

Sri Lanka: Finding the Start of a Long Road

At their meeting in Oslo December 2–5, the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) agreed to “explore a solution founded on the principle of internal self-determination...based on a federal structure within a united Sri Lanka...[that must be] acceptable to all communities.” This is a significant breakthrough, the first in many years. It provides a sense of direction for the long and difficult negotiations ahead. Public statements by both sides indicate that they will be trying to draw lessons from a wide range of existing models.

Some of the key features of the Sri Lankan constitution are presented below, along with very brief descriptions of those aspects of a few other potential models that might have lessons for the Sri Lanka negotiators. These thumbnail sketches show that there are many ways of building both individual and collective minority rights into a national constitution. The biggest challenge will be to protect Sri Lanka’s democratic culture, including the rights and interests of groups from outside the political mainstream or the LTTE.

The breakthrough: In the Oslo announcement, both sides used words that they had previously rejected. For the Sri Lankan political mainstream, “federalism” had long been regarded as a euphemism for breaking up the country. For the LTTE, the qualifier “internal” in front of the term “self-determination” and the reference to a “united Sri Lanka” were a formal recognition that they would not pursue their dream of a separate state in these negotiations. Even more significantly, they had the explicit blessing of the leader. Both those phrases had figured in the speech by LTTE leader Velupillai Prabhakaran on “Heroes Day” in late November.

Having agreed on the broad principle, the government and the LTTE now face the challenge of deciding what it means. Sri Lankan minister of constitutional affairs G. L. Peiris stressed, in a press conference following the negotiating session, that they would be looking at a variety of models.

Sri Lanka’s constitutions: *The current constitution*, enacted in 1978, is broadly similar to the French constitution. It provides for a strong president, independently elected, who serves as commander in chief of the military and governs together with a prime minister responsible to parliament. The current structure of provincial government, however, is based on the Indian constitution. Unlike the states of the United States, Sri Lanka’s provincial governments all have the same structure, with an elected provincial assembly and chief minister and an appointed governor. The current constitution includes two definitional clauses that have been the subject of heated debate: the characterization of the Sri Lanka as “a

unitary state,” and a clause stipulating that though freedom of religion is protected, Buddhism has “the foremost place” and the state has a duty to “protect and foster” it.

A 1987 amendment to the constitution, enacted in an earlier attempt to resolve Sri Lanka’s ethnic conflict, divided responsibilities into three areas: central subjects; provincial subjects; and “shared” subjects, where both the central government and the provinces have a role. This formula in practice tilts power heavily toward the center. The provinces have virtually no independent financial authority and are funded chiefly by revenue sharing from the center. The central government retains authority for “general policymaking” even on provincial subjects. This detracts heavily from the provinces’ authority. In particular, in the sensitive areas of law and order, policing, and land distribution, power has gravitated to the center. Finally, the Sri Lankan constitution, like the Indian, permits the central government to dismiss a provincial chief minister under certain circumstances. The result is a highly centralized system.

The Sri Lankan government’s 1995 peace proposals expanded considerably the list of provincial powers, giving the provinces much broader although still somewhat constrained authority over law and order and land distribution. It reduced the authority of the central government to intervene in provincial management, and deleted the list of “shared” powers, a source of confusion and central government “mission creep.” In its basic structure, this proposal again followed the Indian model, with identically structured provincial governments and significant power to overrule them in the central government. These proposals redefined Sri Lanka as “an indissoluble union of regions”—a creative way of avoiding both the “unitary state” and controversial term “federal.” It retained the clause about the position of Buddhism, which has been a grievance for Tamils preferring a more secular and neutral government.

Other models: The following very brief selection illustrates some of the ways in which other constitutional models have handled federalism or ethnic diversity.

Canada: The Charlottetown Agreement was put forward in 1992 as a possible means to deal with the longstanding demands of the French-speaking minority in Quebec for a greater role in national politics and of the Aborigines or “First Peoples” for greater autonomy. It was ultimately defeated in a nation-wide referendum.

With respect to the “First Peoples,” Charlottetown stated that they “have the right to promote their languages, cultures, and traditions and to ensure the integrity of their societies” and

acknowledged their right to self-government, albeit without a specific territory in which this would apply. The government was to make a “commitment to negotiations” to implement the right of self-government including issues of jurisdiction, lands and resources, and economic and fiscal arrangements. Quebec was dealt with, as it is now, within the governing structure of the rest of Canada, with explicit recognition of its French-speaking majority and a unique culture.

The agreement would have created a bicameral legislature. The House of Commons was to be elected, as it is now, by single-member constituencies, with safeguards to ensure representation for all communities. In the newly created Senate, both these minorities were to have special status. All provinces were equally represented in the Senate, but the agreement provided for additional “First Peoples” members to ensure them adequate representation. The Senate was to vote on all bills passed by the House of Commons except revenue and expenditure bills. Legislation that materially affected French language or culture would require approval by a majority of senators voting and concurrently by a majority of the Francophone senators voting. On entering the Senate, senators were to declare whether they were Francophones for the purpose of the double-majority voting rule. Additionally, Quebec was guaranteed no fewer than 25 percent of the seats in the House of Commons and three of the nine justices in the Supreme Court.

Papua New Guinea: The Bougainville Peace Agreement, signed in 2001, was intended to resolve an insurgency on the island of Bougainville, a province of Papua New Guinea (PNG), arising out of the grievances of the ethnically distinct local people against the PNG government and Australian copper mining companies. The agreement provides for autonomy for the Bougainville Province and for a referendum on independence to be held within 10 to 15 years of the election of the Bougainville government. Until then, the Bougainville provincial government can establish its own judiciary and police force; control land, mining, forestry, environment, foreign investment and culture; and build its own revenue through taxes, while receiving support from the national government and donors. Control of mining is especially important given the island’s huge copper resources. The referendum keeps the independence option open but allows time for reconciliation and consensus on the issue to form, and it also allows time for the economy and administrative structure to grow.

The Bougainville Agreement builds on the Lincoln Agreement of January 1998, which conditioned further progress toward autonomy on disarmament of the Bougainville insurgents and restoration of civil authority, as well as withdrawal of the PNG Defense Force and police riot squads. The agreement also called for a United Nations observer mission to monitor the peace process. Both agreements provided a framework for general amnesty and pardon for insurgents.

Bangladesh: Chittagong Hill Tracts (CHT) Agreement, signed in 1997, establishes a new framework for the government of this largely tribal part of Bangladesh. The agreement addressed grievances of the tribals in the CHT that

the Bangladeshi government was sponsoring non-tribal colonization of their lands and forcing cultural and religious assimilation of the mostly animist and Buddhist tribes into the Islamic Bangladeshi mainstream. India played a major part in brokering the agreement, which also provided the vehicle for Bangladesh and India to deal with the thorny problem of refugee and insurgent migration across their porous border. The agreement has dramatically reduced violence in the affected region, but implementation has moved slowly.

To govern three districts of the CHT, the agreement sets up Hill Councils, composed chiefly of tribal residents but with obligatory representation of non-tribals. Their responsibilities include land management, local police, tribal law and social justice, environment preservation and development, local tourism, licensing for local trade and business, and water utilization. They have limited power to impose fees and taxes.

The provisions for land are very detailed, reflecting the acute sensitivity of the tribal people about encroachment by people from the surrounding plains districts. Lands in the CHT may not be given in settlement, purchased, sold, transferred, or leased out without the prior approval of these councils. Plains settlers will continue to occupy some land held before the agreement. The agreement exempts government-owned properties and a few other key resources from council control, including reserved forests, Kaptai Hydro-electricity Project, Betbunga Earth Satellite Station, state-owned industries and factories. These properties comprise over 50 percent of the area of the CHT.

The agreement also restricts Bangladeshi military personnel to cantonments in the CHT, a significant provision since the army had been the major force for law enforcement in the region. It provides general amnesty for former insurgents against the Bangladeshi government and provides for financial assistance, restoration of jobs, and educational assistance to help rehabilitate the insurgents. It also calls for the return of 50,000 refugees from India, with two acres of land to be provided to each landless family by the Bangladeshi government.

Northern Ireland: The Good Friday Agreement is a set of interlinked commitments by the United Kingdom, the Republic of Ireland, and the political leadership of the unionists (Protestants) and nationalists (Catholics) in Northern Ireland. It stipulates that the future status of Northern Ireland will be determined by that province’s majority. Of particular interest to Sri Lanka is the provision for cross-community support of designated key legislative decisions, including election of key officers in the government and assembly. In the 108-member assembly, members will register as either “nationalists” or “unionists.” Measures designated as requiring cross-community support must obtain either parallel consent (i.e., majorities of both the nationalist and unionist members present and voting) or a “weighted majority” of 60 percent, including at least 40 percent of the members from each community. The agreement also provides for the creation of an Equal Opportunity Commission, a Northern Ireland Victims Commission, and a Commission on Policing in Northern Ireland.

Sri Lanka will also be studying the implementation of the Northern Ireland agreement. The Good Friday Agreement calls for the “total disarmament of all paramilitary organizations.” The Irish Republican Army (IRA)’s unwillingness to “decommission” its weapons has led to repeated crises. In Sri Lanka, the issue of LTTE weapons has helped to scuttle at least two previous peace efforts, in 1987 and 1990. Like the IRA, the LTTE has always regarded itself as a military organization. The status of both the organization and its armed cadres will be a major issue for negotiators.

South Africa: The transition to majority rule in the South African case involves a radical transformation of the state and of power within it with few parallels anywhere in the world. The transition was marked by two extraordinary leaders who negotiated it, Nelson Mandela and F. W. de Klerk. The mechanisms devised for South Africa’s transition, as well as the reconciliation processes, have important lessons for others negotiating equally stubborn disputes, where the change in power relationships is perhaps less overwhelming.

A key turning point on the road to majority rule in South Africa was the referendum of March 17, 1992. The country’s white voters were asked, “Do you support continuation of the reform process which the State President began on February 2, 1990, and which is aimed at a new constitution through negotiations?” When the referendum passed with a majority of 68 percent, F. W. de Klerk was able to proceed with a majority of whites on record behind him. The basic agreement was reached far more quickly than is the norm in stubborn conflicts of this sort. In 1993, the African National Congress (ANC) and National Party (NP) agreed to create a transitional “government of national unity” to govern for a maximum of five years under a transitional constitution that was to take effect after elections in 1994. To oversee and prepare for the elections, they formed a multiracial council.

The transitional constitution made significant structural changes. It formally dissolved the African “ethnic homelands” or “Bantustans,” establishing common citizenship for all South Africans. English, Afrikaans, and nine African languages all became official languages. The constitution even provided for a Volkstaat Council to pursue the possibility of the white minority establishing their own state, though this idea was ultimately not pursued. It dissolved the previous Parliament, but kept other established governmental rules and orders intact, including most of the National Defense Force, police, educational institutions, and public administration. In local government, 40 percent of its members would be elected through proportional representation.

South Africa’s newly elected representatives drafted a new constitution in 1996, which was modified the following year after the Constitutional Court rejected the initial document. As it implements the new political and legal structure, South Africa is radically transforming most areas of government: relations between the center and the states, the functioning of common national services and institutions. Perhaps the most interesting transformation mechanism from Sri Lanka’s point of view is the Truth and Reconciliation Commission. Created

with a view toward helping the nation deal with its deeply violent and conflicted past, it provided a vehicle for those guilty of major human rights abuses in previous years to acknowledge their wrongdoing but emerge able to continue their lives.

Maintaining democracy: In each of these examples, the participants had to overcome crippling mistrust, just as Sri Lankans will need to do. Several participants faced the problem Sri Lanka faces of creating a structure in which members of an armed insurgent group can join both their adversaries and their victims in creating a peaceful society. That others have succeeded should give Sri Lankans hope.

The subject that generates the most persistent worries, however, is how to maintain internal democracy. The LTTE has ruthlessly enforced its claim to speak for all Tamils as their “sole” representative, and has apparently not shifted from its stance. For the sake of Sri Lanka’s democratic future, however, dissident voices—Tamils and others—must not be silenced as the country approaches a possible settlement. Additionally, the issue of the LTTE’s arms must eventually be addressed. The government and the LTTE are finding in the negotiations, and in the joint commissions they have created, a means for testing each other and learning how much business they can do together. Moving ahead, the government will need to accept a greater degree of devolution than it is accustomed to, and the LTTE will need to accept political competition within the areas where it seeks internal self-determination. This may turn out to be more difficult.

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