

**CONFLICT RESOLUTION
SRI LANKA - TAMIL EELAM**

Getting to Yes

By

Nadesan Satyendra

“How you see the world depends on where you sit. People tend to see what they want to see. Out of a mass of detailed information, they tend to pick out and focus on those facts that confirm their prior perceptions and to disregard or misinterpret those that call their perceptions into question. Each side in a negotiation may see only the merits of its case, and only the faults of the other side’s. The ability to see the situation as the other side sees it, as difficult as it may be, is one of the most important skills a negotiator can possess. It is not enough to know that they see things differently. If you want to influence them, you also need to understand empathetically the power of their point of view and to feel the emotional force with which they believe in it. It is not enough to study them like beetles under a microscope; you need to know what it feels like to be a beetle....”

(Roger Fisher & William Ury in
Getting to Yes: Negotiating Agreement Without Giving In, 1991)

“Every dispute has a history; we have been sending messages to them and they have been sending messages to us, even if only by silence or by a professed refusal to negotiate. Positions have been staked out. Proposals have been made and rejected. One thing we know for sure: if the conflict is continuing, whatever we have been saying and doing so far has not worked. It has not produced the result we want, or we would have turned our attention to other matters by now...”

– (Beyond Machiavelli: Tools for Coping With Conflict - Roger Fisher, Elizabeth
Kopelman & Andrea Kupfer Schneider, Harvard University Press, 1994)

“... Sometimes, an important factor in changing the course of an international negotiation may be the introduction of a creative perspective, a new understanding of what may have seemed to be intractable conflict. Such a fresh idea will often provide the kernel of a new question that can be asked of someone who, up until now, has been saying ‘no’... Parties to a conflict tend to get stuck because they have been going back and forth arguing about the past and about the merits of their respective positions. The debate has taken on a stale quality, and new ideas are not being generated. Often, those involved simply see no need for new ideas. They know what they are opposed to. They see their primary concern as having their views prevail. New ideas are a threat to existing ideas. Inventing does not take place because parties are content with the ideas they have. Or emotional involvement on one side of a conflict makes it difficult to achieve the detachment necessary to think of solutions that reconcile the interests of all parties....

Perhaps the most serious constraint on creative thinking in a conflict is the official role of those involved in it. Having authority puts a negotiator in the position where a freely invented option may be mistaken by adversaries as an official position. There is a serious risk that she will be seen, at least personally, as committed to accept an idea that she created or helped to create. Something said in a creative context may later be treated as a concession by other negotiators or by critics at home.

....A final reason for not coming up with better ideas is that most of us do not know how - we are untrained in the art of generating fresh ideas.... few of those involved in a conflict ever spend much time trying to invent better solutions for all concerned. Parties rarely spend time consciously trying to invent original ways of resolving their differences or formulating principles that will appeal to both sides...”

(Roger Fisher from Harvard Law School, Andrea Kupfer Schneider from Marquette Law School, Elizabeth Borgwardt from Stanford Center on Conflict and Negotiation and Brian Ganson in *Coping with International Conflict*, Prentice Hall, 1997)

Introduction

During the past decade 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. It is not a matter for surprise, therefore, that during the same period, questions have been raised, from time to time, as to the feasibility of a political solution to the conflict.

Conflict resolution 'specialists' appear, non governmental organisations undertake behind the scene 'proximity talks', 'facilitators' surface and calls for international 'mediation' are made, but these efforts have ended not only without a bang but, often, without even a whimper. Of course, 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.

International Law & the State

Each party claims to have international law and 'justice' on its side. However the political reality is that an international court of competent jurisdiction will not determine their claims - because no such court exists. The jurisdiction of the International Court of Justice may be invoked only by a state. Non-state nations do not 'become' states as a result of a binding judgment 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. In the end, though the strength of the security forces may vary from one state to another, no state exists which does not have its own security forces. The police and the army of a state are the ultimate repositories of this coercive power and in a democracy, the army and police function within a constitutional frame endorsed by the will of the people and secured by the rule of law.

History shows that states have acquired this monopoly of legitimate coercive power, by political struggle (often armed struggle) and not by judgments 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 annual sessions of the United Nations Commission on Human Rights.

That is not to say that each party to the conflict will not continue to claim to have international law on its side. International law and human rights provide useful platforms for mobilising support for one's cause and creating the political space within which one may continue to resort to arms to secure one's objectives. States as well liberation movements have a felt need to act according to law - or at least to be seen to be acting according to law. However, it would be wrong to dismiss this as simply a cynical tactic. In the end, an appeal to law, justice and equity influences - because it is also an appeal to the essential goodness in people, to their humanity. It is therefore, an appeal not without inherent power.

International Law & Self Determination

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. 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 practice 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'. Faced with reconciling the inalienable right of a people to self-determination with the territorial integrity of existing states, attempts are made to evolve the concept of 'internal self determination'. The example of South Africa is 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 is 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 i.e. 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 & armed resistance

Again, 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 contends that its own resort to arms is lawful because it was a last resort against oppressive Sinhala rule and points out to the series of broken pacts and to the Sixth Amendment to the Sri Lanka constitution which outlawed the parliamentary political struggle for a separate state.

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 recognize 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. Since the conflict is an internal disturbance, 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 asserts that the LTTE is a terrorist organisation.

It is not only Sri Lanka that has categorized the LTTE as a terrorist organisation. The United States has done the same. Canada has taken action against the LTTE Canadian

representative Sureshan Manickavasagam on the basis that he is a member of a terrorist organisation.

But in each case, the executive wing of the government concerned made the categorization. And the laws under which the executive wing has so decided, preclude the courts from themselves finding, on the facts, whether the LTTE is a terrorist organisation or not.

In the case of Sri Lanka, judicial review of the categorization of the LTTE (as a terrorist organisation) is expressly excluded. In the case of the U.S.A. and Canada, 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.

Further, even apart from this procedural tangle, what is terrorism? Is all resort to violence to secure political ends, terrorism? Or should the violence be indiscriminate and intended to cause 'terror' and directed to secure political ends?

Is it that a people ruled by an alien people cannot, in law, resort to arms to secure freedom? Is a state entitled to use force to quell a people's struggle for self-determination?

Is a state, which stockpiles nuclear bombs a terrorist state, because it seeks to use the threat of the terror of a nuclear holocaust to secure its political goals such as the preservation of democracy?

Again, does a state or an organisation, which on occasion resorts to terror as a weapon, thereby become a 'terrorist' state, or a 'terrorist' organisation? For instance did the USA bombing of Libya, a few years ago, render the USA a terrorist state? Or would it be necessary to establish that the dominant purpose, for which the state or organisation exists, is the use of terror?

International law & politics

International law will of course, make its slow (and measured) progress to addressing these issues. 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, the colonial rulers weakened by two world wars, were no longer able to impose their rule and the political principle of self-determination began to secure reluctant recognition in international law.

In 1960, the UN General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples 1960 which supported the view that the right of self determination was now a legal principle, won the support of eighty nine states but significantly, there were 9 abstentions viz: Australia, Belgium, Dominican Republic, France, Portugal, Spain, Union of South Africa, United Kingdom, and United States. International law followed upon the success of struggles for freedom - and not the other way around.

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, though today some legal scholars contend that the right of self-determination is a part of the *ius cogens*.

However, despite the views expressed by such legal scholars, 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.

International mediation

If recourse to international law will not resolve the conflict in the island, then a call for international mediation raises other important issues.

In so far as Sri Lanka is concerned, to agree to international mediation would be to agree at the very commencement of the talking process that the conflict is not an internal conflict but an 'inter-national' conflict. Sri Lanka may take the view that to accept such international 'mediation' would be to concede a major premise of the demand for Tamil Eelam and further that the LTTE call for mediation is simply a tactic to secure the political space to continue the struggle for an independent Tamil Eelam.

The conclusion of the Christian Michelsen Institute Conference sponsored by the Norwegian Government in February 1996 reflected similar concerns:

“Given the separatist nature of the original conflict, full recognition of the LTTE as representing the 'Tamil nation' is not the issue. If that were accorded as a procedural issue in the negotiations, substantive negotiations would not be necessary since LTTE would have obtained its principal aim.”

Again, given the shared interest of many existing states to secure existing state boundaries, from which country would a 'neutral' mediator come from? And what will be the substance of the via media that a mediator may suggest or find acceptable? In the end, it is this latter question that may well prove vital.

The parties to the conflict will need to have some assurance as to the spectrum of possible solutions that may be on offer before they agree to a genuine talking process. Sophisticated foreign policy advisers to governments may raise issues similar to those

raised at the Christian Michelsen Institute Conference and may want to be persuaded that the call for 'international mediation' is not simply a tactic to secure political space for a continuation of the armed struggle for an independent Tamil Eelam.

Sufficient, perhaps has been said to show that there may be a need to go beyond rhetorical appeals to 'international law', and 'international mediation' and look at more effective approaches to a resolution of the conflict in the island of Sri Lanka.

BATNA - Best Alternative to a Negotiated Arrangement

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 Best Alternative to a Negotiated Arrangement. 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 a useful illustration. For the United Kingdom, its 'Best Alternative to a Negotiated Arrangement', 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.

Waging war for peace

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.” (Sri Lanka Sunday Times, 20 August 1995)

Today, Sri Lanka talks of ‘devolution’ and wages 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 heroism and determination seeks 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.

In the meantime, ever increasing number of lives, both Tamil and Sinhala continue to be lost, human suffering continues in increasing proportions, and the two peoples are becoming increasingly brutalized.

Need for a ‘win-win’ approach

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 meaningful 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?

When a win-win approach is suggested, often the knee jerk response is that one or other of the parties (or both of them) should compromise on their goals. Faced with diametrically opposed positions, it easy to conclude that something must give and that the only way out is to explore the whole area of what is ‘fair and just’. This then is the path of district councils, provincial councils, regional councils, the unit of devolution, the extent of devolution, federalism, confederation and slogans such as ‘Peace with Justice’.

Again even if 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 long-term position. Efforts are then made by each party to secure that any ‘arrangement’ that may be agreed upon does not provide a platform for the other party to achieve its long-term goals. 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.

It will be more useful to look behind the stated positions of the parties and try to clarify and understand the interests that each party seeks to protect. Stated positions do not materialize 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 stepwise 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. 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 demonizing the other.

Sinhala interests

Why then is it that the Sinhala people are 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 seashores and 30% of the land must be considered in the light of the fertility of the land in the south and center 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 ‘Mahavamsa’ 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 Dutugemenu 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 Sinhala Buddhist national identity has grown in opposition to the growth of the Tamil national identity.

“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.

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. A permanent alien Sinhala majority rules the Tamil people.
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 colonization 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 people may rule another.

Telescoping two processes: independence and inter-dependence

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 the 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 protects each of their interests. 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.

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. Sovereignty is not virginity

Admittedly, the negotiating process may be complex. In the case of Europe, the European Union evolved over a number of years and was underpinned by NATO. 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.

The demand for Tamil Eelam is an inter-national question...

The demand for Tamil Eelam is an inter-national question and few will deny that any meaningful attempt to resolve the conflict will need to involve the LTTE, Sri Lanka, India and the United States. The political reality is that both India and the United States have, from time to time, involved themselves in the conflict - though, on occasion, that involvement may have been layered (through proxies) in several ways.

In the case of India, the covert aid to Tamil militants during the period upto 1986 ended with the induction of the Indian Peace Keeping Force in 1987 and in 1989 with the banning of the LTTE as 'a threat to the integrity of India'. In the case of the US, the Green Berets were involved as recently as a few months ago on Sri Lankan soil and the US has categorized the LTTE as a 'terrorist' organisation.

The shared interest of Sri Lanka, India and US is shown, for instance, by the fact that each has banned the Liberation Tigers of Tamil Eelam. However, the significant differences in their underlying interests is surfaced by the nature of the ban that each has imposed, and the stated grounds for the action that each has taken.

1. In the case of Sri Lanka, the ban is specific to the LTTE. The Emergency (Proscribing of Liberation Tigers of Tamil Eelam) Regulations No. 1 of 1998 provided that "The organisation styled as the Liberation Tigers of Tamil Eelam is hereby proscribed". In addition, the 6th Amendment to the Sri Lanka constitution had since 1983, rendered unlawful any expression of support for the creation of an independent Tamil Eelam state. Sri Lanka banned the LTTE both because it was an armed movement and also because its goal of an independent Tamil Eelam threatened the territorial integrity of Sri Lanka.

2. The Indian ban was imposed because India was of the view that LTTE's objective for a homeland for all Tamils disrupted the sovereignty and territorial integrity of India. The reason for the Indian ban was not that the LTTE threatened

the territorial integrity of Sri Lanka. Nor was the Indian ban imposed on the ground that the LTTE was an armed movement or a 'terrorist' organisation. Again, though the ban was imposed a few months after the Rajiv Gandhi assassination, the ban itself did not explicitly or implicitly state that the Rajiv Gandhi assassination had anything to do with the ban.

3. Again, the US ban was directed not only at the LTTE but to a number of other organisations as well, which were labeled as 'terrorist'. The US ban was not imposed on the ground that the LTTE were seeking to establish an independent state or that the LTTE struggle threatened the territorial integrity of Sri Lanka. Neither was it on the ground that the LTTE's objective for a homeland for all Tamils disrupted the sovereignty and territorial integrity of India.

As long ago as 1983, President Carter's National Security Adviser, Zbigniew Brzezinski spelt out US foreign policy objectives for the year 2000:

"... the combination of demographic pressures and political unrest will generate particularly in the third world, increasing unrest and violence... The population of the world by the end of this century will have grown to some 6 billion people... moreover most of the increase will be concentrated in the poorer parts of the world, with 85% of the world's population by the end of this century living in Africa, Latin America and the poorer parts of Asia..."

Most of the third world countries... are likely to continue to suffer from weak economies and inefficient government, while their increasingly literate, politically awakened, but restless masses will be more and more susceptible to demagogic mobilisation on behalf of political movements... it is almost a certainty that an increasing number of third world states will come to possess nuclear weapons....

Terrorist groups may also before very long try to advance their causes through a nuclear threat... the problems confronting Washington in assuring US national security will become increasingly complex..."

- Zbigniew Brzezinski

- Power and Principle,

published by Weidenfeld and Nicolson, 1983

Here, it is not without significance that it was during Zbigniew Brzezinski's period in office as National Security adviser, that the United States began publishing its list of international terrorist organisations.

Additionally, nuclear non-proliferation is also an important plank of US foreign policy and in the words of President Clinton, the US intends to "weave its non-proliferation strategy more deeply into the fabric of all its relationships with the world's nations and institutions". This has had its impact on India's nuclear policy and its own security interests. India not without reason, contends that whilst it will support nuclear disarmament it will not support a 'nuclear non proliferation' treaty that creates an elite nuclear club in perpetuity. Non-alignment in a multipolar world takes on a somewhat different coloration to that in a bipolar one. 'Calibrated adjustment' is the name of the new approach.

The US may not be unaware that whatever may be the short term calibrated 'adjustments', in the longer term, stability may be achieved in the Indian region only on the basis of a free association of the separate nations of the sub continent. The US may therefore seek to build up influence within struggles for national self-determination both as a way of monitoring and managing them and also as a useful addition to its armory in managing New Delhi.

It is within this matrix of power balances that any national liberation struggle in the Indian region may be compelled to adopt its own calibrated approach, both towards New Delhi and Washington. It is therefore, important to recognize the differences in the underlying interests (and policy objectives) of Sri Lanka, India and the United States - three countries which are united in their opposition to the LTTE at the present time.

The recent agreement (27 Dec 1998) between Sri Lanka and India to work towards a free trade area in the Indian region, may be a pointer (albeit, a small pointer) to that which may be the direction of the future. The agreement is regarded as the precursor to a seven-nation reduced tariff regime known as the South Asian Free Trade Area (SAFTA), which is expected to get going by 2001. Apart from India and Sri Lanka, SAFTA will include Bhutan, Nepal, Pakistan, the Maldives and Bangladesh.

The views of Julius Nyerere, ex President of Tanzania and one of Africa's most respected elder statesperson, are not without relevance:

"It seems that independence of the former colonies has suited the interests of the industrial world for bigger profits at less cost. Independence made it cheaper for them to exploit us. We became neo-colonies. ... The majority of countries in Africa and the rest of the South are hamstrung by debt, by the IMF. We have too much debt now. It is a heavy burden, a trap. It is debilitating. We must have a new chance. If we doubled our production and debt-servicing capabilities we would still have no money for anything extra like education or development. It is immoral. It is an affront.

The conditions and policies of the World Bank and the IMF are to enable countries to pay debt not to develop. That is all! Let us argue the moral case. Let us create a new liberation movement to free us from immoral debt and neo-colonialism. This is one way forward. The other way is through Pan-African unity...

Kwame Nkrumah and I were committed to the idea of unity... I did not believe in these small little nations. Still today I do not believe in them. I tell our people to look at the European Union, at these people who ruled us who are now uniting... Later African historians will have to study our correspondence on this issue of uniting Africa."

(Interview reported in the New Internationalist, January/February 1999)

Again, strange as it may seem to some, the struggle for an independent Tamil state, 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 and the United States.

"The growing togetherness of the Tamil people, is but a step in the growth of a larger unity. We know that in the end, national freedom can only be secured by a voluntary pooling of sovereignties, in a regional, and ultimately in a world

context... we recognise that our future lies with the peoples of the Indian region and the path of a greater and a larger Indian union is the direction of that future.

It is a union that will reflect the compelling and inevitable need for a common market and a common defence and will be rooted in the common heritage that we share with our brothers and sisters of not only Tamil Nadu but also of India. It is a shared heritage that we freely acknowledge and it is a shared heritage from which we derive strength.”

(Nadesan Satyendra, Tamil Eelam, Kurds and Bhutan, July 1985 –
Quoted also in States, Nations, Sovereignty - Sri Lanka, India and the Tamil Eelam Movement
by Sumantra Bose)

Whilst the demand for an independent Tamil state is not negotiable, there may be a need to explore fresh pathways concerning the terms on which an independent Tamil Eelam may associate with an independent Sri Lanka. And, here, there may be a need to revisit the words of Roger Fisher et al in Coping with International Conflict:

“... Sometimes, an important factor in changing the course of an international negotiation may be the introduction of a creative perspective, a new understanding of what may have seemed to be intractable conflict. Such a fresh idea will often provide the kernel of a new question that can be asked of someone who, up until now, has been saying ‘no’... Parties to a conflict tend to get stuck because they have been going back and forth arguing about the past and about the merits of their respective positions. The debate has taken on a stale quality, and new ideas are not being generated. Often, those involved simply see no need for new ideas. They know what they are opposed to. They see their primary concern as having their views prevail. New ideas are a threat to existing ideas. Inventing does not take place because parties are content with the ideas they have. Or emotional involvement on one side of a conflict makes it difficult to achieve the detachment necessary to think of solutions that reconcile the interests of all parties....

Perhaps the most serious constraint on creative thinking in a conflict is the official role of those involved in it. Having authority puts a negotiator in the position where a freely invented option may be mistaken by adversaries as an official position. There is a serious risk that she will be seen, at least personally, as committed to accept an idea that she created or helped to create. Something said in a creative context may later be treated as a concession by other negotiators or by critics at home..

... A final reason for not coming up with better ideas is that most of us do not know how - we are untrained in the art of generating fresh ideas... few of those involved in a conflict ever spend much time trying to invent better solutions for all concerned. Parties rarely spend time consciously trying to invent original ways of resolving their differences or formulating principles that will appeal to both sides...”