

# *The Right to Self-Determination of the Tamils of Sri Lanka*

by Dr. Victor Rajakulendran, Sydney, Australia

The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest cooperation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy and assure her of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire....

President Woodrow Wilson in the American Congress on January 8, 1918

## **Introduction**

Self-determination or the right to self-determination is a theoretical principle that a people should have the freedom to determine their own governmental forms and structures. In most cases, the principle of self-determination is used by an ethnic or religious minority within a specific geographic area when seeking independence from a majority to escape prejudice or persecution. However, the right to self-determination has been most effectively employed in the decolonization movement.

Because there is a perceived risk that applying the principle of self-determination leads to the fragmentation of states, states have resisted the demand by people for their right to self-determination. Although this principle was first applied in international relations by the American President Woodrow Wilson in his speech on January 8, 1918 outlining his 14 points for reconstructing a new Europe after World War I, the right of all people to self-determination was not introduced into the framework of international law and diplomacy until the UN Charter was ratified in 1945.

The United Nations Charter is the constitution of the United Nations. The 50 original member countries signed it at the United Nations Conference on International Organisation in San Francisco on June 26, 1945. It entered into force on October 24, 1945, after being ratified by the five founding members—the Republic of China, France, the Soviet Union, the United Kingdom, and the United States—and a majority of the other signatories.

As a Charter it is a constituent treaty, and all signatories are bound by its articles. Furthermore, it explicitly says that the Charter trumps all other treaty obligations. As most countries in the world have now ratified this Charter, including Sri Lanka, all the signatories are bound by this treaty to accept the right to their self-determination of a people living in their respective territories.

Exercise of the right to self-determination was most effectively employed in the decolonisation movement. Decolonisation could be achieved by attaining independence, integrating with the administering power or another state, or establishing a "free association" status. The UN has stated that in the process of decolonisation there is no alternative to the principle of self-determination.

## **Application of the principle of Self-determination in Decolonisation**

Decolonisation usually refers to the achievement of independence by the various European colonies and protectorates in Asia and Africa following World War II. A particularly active period of decolonisation occurred between 1945 to 1960, beginning with the independence of Pakistan and India from Britain in 1947.

Decolonisation is a political process and has frequently involved violence. In extreme circumstances, there has been war for independence, sometimes following on a revolution. More often, there has been a dynamic cycle where negotiations failed, minor disturbances ensued resulting in suppression by the police and military forces, escalating into more violent revolts that lead to further negotiations until independence is granted. In rare cases, the actions of the native population have been characterised by non-violence like what happened in India, and the violence came as active suppression from the

occupying forces or as political opposition from forces representing minority local communities, who felt threatened by the prospect of independence. The decolonisation process becomes complete when the *de facto* government of the newly independent country is recognised as the *de jure* sovereign state by the community of nations, the UN.

Karen Parker is a San Francisco-based attorney who practices human rights and humanitarian law, and testifies regularly at the UN Commission on Human Rights in Geneva and its Sub-Commission on the Prevention of Discrimination and Protection of Minorities. She is responsible, in part, for the evolution of international law in such areas as economic sanctions, weaponry, environment as a human right, and the rights of the disabled. According to Parker, during decolonisation two types of situations have arisen. She calls these situations; A. "Perfect Decolonisation" (PD) and B. "Imperfect Decolonisation" (ID). Parker says; "The principle of self-determination arises in the de-colonisation process because in a colonial regime the people of the area are not in control of their own governance. In these situations there is another sovereign, an illegitimate one, exercising control. De-colonisation, then, is a remedy to address the legal need to remove that illegitimate power."

According to Parker, in a PD process, "the colonial power leaves and restores full sovereignty to the people in the territory. In these situations, the people have their own State and have full control of their contemporary affairs, with a seat in the United Nations and all other attributes of a State in international law. There are either no component parts of the State that would have the right to self-determination in its own right or if there are such component parts, the State has voluntarily become a working multi-group State. Some de-colonization that took place after the UN Charter can be viewed as "perfect." This is not to declare that all States that were former colonial States have a "perfect" current government or that a particular government in any of these States fully respects human rights. However, the issue of self-determination no longer arises in these countries".

Parker says an ID occurs when there is an absence of restoration of full governance to a people having the right to self-determination. Parker describes at least 4 different scenarios under which ID occurred.

*Scenario 1:* "Separate States conquered by a colonial power were amalgamated into what the colonial powers frequently referred to as a "unitary" state -- a kind of forced marriage between the two or more formerly separate States. The people of these States usually have different languages, ethnicities, religions or cultures. At the termination of the colonial regime, the colonial power may simply turn over power to one of the groups and leave the other groups or groups essentially entrapped into the new de-colonised State. The entrapped group may resist this, and may seek to restore its pre-colonial sovereignty."

*Scenario 2:* "These different groups may decide to continue as a unitary State, but with an agreement (usually through the de-colonisation instrument or national constitution) that if it does not work out, then the component parts would go back to their pre-colonial status of independent units. This is what I call a "we'll give it a try" abrogation of full independence by usually the smaller group or groups with clear opt-out rights (a fall-back position) if the "unitary" system set up by colonial power fails to afford them full rights. However, when a component part seeks to opt-out, the dominant power refuses."

*Scenario 3:* "One State may forcibly annex a former colonial people, but either the effected peoples or the international community or both do not recognise this as a legal annexation. The international community may have even mandated certain procedures, as yet unrealised, by which the effected people are to indicate their choice regarding self-determination rights."

*Scenario 4:* "There may be a situation where a small component part of a colonially-created "unitary" state agreed to continue the unitary State but with no particular "op-out" agreements signed. Rather, there were either verbal or negotiated, written agreements about how the rights of the smaller (or in some situations weaker) group would be protected in the combined State. However, the smaller or weaker group then experiences severe curtailments of their rights over a long period of time by the dominant group and may lose the ability to protect its rights by peaceful means."

### **What happened to the Tamils in Sri Lanka?**

When the European colonisers came to Sri Lanka (the then Ceylon) there existed at least two separate Kingdoms, a Tamil kingdom in the north and east of the country and a Sinhalese kingdom in the rest of the country. Some say that there were two Sinhalese kingdoms in the rest of the country.

The northern Tamil kingdom of Jaffna, which the Portuguese overthrew in the seventeenth century (1621), comprised of the northern part of the country and a long stretch of land along the entire eastern coast of the island. The Portuguese, and after them the Dutch, called this territory "The Commandment

of Jaffnapatanam." The coveted natural harbour of Trincomalee is on the eastern coast of this old Kingdom. The name Trincomalee is the anglicised corruption of the Tamil name "tiru-kona-malai" (meaning – the sacred angular hill).

Both Portuguese and Dutch were not able to conquer the whole island, but when the British came to colonise the island at the close of the 18th century, they were able to conquer the whole country. Soon after the Colebrook unification of the conquered territories in 1833 the British divided the island into nine provinces for their own administrative ease. Recognising that, in this case, the forced marriage of unitary rule would never work, the first British administrator complained that "I do not know how we are going to do this - these people are really different." Therefore they recognised the Tamil ethnic character of the territory and population of the old Jaffna kingdom, and ensured its continuity by carving two separate provinces out of that territory where the population would not be mixed but would be entirely Tamil-speaking. [Now the east is not entirely Tamil-speaking due to the systematic State-aided colonisation of this part with Sinhalese following independence from Britain]. This area consisted of the Northern and Eastern provinces that were amalgamated under the Indo-Lanka Accord of 29th July, 1987 and is now recognised as the North-East Province, the Tamil homeland.

The decolonisation process in Sri Lanka involved, therefore, both *Scenario 1 and 4* as described by Parker. In the de-colonisation process in Sri-Lanka, there was an attempt by the Tamil and Sinhala leaderships to try out a post-colonial unitary state despite the historic situation of the two countries. In the 1948 constitution, there was an agreement between the majority Sinhalese people and the numerically fewer Tamil people for a government structure that would guarantee that the Tamil people would not become fatally submerged under the Sinhalese.

There was an attempt to avoid submersion of the minority in the language of the Constitution in the form of an **Article 29**. This article was the legal provision which conferred on the parliament of Ceylon (Sri Lanka) its law-making powers. It was also the device by which the framers intended to safeguard and protect the minorities against discriminatory legislation. The article provided that Parliament may make laws for the peace, order and good government of Ceylon. However, any law which conferred a benefit or advantage on one community while not conferring the same benefit or advantage on the other communities and any law which made one community subject to a disability or disadvantage while not making the other communities also subject to the same disability or disadvantage was declared void. This article also laid down the requirement of a two-thirds majority to amend the constitution.

To by-pass this two-thirds majority, the Sinhalese government in 1972 introduced a new constitution through converting the Parliament into a "constituent assembly" and made the island a "Republic of Sri Lanka." With this change, the Tamils lost even the little protection against discrimination they had had through **Article 29** under the 1948 constitution. In addition, major pacts made between the Tamil and Sinhalese leadership to allow the rights of the Tamil people and the rights of the Sinhalese people to be dually respected in a jointly run island were not honoured and ended in failure. Therefore, in Parkers terminology the decolonisation in Sri Lanka is an ID process.

Several attempts to negotiate and re-negotiate for nearly 30 years to try to keep open ways to guarantee the rights of the Tamil people failed. Therefore, the combined Tamil leadership said that "unitary" rule was no longer an option and, in the 1977 parliamentary elections, the Tamil people gave the mandate to the combined Tamil leadership, the Tamil United Liberation Front (TULF), to establish a separate state for the Tamils in the North-East of Sri Lanka.

When the TULF leaders failed to fulfil the people's mandate through democratic means, the youth started an armed resistance and, from 1982, a war has ensued to defend that right of the Tamil people to self-determination.

Although there were many armed Tamil groups in the beginning, only the Liberation Tigers of Tamil Eelam (LTTE) has developed into a formidable force to maintain this armed struggle for the right of the Tamil people to self-determination.

### **What were the options left for the Tamils?**

Based on the historical and socio-political evidence given above, the Tamils in Sri Lanka fulfil the criteria to qualify as a **people**. Not only a common culture, language and religion but also a typical traditional settlement area, a shared history and democratically expressed will characterise them as a **nation**. They also share the experience of a people who has been systematically and collectively discriminated against, even persecuted in an independent Sri Lanka. As evidenced by the facts given above, the majority community of Sinhala Buddhists has effectively appropriated the government machinery and changed the

constitution to its advantage without the consent of the Tamil people, so much so that the State has ceased to represent all the peoples living in the island.

With the outbreak of civil war in 1983 the split of society along ethnic lines in Sri Lanka became apparent, particularly with the Tamils fighting for an independent state in order to find at last security, social justice, equality and economic well-being. After almost two decades of war with over 70,000 dead, huge material destruction, close to a million Tamils displaced and more than a half a million people expatriated, the LTTE, who can justifiably claim to represent the will of the majority of their people, were in control of huge chunks of Tamil homeland in the North-East region.

The LTTE has organised an effective civil administration, including its own health and education systems, as well as a proper judiciary, in the areas that it controls. There are frontiers where all persons and goods that enter or leave their areas are checked. Levies are imposed by the LTTE administration. Foreign passports are stamped with a seal special to Tamil Eelam (the Tamil Homeland). All observers agree that, while the government and bureaucracy of the south is inefficient and corrupt, just the contrary holds for the Northeast. But, despite a separate administration, not all links have been cut. In fact, a certain hybrid system or functional interdependence still exists in the Northeast, if only to give credence to the claim of Colombo that it is the sole and sovereign Government in Sri Lanka.

From a position of strength, with Norway as facilitators, an official cease-fire agreement (CFA) was signed in February 2002 between the LTTE and the then Sri Lankan Government (GoSL). Six rounds of negotiations between the two parties were held at different international venues to look for a political solution to the conflict.

To give peace a chance, to end the suffering of its people, the LTTE put aside its demand for external self-determination in favour of substantial autonomy safeguarding the sovereignty and territorial integrity of the State of Sri Lanka. Given the huge sacrifices made by the Tamils during the war and the territorial gains made during the war, it was a politically risky - but at the same time courageous - major concession. However the GoSL did not reciprocate with its own concessions.

The GoSL rejected the Interim Self-Governing Authority (ISGA) proposed by the LTTE that was badly needed to develop the war ravaged Northeast while both sides negotiate a final political settlement. Even the joint mechanism (Post-Tsunami Operational Management System – PTOMS) proposed by the International Community (IC) and initially accepted by both sides was first legally challenged in courts by the extremist Sinhalese parliamentary parties and now rejected altogether by the present President Mahinda Rajapakse.

The Sri Lankan government failed to fully implement the CFA. Most importantly, the government not only failed to disarm the paramilitaries (Ex-Tamil militants used by the Sri Lankan security forces for intelligence gathering), but also started using them to do hit and run attacks on the LTTE. As a result, a low-intensity war has started threatening the very existence of the CFA and, hence, the peace process itself.

The recent attempts by the facilitators, the Norwegians, to make both sides meet in Geneva have failed to improve the situation. The latest attempts by the Norwegians, after the European Union (EU) listed the LTTE as a terrorist organisation, to secure a security guarantee from both the parties for the Sri Lanka Monitoring Mission, which includes personnel from Nordic countries, including EU countries - Sweden, Denmark and Finland - has also failed.

At the end of the recent talks with the Norwegian facilitators in Oslo, the LTTE released a communique. In that communique, the LTTE has claimed its administration as the *de facto* State of Tamil Eelam, described what its aims are, what it has done so far for a just peace and normalcy for the suffering people of the Tamil Nation, what the GoSL has failed to do and what it has done to worsen the plight of the Tamil people. In conclusion, the LTTE has reaffirmed its policy of finding a solution to the Tamil national question based on the realisation of its right to self-determination.

### **Role of the International Community in other similar conflicts**

***In resolving contemporary conflicts in other countries the IC has recognised and emphasised the People's right to their self-determination.***

#### ***Eritrean Conflict***

After being under colonial rule, first by the Italians and later by British, after the decolonisation process, the people of Eritrea decided to break away from the Ethiopian federation. The armed struggle of the Eritrean people, using arms captured from the Ethiopian occupying forces, although at first suppressed by

the help provided by the Soviet Union to Ethiopian forces, succeeded in establishing military control of the region. Later, through facilitation provided by the US government, Eritreans voted in overwhelmingly for independence from Ethiopia in 1993 in a UN-monitored, free and fair referendum. The Eritrean authorities declared Eritrea an independent state on April 27, 1993. The government was reorganised and, after a national, freely contested election, the National Assembly, chose Isaias as President of the Provisional Government of Eritrea. A new Eritrean constitution was ratified in 1996.

### ***East Timor Conflict***

After colonial occupation for 3 centuries, in 1974, Portugal as a decolonisation process sought to establish a provisional government and a popular assembly that would determine the status of East Timor. Civil war broke out between those who favoured independence and those who advocated integration with Indonesia. Unable to control the situation, Portugal withdrew. Indonesia intervened militarily with the approval of the US administration under President Ford and integrated East Timor as its 27th province in 1976. The United Nations never recognised this integration and both the Security Council and the General Assembly called for Indonesia's withdrawal. Armed resistance began within East Timor and was put down by the Indonesian occupation forces, and leaders like Xannana Gusmao were imprisoned in Jakarta.

Beginning in 1982, at the request of the General Assembly, successive Secretaries-General held regular talks with Indonesia and Portugal aimed at resolving the status of the territory. In June 1998, Indonesia proposed limited autonomy for East Timor within Indonesia. In light of this proposal, the talks made rapid progress and resulted in a set of agreements between Indonesia and Portugal, signed in New York on 5 May 1999. The two Governments entrusted the Secretary-General with organising and conducting a "Popular Consultation" in order to ascertain whether the East Timorese people accepted or rejected a special autonomy for East Timor within the unitary Republic of Indonesia. 98 per cent of registered voters who went to the polls decided by a margin of 94,388 (21.5 per cent) to 344,580 (78.5 per cent) to reject the proposed autonomy and begin a process of transition towards independence. After more bloodshed caused by the Indonesian occupational forces, the UN intervened with the help of a multinational force headed by Australia and brought normalcy to East Timor.

On 30 August 2001, two years after the "Popular Consultation," more than 91 per cent of East Timor's eligible voters went to the polls again; this time to elect an 88-member Constituent Assembly tasked with writing and adopting a new Constitution and establishing the framework for future elections and a transition to full independence. East Timor's Constituent Assembly signed into force the Territory's first Constitution on 22 March 2002 and, following presidential elections on 14 April, Xanana Gusmao was appointed president of East Timor. The Constituent Assembly transformed itself into the country's parliament on 20 May 2002.

### ***Bougainville conflict***

After resisting the Papua New Guinea occupation forces for decades, the Bougainville factions first met to discuss a peaceful settlement of the conflict in July 1997. In October 1997 they agreed to an immediate truce. The New Zealand-led Truce Monitoring Group (TMG) was deployed in December 1997 and, at one point in time, included up to 250 truce monitors from Australia, New Zealand, Fiji and Vanuatu. The parties agreed on a permanent cease-fire agreement on 30 April 1998. The Australian-led Peace Monitoring Group (PMG) was then deployed to replace the TMG. This was followed at the end of July 1998 by the deployment of the United Nations Observer Mission on Bougainville (UNOMB).

A comprehensive Bougainville Peace Agreement was signed in Arawa on 30 August 2001. The Agreement included a weapon disposal plan and provided for elections for the establishment of autonomous government on Bougainville. It also provided for a referendum, in 10 to 15 years, on the question of Bougainvillean independence.

On 21 December 2004, an agreed Constitution for the Autonomous Region of Bougainville was gazetted by the PNG Government, paving the way for elections for the establishment of autonomous government.

In May 2005, UNOMB declared the weapons disposal program complete and verified the situation on Bougainville as being conducive to holding elections. The election, which took place from 20 May to 2 June 2005, resulted in the first Bougainville President, Joseph Kabui, and 39 members of the Autonomous Bougainville Government being sworn into office on 15 June 2005 in a ceremony in Buka.

The author would like to emphasise here that the IC has sanctioned and provided the option for the People of Bougainville to exercise their right to self determination for full independence in 10-15 years if they are not happy with the Autonomous Bougainville Government they are enjoying now.

### ***Sudanese conflict***

After a civil war for more than 21 years in Sudan, the government of Sudan in the North and the Sudanese People's Liberation Movement (SPLM) in the South signed a permanent peace accord on January 9, 2005. This is a final comprehensive peace agreement. It is the culmination of a more than two years of intensive negotiations. The regional Inter-governmental Authority on Development (IGAD), led by retired Kenyan General Lazaro Sumbeiywo, mediated the peace talks. However, a united diplomatic front to achieve peace was also led by the United Kingdom, Norway, Kenya, and the United States, with significant involvement from the U.S. Special Envoy, Ambassador John Danforth, during the last two years of the effort.

The peace accord was signed in Nairobi by General John Garang on behalf of the SPLA and Sudanese First Vice President Ali Osman Taha on behalf of the government of Sudan. Dignitaries attended the event from all over the world. U.S. Secretary of State Colin Powell attended and signed as a witness on behalf of the United States.

This accord provides for a federal system, with a two-chamber central government and a regional government for Southern Sudan, which will have substantial powers. This structure will stay in effect for six years, after which South Sudan may choose to become independent through a referendum vote. During this interim period, a government of national unity will administer the country on a national basis. The agreement provides for an internationally monitored cease-fire with UN peace monitors. Two separate armed forces with a joint coordinating mechanism will be maintained in the North and South during the six-year transitional period. The agreement also provides that Sharia law, which is applied in the predominantly Muslim North, will not apply in the predominantly Christian South or in the capital, Khartoum, - a major sticking point.

Once again this author would like to point out that the IC has recognised the South Sudanese People's right to their self-determination for full independence. This author also would like to point out that the IC has recognised and recommended two separate armed forces with a joint coordinating mechanism to be operative in the North and South during the six-year transitional period.

### **Conclusion**

Considering the political history of the two Nations in Sri Lanka and the nature of the armed resistance by the LTTE to establish the self-determination of the Tamil people, the Tamils' struggle for their right to self-determination is no different from that of the Eritreans, East Timorese, Bougainvilleans and Southern Sudanese. However, after agreeing to nominate the LTTE as the representative to negotiate with the GoSL, the IC is trying to portray the Tamils' struggle for their right to self-determination as "terrorism," because of some of the military tactics used by the LTTE, and is not condemning the "State Terrorism" used by the GoSL against the Tamil people. This is purely a double standard based on self interest. The IC should treat the LTTE in the same way it treated the Eritrean People Liberation Front, the East Timorese Resistance Forces, the Bougainville Revolutionary Army and the Sudanese Liberation Army, which were recognised as the representatives of their respective peoples who were struggling for their freedom.

It is time for the IC to accept the ground reality in Sri Lanka and act in a similar way to the manner in which they have responded to end the conflict in Eritrea, East Timor, Bougainville and Sudan. The sooner the IC responds the way international principles require, the sooner they will help put an end to the misery of the Tamil people in Sri Lanka.

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