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Pirapaharan, Chapter 36 (continued)

by T. Sabaratnam

(Volume 2)

Thimpu Talks - Second Round (Continued)

The Tamil delegation did not permit the government representatives to present their proposals. The Tamils told the government delegation they wanted to raise two matters that flowed from the opening statement of Hector Jayewardene before the government presented their proposals. The Tamils said their continued participation in the talks depended on the clarification the government side offered on those matters.

The two matters on which the Tamil side sought clarification were: the four basic principles on which the solution should be based and the representative character of the Tamil delegations. The next three days - 13 to 15 August - were spent on discussing those matters.

Tamil delegates first submitted a joint statement on the evolution and relevance of the four basic principles. They also made detailed oral submissions.

The Tamil delegations made it clear they were in Thimpu to talk about a lasting solution to the ethnic conflict. They said that such a solution should have a basic framework. The four principles they had submitted on 13 July constituted the fundamental elements of that framework. They were the four cornerstones of any solution acceptable to the Tamil people. For the negotiations to be fruitful, the solution should be built on those fundamental principles, they said.

Nationhood

The first of the four elements, the Tamil delegation submitted, was the recognition that the Tamils of Sri Lanka constitute a nation. That is an existential reality, they argued. They pointed out that the word 'nation' is used in two senses. It was used to mean 'a state' and more fundamentally, the 'cohesive group identity of a people.' They said they were using the word 'nation' to mean the 'cohesive group identity of the Tamil people.'

They argued that the group identity of the Tamil people is exhibited by their emotions and feelings; their strong bond of togetherness and their desire to preserve their identity. The fact that thousands of young men took up arms demonstrated their emotions and feeling; their togetherness and their common will to preserve that identity. The Tamils' determination to defend their identity is exhibited by their willingness to fight and die for it, they contended.

Nadesan Satyendra quoted two famous definitions to substantiate these arguments. Rupert Emerson, he said, defined a nation thus:

'The simplest statement that can be made about a nation is that it is a body of people who feel that they are a nation; and it may be that when all the fine spun analysis is concluded, this will be the ultimate statement as well.'

Professor Taylor wrote: "Where and what is a nation? Is there such a thing? You would answer that the nation exists only in the minds and hearts of men. It is an idea. It is therefore more real than its courts and armies; more real than you and I are, for it existed in our fathers and will exist in our children. It is an idea, it is an imagination."

Apart from the fact that Tamils of Sri Lanka felt themselves a nation, they also satisfy the classical criteria set by political theorists for a people to constitute a nation. They inherited a common heritage, a common culture, a common language, an identified homeland and a common economic life. And they had exhibited their will to live as a separate nation by resisting invasions during their long history and voting for federalism from 1956 to 1970 and voting for a separate state since 1977. They had also refused to take part in the enactment of the 1972 and 1978 constitutions.

Tamil Homeland

Next the Tamil delegates described the second element that should form the basis of a solution acceptable to the Tamil people. They said for the Sri Lankan Tamils to continue their existence as a nation they need the defined territory in which they have traditionally lived to be recognized as their homeland. The existence of an identified homeland for the Tamils in Sri Lanka should be accepted, they argued. They submitted that the existence of a Tamil homeland had been accepted as a reality - historically, administratively and in practice.

Historically, they said, the Tamils and Sinhalese had lived as separate nations in their defined homelands; Tamils in the northern and eastern parts and the Sinhalese in the rest of the country. When the Portuguese invaded Sri Lanka at the beginning of the 16th century the Tamil kingdom, the Kingdom of Jaffna, was ruling the northern and eastern parts of the country; the Kingdom of Kotte was ruling the coastal areas of the western and southern Sri Lanka and the Kandyan

Kingdom was ruling the central hills of the island.

Flag of Kotte Kingdom

Kotte was the first to come under foreign influence and its rulers later in that century willingly transferred their sovereignty to the Portuguese king. The Jaffna Kingdom was conquered by the Portuguese in 1621 and the Kandyan Kingdom by the British in 1815. The sovereignty of Jaffna Kingdom, which passed to the colonial rulers through capture, should have reverted to the Tamil people at independence.

Administratively, the NorthEast were treated separately by the Portuguese, the Dutch who ousted the Portuguese and the British who edged the Dutch out between 1621 and 1833; a period of over two centuries. The British in 1833 centralized the administration with authority flowing from Colombo to the provinces. Even then, the NorthEast were treated as provinces in their own right. The same administrative arrangements continue today.



Sinhala governments have reinforced the belief that the NorthEast constitutes the Tamil homeland through political pacts, legal enactments and through their constitutions. The Bandaranaike- Chelvanayakam Pact of 1958 provided for the settling up of regional councils in the north and east, with the provision to amalgamate them if the people desired, and accepted Tamil as the language of administration of those two provinces. The pact states, "...without infringing on the position of the Official Language as such, the language of administration of the Northern and Eastern Provinces be Tamil." The Tamil Language Special Provisions Act passed into law in 1958 by the S. W. R. D. Bandaranaike government made Tamil the language of administration of the northern and eastern provinces. The Dudley Senanayake- Chelvanayakam Agreement of 1965 took the arrangement a step further. It promised to make the Tamil language the language of record also. And Tamil was declared the language of administration and record in 8 January 1966.

The 1972 and 1978 constitutions have recognized the NorthEast of Sri Lanka as the Tamil homeland. The 1972 constitution provided for the use of the Tamil language in the NorthEast. The 1978 constitution declared Tamil as a national language and provided for the use of this national language in the NorthEast.

The more telling argument was the third. It pointed out that the Sinhala people and its governments regarded the northerneastern portions of Sri Lanka as the Tamil homeland. When, in late 1950s Tamil people started agitating for official status for the Tamil language, the cry among the Sinhala people was, 'Go back to your homeland.' By that, they meant the NorthEast. And, during 1958, 1977, 1981 and 1983 riots, the governments of the relevant time sent the Tamil refugees by special trains and ships under armed escort to the northeast, where they were considered to be safe.

A Tamil delegate made that point movingly at Thimpu when he asked: "Where do we go for safety, when we are assaulted in the South of Sri Lanka? Where does the government of Sri Lanka send us when there are riots in Colombo? We seek sanctuary in the North and East of Sri Lanka. That is our homeland."

Self Determination

The right to self-determination was the third element the Tamil delegates wanted incorporated into a solution to the Tamil problem. They took up Hector Jayewardene's argument that international law and practice permits the right of self-determination only to colonial peoples striving to win independence from foreign domination. They argued that Tamils were under foreign rule and had the right to free themselves from Sinhala subjugation.

The Tamil delegates enumerated the several acts of subjugation the Tamils suffer. Disfranchisement of the Indian Tamils which reduced their numerical strength, state aided colonization which stole vast amounts of land from the Tamil homeland, the enactment of the Sinhala Only law which deprived the Tamils of the use of their language, the introduction of standardization that reduced the entry of the Tamils to the universities, riots which threatened the life and property of the Tamils and state terrorism which threatened the very existence of the Tamil community were all acts of subjugation which they said the Tamils have the right to free themselves from.

The Tamil delegation did not press the fourth element - the citizenship issue - due to the agreement reached at the All Party Conference in 1984. They argued for the inclusion of a strong human rights section in any forthcoming agreement.

The Sri Lankan delegation did not participate in the debate on the four principles. A Tamil delegate told me, "They just listened. They did not engage us." But Hector Jayewardene indicated that he wanted to submit a note on the land problem,

Violence flares up

On 14 August, while at Thimpu the Tamil delegates were stressing the need to incorporate the four basic principles in any solution to the ethnic problem to make it acceptable to the Tamil people, the army enacted another foul murder. Army gunmen stopped a minibus plying from Colombo to Trincomalee, ordered the six Tamil passengers in it to get down, marched them into the jungle and hacked them to death. This was viewed as a continuation of the Vavuniya and

Trincomalee killings of 10 April.

The Tigers carried out their threat of retaliatory attacks a few hours after the gruesome killings of the Tamils. About 40 guerrillas led by Victor attacked the army camp at Murungan in the Mannar district.

In Chennai the LTTE issued a statement which said the Murungan attack was a warning to the Sri Lankan army. "We will hit back if Tamils are killed," it said.

India cautioned both sides to stick to the ceasefire.

Legitimacy Issue

The Tamil delegation took up the question of the character of their representation on 15 August. It submitted a joint statement requesting the Sri Lankan delegation to clarify the remark Hector Jayewardene had made in the course of his opening statement on 12 August. Hector Jayewardene called the Tamil side "the six groups representing the interests of certain Tamil groups in Sri Lanka."

The following is the text of the joint statement:

Before you proceed to place before us the so-called proposal of the Sri Lankan Government, the Tamil delegation wishes to seek clarifications on two matters. Your response to these two issues will determine whether the talks can continue or not. I therefore urge you, Gentlemen, to listen carefully to what we have to say and treat it with utmost seriousness.

The first issue pertains to the legitimacy of the Tamil Delegation present at Thimpu. The Statement of 12th August by the Leader of the Sri Lankan Govt.'s delegation which was, no doubt, prepared largely for domestic and international consumption refers to the Tamil delegation as "Six groups representing the interest of certain Tamil groups in Sri Lanka."

We wish to state emphatically that the six organisations comprising of the Tamil delegation at the Thimpu talks are not mere negotiators representing a clientele - we are a liberation movement who are the sole legitimate representatives of the Tamils of Eelam or Tamil Eelam. In short, we represent the Tamil Nation.

We also wish to point out that a liberation movement does not drop from skies; it grows in response to the widening and deepening of national oppression against a people and is in turn nurtured and sustained by the support and confidence that it enjoys from the people. We, the Tamil Eelam Liberation Movement, who are committed to the liberation of our people from National Oppression and Repression took to arms, not for the love of arms. We resorted to the force of arms because all force of reason had failed to convince the successive Sri Lankan Governments of the need to resolve the Tamil National Question.

Gentlemen, your presence at this table is the direct result of our armed struggle and your Government's request to talk to us is because it knows fully well that we, the six organisations represented here, together comprise the sole legitimate representatives of the Tamil people. But it is not enough that these realities be known to just the two of us. The Thimpu talks have acquired an international dimension that these realities become manifest in the peace talks.

In this point, I wish to highlight another practical problem. How is your Government going to explain to the international community that it is seated across a table trying to arrive at a negotiated settlement with a "group" which does not represent the entire Tamil people or a Tamil Nation?

How are we going to explain to our people that we are seated across a table with a hostile government which does not recognise us as their sole legitimate representative? This is a practical problem that needs to be resolved if the Thimpu talks are to continue and the burden of resolving this practical problem lies with you - because it is a problem that was created by you. In any event, we can pose another reasonable question. What right have you to question our legitimacy when you seek to run away from the will of your people by seeking a referendum? But we do not wish to make an issue of this right now, since most governments of the world today which rule through constitutional dictatorship like your Government do not enjoy the support or confidence of their people.

We now come to the second issue that we wish to raise before we proceed. The Leader of the Sri Lankan delegation yesterday indicated an eagerness to present certain proposals as regards land settlement. We have pointed out time and again at the first round of talks, that we have absolutely no intention of discussing subjects for devolution without coming to an agreement on the system of government and the unit for devolution of power. The framework that you presented at the first round was duly rejected and reasons cited. We are therefore puzzled as to your present attempt to present fresh proposals. We await your responses to the matters that we have raised before deciding whether we can participate in these talks any further.

This joint statement posed a threat to the continuance of the talks. The Sri Lankan government was upset. It realized that the Tamil militants had been provided with an escape route by the questioning of the legitimacy of the Tamil side. Hector Jayewardene telephoned his brother President Jayewardene in Colombo. They decided to wriggle out of the situation they had created for themselves,

Hector Jayewardene made the following statement in the evening:

Dr. H.W. Jayewardene's Statement of 12th August 1985 did not intend to raise any question as to the legitimacy of the delegations present here. In view of the clarifications sought, we state our position as follows:-

1. The Sri Lanka Government delegation represents all communities in Sri Lanka including the Tamils of recent Indian origin. In the Sri Lanka Government itself there are elected representatives of the Tamil people.
 2. The Tamil delegations here claim to represent the entire Tamil people in Sri Lanka. In view of the fact that the Sri Lanka Government delegation also represents certain Tamil interest, we cannot accept the position that the groups present here represent all the Tamils of Sri Lanka, or are the sole representatives of the Tamil people.
- It is well known that a recognized Tamil political party, the Tamil Congress, as well as certain other Tamil militant groups are not represented here.
3. There is sufficient representation of the Tamil people at these talks to reach a negotiated settlement regarding the problems that have been identified, and it is for this reason that the Sri Lanka Government delegation is present at these talks.

That clarification saved the conference from collapse. The clarification also paved the way for the Sri Lankan delegation to present new proposals. The new proposal was titled: *An Outline of the Structure of the Sub-National Units of a Participatory System of Government.*

The proposal comprises 12 articles. Article 1 gives the rationale of the proposal, which is to introduce a participatory system of government in Sri Lanka. It says the proposed structure of the government and the powers devolved to the various sub-national units are intended to ensure the involvement of the people in identifying their needs and problems, working out their solutions and implementing them.

The structure is designed to be strictly in conformity with the present unitary constitution. It is designed to ensure that the executive powers are with the President and the legislative powers with the Parliament. Article 2 specifically states that "units for the exercise of governmental power (will be) within the framework of the constitution."

A three-tier structure of sub-national units are to be set up with the possibility of a fourth if need arises. The sub-national units are: Provincial Councils, District Councils and Pradeshiys Sabhas.

Provincial Councils will be set up for each province, District Councils for each district and Pradeshiya Sabhas for each Divisional Secretariat Divisions. If need arises, a Council of States will be established.

The proposal strictly prohibits the coordination or merger of the provinces by limiting the boundaries of the Provincial Councils to the boundaries of the existing provinces.

The Provincial Councils will have a Chief Executive. He will be called Chief Minister if he is a Member of Parliament and by some other appropriate name if he is not. The President will appoint a person who commands the confidence of the members of the Provincial Council as the Chief Executive. The Chief Executive will be entitled to choose his Executive Council from among the members of the Provincial Council.

The executive powers will flow from the President. If the Chief Executive is a Member of Parliament, the President will assign him executive powers. If he is not a Member of Parliament, the President will delegate him executive powers. The members of the Executive Council will not have executive power. This arrangement ensures that the Provincial Councils do not enjoy any executive powers on their own.

The Provincial Councils will have power only to make Ordinances (subordinate legislation) on specified subjects, which will be operative within the Province. The President will have power to disapprove such Ordinances. Parliament will have to approve such ordinances. The subjects that will be devolved to the Provincial Councils will be specified in an amendment to the constitution.

District Councils will form the next tier of the governmental structure. Such Councils will be headed by the Chief Executives of the Districts. If he is a Member of Parliament, he will be called the District Minister. If he is not, he will be called a Minister. The President will assign the District Minister executive power. To the Minister he will delegate power. District Councils will have the legislative power to make ordinances on specified subjects mentioned in the Constitution.

On the surface this government proposal looks fine from a Tamil point of view. But it is not so. The basic sub-national unit of the governmental structure is the district and not the province in this proposal. District Councils can decide to join together to form a Provincial Council or not. Members are also elected to the District Councils.

The voters choose the members of the District Councils. The chosen members and the parliamentarians of the districts constitute the membership of the councils. The district councils of each province will have the power to decide whether they are going to function as District Councils or amalgamate at the provincial level. The section under the heading, 'Decision to function as Provincial Council or District Council,' does the trick.

There are three Articles, 10 to 12, under that heading. Article 10 deals with the constitution of the Provincial Councils. It deals with two situations, the provinces where District Councils were functioning at that moment (Article 10(a)) and the areas where District Councils did not function (Article 10 (c)).

District Councils were functioning in the provinces other than the northern and eastern provinces. In the provinces where District Councils were functioning, the Provincial Councils are constituted if two-thirds of the members of the District Councils in a province decide by resolution passed by a simple majority to function as a Provincial Council. If no such decision is made, District Councils will continue to function. When the Provincial Council is created, the District Councils of that province will cease to function. (Article 10 (b))

In the northern and eastern provinces, District Councils were not functioning. In those provinces District Councils should be elected first and two-thirds of the District Councils of each province must decide by resolution passed by a simple majority within a specified period after the election to function as a Provincial Council. If no such decision is made, District Councils will be constituted for each district.

Article 11 dealt with the membership of the Provincial Councils and District Councils. Members elected from the Districts of a province and the Members of Parliament from that province become members of the Provincial Councils. Members elected from the districts and the Members of Parliament from that district become members of the District Councils.

Article 12 was a feature incorporated to ensure the failure of the Provincial Council system. It lays down that one-third of the number of District Councils within a province can decide by resolution to withdraw from the Provincial Council and function only as District Councils.

Two Tamil delegates told me that when they read the proposals they laughed. "Some others were fuming, especially Satyendra," one of them said.

The scene was set for the walk out. The Tamils only needed a proper environment.

"The problem is, we must pull out of the talks without hurting India," Pirapaharan had told the other ENLF leaders.

The Sri Lankan Army provided that very night (16 August) the environment needed to stage the walk out. The massacres at Vavuniya and Trincomalee angered the Tamils.

Annexure

An Outline of the Structure of the Sub-National Units of a Participatory System of Government - Proposal Presented by Sri Lanka Delegation - 16 August 1985

Rationale

1. The object of the present proposals for devolution is to ensure a greater sharing of power by all the people, and their maximum participation in identifying their needs and problems, and in deciding upon matters vitally affecting their interests. While enabling people at the local level to plan and to implement their solutions for problems, the proposed devolution seeks to maintain the political and economic unity of the nation, in the interests of the prosperity and good government of all parts of Sri Lanka.

Scheme

2. Apart from the Central Government, the units for the exercise of governmental power within the framework of the Constitution will be -

- (a) The Provincial Council (in each province)
- (b) The District Council (in each District)
- (c) The Pradesheeya Sabha with representation at the village level (in each AGA Division).

The present Provincial boundaries will constitute the limits of the area of authority of the Provincial Council.

The present District boundaries will constitute the limits of the area of authority of the District Council.

In this scheme, the Provincial Councils and the District Councils will be established by an amendment to the Constitution and the powers to be devolved on them will be prescribed by an Act of Parliament. Pradesheeya Sabhas will be established by an Act of Parliament.

Provincial Councils

Executive Power

3(a) The President shall appoint as Chief Executive of a Provincial Council one of the members who appears to the President to have the most support in the Council. The Chief Executive will be entitled to choose his Executive Council from among the members of the Provincial Council.

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3(b) If the member so appointed Chief executive is a Member of Parliament, the President shall appoint him as Chief Minister of the Provincial Council, and assign executive powers to him.

3(c) If that member is not a Member of Parliament, he will not be appointed a Minister, but will enjoy as nearly as practicable, the rights, privileges and perquisites of a Minister, and will exercise delegated executive power.

3(d) There are two alternatives as to the powers of a Member of the Executive Council - either

(i) such member will not have any executive power, and will assist the Chief Executive; or

(ii) such member will, on the recommendation of the Chief executive, be delegated executive powers by the President.

3(e) To overcome difficulties regarding the assignment of executive powers to persons who are not Members of Parliament, the possibility of establishing a Council of State (as an advisory body to, and as part of, Parliament) needs to be considered. The functions of the Council of State have been set out in the draft Tenth Amendment to the Constitution, Articles 84R-84V.

3(f) The powers that may be assigned or delegated to the Chief executive (and the members of the Executive Council) will be specified in the Statute.

4 Legislative Power

The Provincial Council will have power to make Ordinances (which will be in the nature of subordinate legislation) on specified subjects, which will be operative within the Province. The President will have the right to require reconsideration of such Ordinances and to disapprove of such Ordinances.

Devolution of Power

5(a) The powers that will be exclusively reserved for the Central Government have been specified last July.

5(b) The powers to be devolved on a Provincial Council (through the Chief Executive) will be specified in the Statute.

5(c) Powers not specifically devolved will remain in the Central Government.

District Councils

Executive Powers

6(a) The President shall appoint as Chief Executive of District Council one of the members who appears to the President to have most support in the Council, and such Chief Executive will exercise all Executive powers delegated to him.

6(b) If the member so appointed Chief executive is a Member of Parliament, the President shall appoint him as District Minister of the District Council, and assign executive powers to him.

6(c) If that member is not a Member of Parliament, he will not be appointed a Minister, but will enjoy as nearly as practicable, the rights, privileges and perquisites of a Minister, and will exercise delegated executive power.

6(d) The powers that may be assigned or delegated to the Chief executive will be specified in the Statute.

Legislative Power

7 The District Council will have power to make Ordinances (which will be the nature of subordinate legislation) on specified subjects, which will be operative within the District. The President will have the right to require reconsideration of such Ordinances and to disapprove of such Ordinances.

Devolution of Powers

8(a) The powers that will be exclusively reserved for the Central Government have been specified last July.

8(b) The powers to be devolved on a District Council (through the Chief Executive) will be specified in the Statute.

8(c) Powers not specifically devolved will remain in the Central Government.

9 Elections

Elections will be held in respect of each Administrative District in a Province on the proportional representation system with a view to the constitution of a Provincial Council or a District Council. The number of members to be elected will be determined according to the population and area of the District.

Decision to function as Provincial Council or District Council

10(a) In any Province in which at present all the District Councils are functioning, a Provincial Council shall be constituted if the members of two-thirds of the District Councils in the province decide by resolution passed by a simple majority to function as a Provincial Council.

(Where there are two District Councils in a Province, a Provincial Council shall be constituted only if both District Councils so resolve).

If no such decision is made, the District Councils shall continue to function.

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10(b) When a Provincial Council is so constituted, the District Councils of that Province shall not function except for the purpose of exercising any powers and functions delegated to them by the Provincial Council.

10(c) In any Province in which at present some or all of the District Councils are not functioning, a Provincial Council shall be constituted if the members elected (as set out in para 9 above) of two-thirds of the Districts of that province decide by resolution, passed by a simple majority within a specified period after such election, to function as a Provincial Council.

If no such decision is made, a District Council shall be constituted for each District.

Membership of Provincial Councils and District Councils

11(a) The members of a Provincial Council shall be the members elected from the Districts of that province (as set out in para 9), and the Members of Parliament from that province.

11(b) The members of a District Council shall be the members elected from that District (as set out in para 9) and the Members of Parliament from that District.

Subsequent Reconsideration

12(a) Where a Provincial Council is functioning, one-third of the number of District Councils within that Province may decide by resolution to withdraw from such Provincial Council and function only as a District Council.

12(b) Likewise two or more contiguous District Councils in a province may decide by resolution to be constituted as a Provincial Council in a Province.

12(c) A District Council of a Province may at any time by resolution passed by a simple majority decide to join the provincial Council of that Province.

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Chapter 37. Thimpu Talks Collapse

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