanka into a **Sinhala Buddhist Nation**. If a Sinhala-Buddhist Nation is the objective, then I can see no option to the establishment of a **separate Tamil Nation**. The concept of Eelam, as a separate Tamil State is called, is not a creation of the Tamils. It has been forced on the Tamils by Sinhala anti-Tamil chauvinism. The concept of a separate Tamil State was initially rejected by the Tamils when it was floated by Tamil politicians in 1948 when the Ceylonese Government (as it then was) disenfranchised and decitizenised a million plantation Tamils in one of the worst acts of political barbarism the world has known.

This opposition to Eelam by the Tamils weakened over the next three decades as more and more blatantly anti-Tamil discriminatory acts were heaped on the Tamils – in the use of their language (Tamil), education (I was at that time a Senior Don in the Kandy University), employment and job opportunities. I must add to this list of anti-Tamil discriminatory acts one which is not often mentioned. It is, by far, the most important. This is the developmental neglect of the Tamil areas at the hands of the Central Government in Colombo, which has been, is, and always will be, Sinhalese.

It is this developmental neglect of the Tamil areas that made it necessary for Tamils to come from the North (and East) to the Sinhala South to compete, often successfully ('too successfully!') with the Sinhalese for jobs in a shrinking job market.

This is a situation that unscrupulous Sinhalese politicians can, and did, exploit by discriminating against the Tamils. It was (and still is) a despicable quest to play populist politics rather than build a Sri Lankan Nation.

The British Colonial construct of 1833 glued together three separate kingdoms (the Tamil Kingdom in the North, the Kandyan Kingdom in the centre and the Kotte Kingdom in the Sinhala South) – the Colebrooke-Cameron 'reforms'. This is getting unstuck because of poor quality Sinhala Governance since Independence. What the Tamils are asking for is not to divide and destroy Sri Lanka but to dismantle a British Colonial construct which has clearly failed (as similar British colonial constructs have failed in Malaya, India and numerous other countries). This will allow the Tamil areas (and incidentally the Sinhalese areas) to develop and survive. It is crucial to appreciate this since, unless you do so, you will not be able to make a positive contribution to the peace process. I would draw your attention to the fact that the Peace Process is necessary because of an ethnic war that was inevitable because reasoned, well-documented, well-presented pleas by Tamil politicians backed by a succession of non-violent protests, have failed. **Belief in absurdities** (that multi-ethnic, multi-religious Sri Lanka will be a Sinhala Buddhist Nation) **results in atrocities** (civil war).

### 3. Am I a Terrorist?

No I am not. I am a doctor of medicine, committed to saving lives, not destroying life by terror or any other means. I have dealt with this problem of 'terrorism' in several publications, a couple have been distributed to you.

The perception of 'terrorism' is often in the eye of the beholder. If the beholder (an individual, population or country) supports the goals of the rebels then those rebels are 'freedom fighters', if they do not then they are 'terrorists'.

Any government's condemnation of terror is credible only if it shows itself to be responsive to reasonable, closely argued, persistent, non violent dissent. No Sinhala government since Independence in 1948 has been responsive to the reasonable demands of the Tamil minority. Tamil non-violent resistance has been crushed with military might of the Sinhala State. If that is the response that the Tamils have had, then, by default, they have to turn to violence. It is a sad fact, documented across the world, that if one seeks to redress a public grievance (believe me, the Tamil minority have had many grievances at the hands of the ruling Sinhalese), violence is more effective than non-violence. That is what has been happening in Sri Lanka.

Violence is highly destructive of lives, property, the economy and the future of the country. In Sri Lanka, it has physically decimated the Tamil areas and is (economically) destroying the Sinhala South, indeed the whole Country. That is why Peace talks have become necessary.

As to whether the LTTE are freedom fighters or terrorists is discussed later in this article using criteria set out in the Geneva Convention.

### Why are we called "Tamil Tiger Terrorists"?

Why are we, irrespective of our ethnicity and even race, who oppose Sinhala ethno-religious chauvinism called 'Tamil Tiger Terrorists'? How did I become a 'Tamil Tiger Terrorist'? It was after the near-genocidal massacre of Tamil civilians in the Sinhala South in July 1983.

Some 3,000 Tamil civilians were massacred by Sinhala hoodlums with the active support of the then President J. R. Jayawardene's anti Tamil 'Mafia' under the control of his racist Ministers. I published a booklet '*The 1983 Massacre. Unanswered Questions*'. The clear message was that to massacre innocent Tamil civilians and terrorise them was acceptable but to expose this to the outside world constituted an act of terrorism! This booklet was followed by another on *Human Rights Violations in Sri Lanka*, published in the mid 1980s. This documented the serious violations of human rights of the Tamil people and confirmed me a 'Tamil Tiger Terrorist'!

So is Adrian Wijemanne, a distinguished Sinhalese, now spending his last days in Cambridge, England, who has written extensively on the ethnic conflict. His carefully argued papers which contain more sense than those published by anyone, myself included, makes him a 'Tamil Tiger Terrorist' – in fact, the leading one!

Justice V. R. Krishna Iyer, a distinguished Indian Supreme Court Judge, who has addressed many international meetings with me to expose what is going on behind the censored doors of Sri Lanka, was another 'Tamil Tiger Terrorist'. When accosted by a 'Sinhala patriot' in New York, his quiet response to me was, "if the concealed information we are releasing makes us 'Tiger Terrorists' it must certainly be worth releasing".

It is a pity that there is a developing concept that to be a patriotic Sinhalese one has to support the concept of a Sinhala Buddhist Nation. It is similar to the declaration of President George Bush 'that you are either with us (him) or you are with the terrorists'.

Sri Lanka has never had a responsible Press. The press has always been partisan, more recently no more than a propaganda arm of the government in power. This is why a group such as the TCHR which is a UN accredited NGO on Information has a crucial role to play in bringing to the attention of the international community what the Sinhala Government and pro-government media are trying to conceal or destroy. The fact that the propaganda put out by the Sri Lankan (read Sinhala) Government is so biased and often false, is something that the International community must recognise. The Tamils do not have anything even remotely as powerful as the well-funded, well-organised Sinhala Government propaganda machine. With the advent of the internet ([www.sangam.org](http://www.sangam.org), [www.tamilcanadian.com](http://www.tamilcanadian.com), [www.tamilnet.com](http://www.tamilnet.com), [tamilnation.org](http://tamilnation.org)) this imbalance is currently being addressed. Nonetheless, the power of the government to influence other governments by distributing anti-Tamil false propaganda is a serious problem.

## **The Peace Talks**

I have dealt with the issues that have to be addressed in these Talks in two publications '*The Peace cannot be abandoned*' written in 2002, when the Peace negotiated by the GoSL and the LTTE stalled. This was a detailed analysis which included and identified the saboteurs of peace and why they were doing what they were.

I released another analysis '*Talks, Talks and More Talks*' just before the Geneva talks in February 2006. In it I set out the crucial issues that had to be addressed if the Talks were to have any meaning.

The disappointing results of these talks were set out in yet another publication '*Peace Talks that have gone nowhere*'.

In the next two weeks I will be releasing yet another '*The Agenda for more Talks*' which sets out yet again, the critical issues that have to be addressed and implemented if Peace is to be maintained in Sri Lanka.

## The EU Contribution.

It is awkward for me to come to Brussels and say that the EU has failed – but it has. This is not said lightly or with a derogatory intention but in the hope that some of the damage done might be reversed. It is not just the EU that has failed, so have many Western countries with the exception of some of the Nordic countries and Switzerland.

If these countries, in particular the US, India and Britain (which was responsible for the Sri Lankan administrative problems which resulted in discrimination against Tamils), cannot make a positive contribution to Peace in Sri Lanka, I would urge that they do not make a negative, indeed destructive, contribution.

This is by:

- 1 Enhancing the military capabilities of a country which is using this to fight it's own people.
- 2 Trying to marginalise or to exclude one of the essential parties to the negotiation – the LTTE.

1. Enhancing the military capabilities of the Sri Lankan armed forces (nearly 100% Sinhalese) has been dealt with in my '*Talk, Talks, and More Talks*'. This specifically targeted the highly destructive 'contribution' made by the US. Other countries (the UK, India, Pakistan, Singapore, Israel and China to mention just a few) have made their own destructive 'contribution' often for their own economic or geo-political gain.

2. Trying to marginalise the LTTE is serious, non productive (in fact counter productive) and meaningless.

Peace talks without the LTTE is like trying clap with one hand. Whether one loves them or hates them, their presence and co-operation in any peace deal is essential. Those who believe otherwise do not appreciate the ground realities in Sri Lanka, especially in the Tamil areas.

Inappropriate comments in Colombo by a succession of US Ambassadors and others from Washington who are just 'passing through' and actions against the LTTE, have a disastrous effect. It markedly strengthens the hand of the extreme Sinhala chauvinists in Colombo to whom it is music. For example' after the recent visit of Nicholas Burns, the US Undersecretary for Political Affairs and a comment that the US would take a hard line against the LTTE, Colombo was plastered with anti-Tamil slogans and demands that the LTTE be crushed, however impossible this has turned out to be in the last three decades. This in turn puts pressure on the Sri Lankan Government to adopt an even more hardline position in negotiations and talks with the LTTE. It is this hardline stance that has prevented the GoSL from coming up with any meaningful solution for power sharing with the Tamils.

When, on 26th September, 2005, the EU Declaration stated that the EU was, '*actively considering formal listing of the LTTE as a Terrorist organisation*' and in the meantime had '*agreed that with immediate effect, delegates from the LTTE will no longer be received in any EU Member States until further notice*', I thought the EU was singing from the same hymn sheet as the US and going down the same senseless path.

What the EU was doing was opting out of the Sri Lankan Peace Process since it is not possible to host negotiations with a banned 'terrorist' organisation, as the British will confirm in their futile action in banning the IRA which then had to be 'de-banned' to enable negotiations to occur.

It is of interest that Sri Lanka, the country most affected by the LTTE, has banned and then 'de-banned' them! Yet, other countries not affected by the LTTE continue to ban them. It defies reason.

My hurriedly written piece '*EU Credibility on the line*' which followed this incomprehensive Declaration is still available on the net. The EU can obviously do what it likes but to continue with this ban is not productive, indeed could be counter-productive. If the EU and other countries that have banned the LTTE have concerns about their human rights record, it makes more sense to invite them and express whatever concerns there are and a request made that they address these concerns to the satisfaction of internationally credible human rights organisations.

The EU Declaration condemns the LTTE stating '*pursuit of political goals by such totally unacceptable methods* (the reference was to the boycott of the Presidential elections by the Tamils in the North) *only serves to damage the LTTE's standing and credibility as a negotiating partner*'. It is amazing that the EU cannot see the contradiction in this. A succession of Sinhala governments have been using even more 'unacceptable methods' – violence, intimidation and indeed terrorism against the Tamil civilian population in the North in the 'pursuit of political goals' i.e., the acceptance of a Sinhala Buddhist Nation.

The EU Declaration goes on to state '*and that each Member State will where necessary, take additional measures to check and curb illegal or undesirable activities (including issues of funds and propaganda) of the LTTE, its' related organisations and individual supporters*'.

May I, with respect, ask the EU about the 'illegal and undesirable activities' of the Sri Lankan Government? It is illegal even by Sri Lanka's own Constitution, which assures protection of all ethnic groups. The Tamils are Sri Lankans and to bomb and decimate the areas they live in, especially the North, is a violation of the Constitution and is therefore illegal. Here is the international community, especially those who supply arms or finances which enable the government to free up funds for the purchase of these weapons, enhancing this capability and becoming part of the problem.

*"Undesirable activities (including issues of funds and propaganda...)"* Western governments have markedly enhanced these very same 'undesirable activities' by supplying limitless funds and even expertise to the GoSL. What is worse, GoSL propaganda has been accepted without question, despite the fact that it is blatantly false and inflammatory. EU countries have knowledgeable embassies in Colombo. They cannot be unaware of how false the government propaganda is and the damage done by accepting it. It is not damage done to the LTTE but to the Tamil people in the North and East. I cannot over emphasise this.

As for blocking funds for the LTTE at an international level, I must draw attention to the fact that it was the exclusion of the LTTE from a donor conference in Washington (because the LTTE is a banned 'terrorist organisation') that resulted in them boycotting the crucial donor meeting in Japan in 2002 and then calling off all negotiations with the Runil Wickramasinghe government with which it signed the crucial 2002 Ceasefire Agreement. Those who take these decisions in the international arena do not realise the fallout on negotiating a serious domestic problem in Sri Lanka. If the LTTE could not visit Washington because they were banned, it does not take a great deal of intelligence to work out that another site where they were not banned e.g., Switzerland, could have been where the donors met. This would have kept the LTTE 'in the loop'. It is important to appreciate that international or other aid going to the LTTE is not necessarily going into the purchase of weapons. With the Sri Lankan Government opting out of looking after the people of the vast Wanni area, it is the LTTE who have to administer this area and look after it's people and it is simply not possible to do this without funds. It is not the LTTE who will pay for this but the people of the area, 75% of whom live below the poverty line.

As for banning fund raising for the LTTE at an individual level it is very simplistic to think that it will work. One could make it more difficult for the LTTE (or any other organisation) to raise funds but to block it, check it or even curb it is impossible. To believe that it is possible is to live in a dream world far removed from reality.

There are hundreds of thousands of expatriate Tamils living in some of the wealthiest countries in the world many employed at a high level, who have families and extended families in the North and East. They are aware that the government has opted out of governing these people. They will send money to anyone or any organisation prepared to look after them.

What is even more important, which western countries have no concept that there is a particular 'Tamil mind-set' that the Tamil North and East is 'home'. This is especially true for Tamils of Jaffna who constitute the vast majority of those who come to these countries. They may have lived outside for decades, some of the younger ones never having been to Jaffna, but the Jaffna peninsular remains 'home'. Having taught several hundred medical students from this area in the seven years that I spent in Sri Lanka, I am very well aware of this mind-set. It cannot be changed by a ban or whatever, it will only enhance it.

Some are well aware of the suffering of their people who have been subjected to violence and force by the Sinhala army on the rampage trying to force the Tamil people into subjugation. Some of the older expatriates have had personal experience of this violence. They are well aware that the Sinhala Government has no intention of resolving the conflict by peaceful means.

Let alone settling the ethnic conflict in a manner that will enable the Tamil areas to survive and develop, the recent Tsunami destruction and the glaring GoSL discrimination compounded the suffering of the people in this area in terms of denial of reconstruction and rehabilitation. This blatant discrimination has convinced them that the Sinhala Government is not interested in the Tamil areas or the welfare of the Tamil people. They view the rapidly expanding Sinhala anti-Tamil political rhetoric and the demands that the Tamils be crushed into submission, with added concern.

Whatever they think of the LTTE whether they love them or hate them, it is blindly obvious that it is only the LTTE that is prepared to challenge the anti-Tamil chauvinism of the Sinhala Government. They see the LTTE as their sole representatives. How the LTTE got to this position, whether by murdering their opponents or not, is a separate issue. But the reality is that they are there and unlikely to quit.

Expatriate Tamils may be divided in their support (emotional, physical or financial) of the LTTE but are realistic enough to appreciate that if the LTTE collapses, the Tamil struggle for justice for the Tamil people will be over. If the LTTE collapses (an unlikely scenario) or are disarmed (an even more unlikely scenario), the Tamils will not be **at** the Conference table but **under** it, as they have been for the past fifty years, waiting for scraps to fall from their Sinhala masters at the table.

With no other Tamil military group prepared to stand up against the Sinhala Government, almost by default expatriate Tamil support will go to the LTTE.

This was strikingly demonstrated after the 2002 Ceasefire when expatriates flooded into the Wanni in the North run by the LTTE, taking with them human and material resources' to say nothing of millions of dollars, to help in the reconstruction of this area. This has been done without any great fanfare but a *de facto* separate Tamil State with it's own LTTE administration, police force, legal system, medical delivery systems and army have been in operation for years (and is expanding in a spectacular manner).

The US has declared on several occasions, more so recently, that *“a separate Tamil State is unacceptable to the US”*. Frankly, the Tamils did not ask the US for their opinion or approval. It is their problem and they have decided, in the 1977 General Election, the last credible elections when they gave an overwhelming mandate to the Tamil MPs from the area to establish a separate Tamil State. It is that which has been established, albeit *de facto*, but nonetheless functioning efficiently. This *de facto* state is functioning far more efficiently than the incompetent, corrupt and chaotic State in the south run by the GoSL I might add that the mandate of the GoSL does not run in the vast Wanni area, run by the LTTE. These are realities, which the international community, including the EU, must appreciate. To simply label the LTTE as terrorists is to distance oneself from ground realities.

If the Western world wants to support a corrupt and incompetent regime in the South that is their business. It is certainly not the first time that this has been done, e.g., Suharto, Marcos and even Saddam Hussein. However, I am quite sure that the *de facto* separate state established at the cost of much bloodshed, sweat and toil will not disappear, nor will the LTTE.

Where does that leave Karuna, the renegade from the LTTE who is challenging the parent organisation? In a recent interview, Karuna spelt out where he stood. Here is what he said, *“We are (a) people’s movement and respect the wishes of our people...they have entrusted us to defend them from the LTTE”*. So, on his own admission, his aim is to crush the LTTE. I note that he sees no need to defend his people from the anti-Tamil racism of the Sinhala Government. It is of interest that in the run up to the presidential elections Ranil Wickramasinghe’s party (who signed the Peace Pact with the LTTE) boasted that it was they (UNP) who arranged for Karuna to split from the LTTE!

In that same interview, Karuna says that a *“lasting peace can be achieved by consensus and inclusive politics”*, meaning the GoSL. Someone should whisper in his ear that this is precisely what the elected Tamil leaders have been doing since 1956 (and even before), that numerous supposedly ‘inclusive’ or partially inclusive, pacts have been signed between the GoSL of different political persuasions with the Tamils and that not one of these Agreements or Pacts have been implemented by the government. The Tamils have been down the road that Mr. Karuna advocated, many times over.

Mr. Karuna goes on to conclude that, *“the partnership between Pirabakaran (the LTTE Leader) and Anton Balasingham (the LTTE Ideologue and Chief Negotiator) is the cause of all the evil that is preventing a resolution of the Tamil conflict...”* He is wrong. The cause of all the ‘evil’ is Sinhala ethno-religious extremism which declares that Sri Lanka will be a Sinhala Buddhist Nation, a decision even enshrined in the Constitution since 1972.

It is not for me, a Sinhalese, to get involved in internal Tamil squabbles but I doubt if the Tamil people, both in and outside Sri Lanka, will buy this many-times-failed inclusive politics in Sri Lanka.

## **A Solution**

I have not come here to discuss solutions to the complex Sri Lankan ethnic problem. There is a publication coming out in the next few weeks *‘Self Determination for the Tamils’* in which I have discussed the options. I will only briefly summarise what I have written.<sup>1</sup>

Before discussing solutions, it is important to appreciate some basic facts in Sri Lanka and the failure of international action.

### 1. Sri Lanka is a Democracy in crisis

I have dealt with this extensively in my presentation in London in 2001 which will be published in the not too distant future '*Abuse of Democracy in Sri Lanka*'.

Here I will quote the Swedish Red Cross who put this accurately in 1985 since when the situation has deteriorated markedly.

*"There was a general consensus that within Sri Lanka today the situation has markedly deteriorated, the Tamils do not have the protection of the rule of Law, that the Sri Lankan Government presents itself as a Democracy in crisis and that neither the Government nor it's friends abroad appreciate the serious inroads in democracy which have been made by legislative, administrative and military measures which have been taken. The extreme measures which are currently being adopted by the Government inevitably provoke extreme reactions on the other side. The normal life of the population of the North (and now of the East, even more so) has been seriously affected. The continuing colonisation of Tamil areas with Sinhalese settlers is exacerbating the situation."*<sup>2</sup>

### 2. Internal Armed Conflict

In an armed conflict which takes place in the territory of a "High Contracting Party" (the Sri Lankan Government in this case) the test that is used to determine whether the dissident armed forces is an "armed group" as opposed to a "terrorist group" is set out in Article 1 of Protocol Additional to the Geneva Convention of 1947. This states that in an "*armed conflict... which takes place in the territory of a High Contracting Party... between it's armed forces and dissident armed forces or other organised groups which, under responsible command, exercise such control over a part of it's territory as to enable them to carry out sustained and concentrated military operations and to implement this Protocol*".<sup>3</sup>

In the armed conflict that has been occurring in Sri Lanka since at least 1983, the Liberation Tigers of Tamil Eelam (LTTE) has met these requirements.

- i. Military operations
- ii. organised command
- iii. organisational capacity
- iv. control over territory

They openly carry arms and distinguish them from the civilian population and other requirements of combatant forces recognised by international law.

Even the United Nations has recognised that conditions have been met to invoke at least international armed conflict rules – the 1987 United Nations Commission on Human Rights Resolution. UN Human Rights Commission on Human Rights of 1987/61 dealt almost exclusively with humanitarian law applied to the conflict in Sri Lanka.

If the LTTE has fulfilled the requirements of an Armed Group (cf a Terrorist Group) then it is protected by the Geneva Conventions and other humanitarian law groups in a civil war situation.

### 3. The Failure of the International Community

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<sup>2</sup> Report of the Working Group, Swedish Red Cross at the Second Consultation on Ethnic Violence, Development and Human Rights. (Netherlands, 1985)

<sup>3</sup> UN.Doc.a/32/44/annex 11, 1947, reprinted in 16 I.L.M.1442 (1977).



The international community has failed to address:

1. The existence of an armed conflict.

There has been a failure to recognise the existence of an armed conflict which meets at least international standards for an internal armed conflict according to human rights law and humanitarian law principles. Increasingly this armed conflict is dismissed as an exercise in 'terrorism' especially after the New York bombing on 9/11. This is, of course, welcomed by the GoSL which is capitalising on the readily available funds and military hardware 'to fight terrorism'. In reality this is to fight it's own civilian Tamil people.

2. The gross violations of human rights.

There has been extensive violations of human rights, especially of the civilian population in the Tamil North and East by the Sri Lankan Armed Forces, the LTTE, the recently formed anti-LTTE paramilitaries armed and supported by the Sri Lankan Armed Forces, and Sinhalese hoodlums, criminals and gangsters supported by Sinhalese extremists and politically active Buddhist monks. The most seriously affected by these human rights violations are the Tamils in the North and East almost all of it at the hands of the Sri Lankan Armed Forces.

However, what has been presented at human rights forums and elsewhere, are human rights violations committed by the LTTE. Little is heard of human rights violations committed by others, especially by the Armed Forces on the Tamil civilian population.

This has seriously affected the lives and human rights of thousands of Tamil civilians over a prolonged period. The failure of the international community to address the problem in an impartial, constant, appropriate and timely fashion has made the situation of the Tamil people much worse. The Tamil people have justifiably lost all confidence that the Sinhala dominated government will ever protect their rights. This has will and has, markedly increased their support for a separate Tamil State, the administration of which must be beyond the reach of the Sinhala government in the South.

3 The right of Self Determination

The right of self-determination, the ability to determine a people's political status as well as their economic, social and cultural development, is fundamental in protecting their human rights. It is the first right to be identified in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which are the two main human rights documents.

The UN special rapporteur Hector Gross Espiell in his report on the 'Right of Self Determination' states '*human rights and fundamental freedoms can exist truly and fully when self-determination also exists, such is the fundamental importance of self-determination as a human rights and pre-requisite for the enjoyment of all other rights and freedoms.*'<sup>4</sup>

The right of self-determination was, in the post World War II situation, originally applied to people not in control of their traditional territory due to foreign or colonial domination. The dominated people held the right to self determination as long as the colonial power was

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<sup>4</sup> U.N Doc E/CN, 4/SUB.2/405/REV.1 (1979) and UN Sales No. E.79 XIV.5/1988

present. When the colonial power was removed, by force or peacefully, the right of self-determination ceased to exist.<sup>5</sup>

The right to self-determination also recognised that the boundaries established by the colonial power were to be the boundaries of the decolonised state. This is so even if, as in the case of Sri Lanka, the colonial power had artificially created a unitary state from territories traditionally held by different ethnic groups, each governing their territories independently of another group.

The underlying divisions among different ethnic groups forced into a unitary state by the colonial power and maintained up to Independence have led to great strife and separations or attempted separations, following the departure of the colonial power. The obvious example among many, was India which at Independence was divided into India and Pakistan (East and West Pakistan). Later East Pakistan severed itself from West Pakistan and became Bangladesh.

The division of Malaya about a year after independence into Singapore and Malaysia is another example. It is of interest that both these countries have developed strikingly after separation and this spectacular development may not have occurred had they not separated.

The situation in Sri Lanka has not been viewed as an exercise in self-determination by most of the world's governments. This was because when the foreign power Britain left in 1948, the unitary government was considered united even though there were two major ethnic groups, the Tamils and the Sinhalese, each of which had separate kingdoms prior to colonial rule and each of which met the international law definition of 'peoples'. Each had its own language, ethnicity, religion and culture<sup>6</sup>. Serious concerns had been expressed by the Tamils of possible discrimination at the hands of the Sinhalese. These were ignored by the departing British who were more interested in leaving behind a 'Britain-friendly' Sinhala capitalist Government than worrying about possible ethnic problems in the future.

According to this traditional view of self-determination (which must be challenged) neither widespread systematic violation of human rights of an ethnic group such as the Tamils or an armed conflict at the level of civil war, automatically invokes the right of self-determination. However, the international community has no remedies for improving the Tamil rights because of the power foreign governments that have protected Sri Lanka diplomatically. It is obvious that this old and outdated view of self-determination is highly detrimental to human rights.

One way to evolve a law of self-determination so that it protects the people in the situation that the Tamils find themselves in, is to grant the right of self-determination to ethnic groups subjected to severe discrimination at the hands of the ruling government.

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<sup>5</sup> The United Nation's Declaration on the Granting of Independence to Colonial Countries and Peoples. U.N.GA. RES.1514, 15U.N.GAOR, SUPP. (No. 16) page 66 (1961)

<sup>6</sup> The famous 'Cleghorn Minutes' written by Sir Hue Cleghorn, the first British Colonial Secretary of Ceylon, in 1799 stated, 'two different nations, from very ancient periods, have divided between them the possession of the island; the Sinhalese inhabiting the interior in its Southern and Western parts from the River Wallouve (today's Walawe) to that of Chillaw (today's Chilaw), and the Malabars (Tamils) who possess the Northern and Eastern Districts. These two nations defer entirely in their religions, language and manners'. I am reluctant to mention a comment made to me at a talk I gave in Canada where a member of the audience who said that he was the grandson of C. Sunderalingam, MP Vavuniya, who first campaigned for Eelam which he called EYLOM, said that the Cleghorn Minute was a creation of his grandfather. I have not been able to check this out.

The right of self-determination is held by “peoples” not governments or individuals. This was reinforced by the International Court of Justice in its opinion on the situation in Western Sahara in which the Court stated that ‘the principle of self-determination (is) a right of peoples’.

It is the word ‘peoples’ that has caused the greatest difficulty in the interpretation of the right of self-determination. Many governments choose (for their own self preservation) to interpret ‘peoples’ as all the people in the country. Therefore, a minority such as the Tamils who are numerically less than the majority (Sinhalese) cannot claim to be a separate “peoples” this will have to change if serious human rights abuse is to stop.

For much of the above interpretation of humanitarian law I am acknowledge the support I have had from a long time supporter of the Tamil people, an American lawyer, Karen Parker whom I have known for a very long time. Some of which I have stated above comes from an outstanding paper she presented at the ‘International Conference on Tamil Nationhood and Search for Peace in Sri Lanka’, in Ottawa, Canada in 1999, at which I was privileged to be present. There is also an excellent discussion on self-determination by the British lawyer Geoffrey Robertson in his *‘Crimes Against Humanity’*.

### Possible Solutions

There are at least three possible solutions to the ethnic problem in Sri Lanka.

1. To continue as a unitary state which some devolution of power to the Tamil areas.
2. A Federal or Confederal setup with two or more states.
3. Separation with the establishment of a separate Tamil state and a separate Sinhala state.

#### 1. The current unitary state with minimal changes

One ‘solution’ is to continue the status quo with some devolution of power to the Tamil areas. This is what the Sinhala extremists are prepared to agree to at the very most, this will not work because it will not be acceptable to the Tamils. There has been too much bloodshed and suffering for this to be accepted by the Tamils in the North and East.

#### 2. A Federal setup

A Federal setup with two states has been discussed – a Federal Tamil State in the North and the East and a Sinhala State in the South. It is not the words that count but the degree of devolution and power sharing that matters. As far as I can see, the degree of power sharing that the Sinhala Government is prepared to consider is minimal.

Because a Federal setup into two states will create so much hostility in the South, I did suggest a five state devolution of power such as exists in Australia with two states in the Tamil North and East and three states in the Sinhala South. This has not had any attention paid to it.

For any Federal setup to work there must be trust between the federating partners. This certainly does not exist in Sri Lanka today. While a federal setup may have worked two or three decades ago, the amount of blood that has been shed and the violation of agreements entered into with the Sinhala Government is such that I doubt whether at this point in time for any Federal setup will work.

Since the 2002 Ceasefire, a Federal solution has been closely studied. The Federal States that have been studied are Switzerland, Belgium and Canada, amongst others. It is important to appreciate that in these countries, the federations that exist is not between parties that have been in armed conflict with each other. Therefore, the setup in these countries are not applicable to Sri Lanka.

A country where there has been an armed conflict and which a Federation of sorts is being tried is Bosnia-Herzegovina, which is a former unitary state in which an attempt has been made to secure peace between three warring parties – Serbs, Muslims and Croats by recourse to a Federal form.

As the EU knows very well, this has been a very costly exercise because it has involved having a Peace Implementation Council, a 'High Representative' in the country, and a Stabilising Force – SFOR – composed of troops from USA, NATO and several European countries. It is not a feasible proposition to have such an arrangement in Sri Lanka.

### 3. Separation

As I have said, a *de facto* separate Tamil state already exists. It is important to appreciate that whatever the Sri Lankan government feels and whatever the pressure exerted on it by Sinhala extremists, no country in the world has two separate Armed Forces, separate Police forces, separate legal systems etc., all of which exist and have existed for years in the Wanni under the LTTE. This is the reality on the ground.

To disarm the LTTE, let alone “crush” them is not a possibility any more than it was to disarm the separate armies in Bosnia-Herzegovina. India with the fourth largest army in the world and a million soldiers in uniform was unable to disarm or “crush” the LTTE in 1988. More than a thousand Indian troops returned in body bags and the Indian army had to return to India after this military (mis)adventure. There is not the remotest chance that the Sri Lankan Armed Forces will be able to do what India could not do. A series of devastating defeats suffered by the Sri Lankan Armed Forces with a massive loss of men and weapons is evidence of this, if evidence is needed.

If the Armed Forces of the LTTE and the Armed Forces of the Sri Lankan government are to exist in an undivided country, then a “Peace Stabilising Force” as exists in Bosnia-Herzegovina will have to be introduced. As I have indicated, and the EU knows full well, it will be prohibitively expensive and not sustainable.

The separation of Sri Lanka into two independent sovereign states, each a member of the United Nations, and bound by the UN Charter's provisions will be a much more attractive and practical proposition.

### A Personal note:

I will end this on a personal note. In scores of addresses I have given across the world in the past two decades, I have referred to the Tamils as “my Tamil people in the North and East” whose hard work, particularly in the clerical and professional sectors has made Sri Lanka what it is, to the Plantation Tamils as “my Tamil people in the Hills” who through sweat, toil and near slave labour has put Sri Lanka on the map, to the Muslims as “my Muslim people” who have been by their dedication to petty trading supplied this much needed service across the country and to the Sinhalese as “my Sinhala people in the South” who are such friendly people, when not stirred up to racist anti-Tamil hatred and brutality by irresponsible and mischievous Sinhala politicians for their own selfish gains

Unfortunately this 'inclusiveness' has been lost because of the damnable activities of a succession of Sinhala extremists and political opportunists who confuse patriotism with ethno-religious chauvinism and have sabotaged the building of a nation.

As for the future, a united Sri Lanka is possible in the years ahead but only after each area has developed – a separate Tamil State in the North and East and a separate Sinhala State in the South. When this has occurred, and when mutual respect has been achieved, the formation of a Confederation may be possible. Attempts to persist with a British Colonial construct which has demonstrably failed is to put Sri Lanka into a "failed-state" basket.

#### In summary

- 1 The four year peace in Sri Lanka is about to come to an end. If it does, it will be the 'end' of Sri Lanka – not necessarily the physical end (it may well be for the North and East) but certainly the economic end with the country facing bankruptcy' aid donors notwithstanding. It will then become a 'failed-state'.
- 2 There is a possibility that Sri Lanka could be saved. This cannot be done by excluding or marginalising a key play – the LTTE.
- 3 The EU has essentially opted out of making, or being able to make, a meaningful contribution to the rescue of Sri Lanka. It will continue to do so unless it changes some of the decisions it has made. Throwing millions of euro into the hands of a corrupt and incompetent government is not an answer.

Much of what I have said sounds very negative. However, the very fact that the EU has had this meeting and has enabled those of us who are concerned with the future of Sri Lanka to present our views is a step in the right direction. A two hour meeting is not enough. Appropriate and sensible action will have to be taken by the EU after consideration of the ground realities.

7th March, 2006