

NOTES AND COMMENTS

Human Rights, Nationally and Internationally

In his address to the 51st session of the Human Rights Commission in Geneva on the 10th of February 1995, Mr. Lakshman Kadirgamar, the Minister of Foreign Affairs, made a fine statement on the government's commitment to the cause of human rights. He said:

Sri Lanka's respect for human rights has three dimensions: national, regional and international. At the national level, as I stated earlier, we have introduced a wide range of measures to enhance respect for human rights. The constitutional reforms, currently under way in the country, will entail the expansion of the existing scope of human rights in line with internationally accepted standards. The legislation to establish a national human rights commission, awaiting passage in Parliament, will certainly constitute an important landmark in this endeavour.

At the regional level, Sri Lanka will play a constructive role, in cooperation with all countries in the region, to create a collective expression of our commitment to uphold human rights and fundamental freedoms. In the spirit of evolving a regional approach, Sri Lanka endorses the proposition, which is currently a subject of keen and intense discussion among academic circles in South Asian countries, to put in place early initiatives to establish an appropriate human rights mechanism in the region. Sri Lanka will actively support such an approach.

At the international level, Sri Lanka will continue to cooperate with the Commission on Human Rights and all other relevant human rights mechanisms of the UN.

All this is well said. But it is necessary at this stage to enter a few caveats about performance and possible weaknesses.

At the national level, the proposed draft for the constitution's chapter on fundamental rights has a large number of weaknesses that have been pointed out by civil rights organizations. It certainly does not conform to internationally accepted standards in many important aspects. It is to be hoped that the government will be responsive to these criticisms.

There are also 26 important UN human rights instruments which have not yet been ratified by Sri Lanka. There also seems to be a reluctance to open up possibilities for aggrieved individuals to appeal to UN human rights mechanisms. If the government becomes a signatory to the Optional Protocol under the international Covenant on Civil and Political Rights,

if it makes the declarations under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, and under article 21 of the Convention Against Torture, then the way will be open citizens who have been unable to obtain redress domestically to appeal to the UN mechanisms. A government that is committed to human rights and to transparency in all its actions should have no hesitation in permitting its citizens the right of appeal to international mechanisms.

At the regional level, we have yet to be convinced of the necessity for regional mechanisms. We know of no regional mechanism that is an improvement on international standards; in fact, they derogate in various ways from those standards. In the Asian region, many governments have been arguing that the region's cultural specificities and traditions should shape the nature of its adherence to human rights. This is a very dangerous argument that often results in the diminution of human rights in the interests of maintaining and preserving cultural traditions. This is a problem that should be addressed with great care. We find the government's acceptance of the proposal for a regional mechanism uncritical and careless.

At the international level, there is another concern which has not figured in the speech. This is a concern for human rights everywhere, for a concern with the violation of human rights in any country in the world. Due adherence to international standards everywhere must be the concern of all governments and peoples. But, Sri Lanka's record in supporting human rights actions in other countries has been very bad. It has often voted along with some of the world's worst regimes in support of repression. We had hoped the new government would act in a different manner, but these hopes were belied by Sri Lanka's vote on the issue of human rights in China.

A resolution was moved at the sessions on human rights in China. After noting "continuous reports of violations of human rights and fundamental freedoms throughout China, including inadequate protection of the distinct cultural, ethnic, linguistic and religious identity of Tibetans and others" and "continuing reports of violations of human rights and fundamental freedoms in China by local, provincial and national authorities and severe restrictions on the rights of citizens to freedom of assembly, association, expression and religion as well as due process and a fair trial", the resolution asked China to take "measures to ensure the observance of all human rights, including the rights of women and to improve the impartial administration of justice".

Sri Lanka voted against this innocuous resolution and helped China to avert the opprobrium of being called a violator of human rights.

We know that power politics enters these issues; but if it is government policy to take steps to protect human rights within the country irrespective of political or other affiliations, then it is equally important that it takes a principled stand on violations everywhere.

The Minister of Foreign Affairs has an advisory committee composed of some of the most respected human rights activists in the country; maybe he should start taking their advice more seriously.

Third Eelam War?

When the LTTE withdrew from the peace process on April 19 literally with a bang — they blew up two Nawal ships inside Trincomalee harbour —, some sections of the press in Colombo speculated on the beginning of the 'Eelam War 3'. Some even went to the extent of (mis)quoting Prabhakaran — the LTTE leader — to say that he had in fact declared Eelam War 3.

The limited nature of the hostilities that broke out on April 19 may have disappointed some. Actually, such disappointment was inevitable, because neither party wanted at this stage a full scale war. What the LTTE initiated, as it appears now, is a limited war, to achieve a set of limited objectives.

Why is it that the LTTE cannot afford to fight a total war? To find an answer to this question, one has to look at the total political picture in the Northern Province and its politico-strategic implications for the LTTE project.

While almost the entirety of the Jaffna peninsula is surrounded by large scale military camps of the Sri Lankan state, the territory and society North of Vavuniya are totally controlled by the LTTE. The LTTE's totality of control of the North exists in the form of a quasi-state in which they exercise military, political, administrative, judicial, ideological, communication and even psychological control over the populace. The Sri Lankan state does not exist in that society in a rather uneasy manner, in the form of some administrative institutions which are for all practical purposes appendages of the LTTE administrative machinery.

The point then is that the LTTE has built up, beyond Vavuniya, civil institutions and structures which, though

thoroughly militarized, are seen by the LTTE as foundations of the incipient state of Eelam. A large scale, protracted war in the North would mean the decimation of these state institutions and perhaps the possibility of the LTTE being forced back into the status of a guerilla army.

The LTTE may have many shortcomings in its political conduct. However, the acute awareness of its self-interest is obviously not a fault for which the LTTE can be chided. A limited war, localised in the East and conducted at times in the sea, serves best the LTTE's current agenda.

Negotiations or Pre-Negotiation Talks?

It is not a question of semantics, but a real issue concerning the characterization of what transpired between the government and the LTTE since September last year. "Peace talks", and "peace negotiations" are the two terms that are usually employed to describe what happened. Talks they are; yet they are not political negotiations as such. In fact, one major allegation that President Kumaratunga has been making against the LTTE is that the latter, despite repeated insistence by the government, refused to agree to 'political talks.' What were then these talks that went on through four rounds in Jaffna?

Both President Kumaratunga and Mr. Prabhakaran are quite right to say that there were no 'political negotiations.' in the sense that nothing was discussed concerning a political settlement to the ethnic question. While the LTTE had been vaguely talking about a federal alternative to Eelam, the government was also making general references to 'extensive devolution'. And all these references were made not at the 'negotiation' table, nor in the letters which the two leaders exchanged, but in public statements.

The range of issues that constituted the subject of talks during four rounds can be grouped into two broad themes: (i) steps to be taken towards the normalization of civilian life in the North, and (ii) matters concerning the military status quo. All the issues clustered in these two themes, and the talks on them, were actually no more than preparatory or ground laying work towards future political negotiations on substantive issues. In the language of conflict resolution, they were primarily pre-negotiation talks.

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BOOK LAUNCH

Social Scientists' Association and Pravada Publications announces a book launch in conjunction with the Sinhalese Conference, June.