

DLF Communiqué:

The Majority Report of the Expert Committee of the APRC

The Interim Report submitted by an eleven member majority of the Expert Committee of the APRC falls short of the high degree of autonomy and the possibility of a near federal constitutional dispensation promised in the 2002 Oslo Declaration. Nevertheless it is a considerable advance on the 1997 and 2000 constitutional proposals, the previous best so far. The more progressive members of the Committee would, no doubt, have had to make compromises in order to achieve a majority consensus - an understandable and important consideration in enhancing the credibility of the recommendations. What is more important is that this Report forms an adequate basis as a Southern Consensus for initiating negotiations with the Tamil and Muslim people.

The real trouble, however, will start only now. Will the government and the UNP have the nerve to accept these proposals as they stand, or will they water them down to accommodate the JVP-JHU and the Minority Reports? The Minority is retrogressive on devolution, North-East merger and sensitivity to Muslim and Up-Country Tamil interests? If the past is any guideline, the SLFP and the UNP leaderships have bowed to chauvinist threats; and threats and intimidation there will be a plenty in the coming months. The DLF calls upon the APRC, the APC, the PA Government and the UNP to resist such pressures.

Strengths and weaknesses

The most welcome aspect of the Report is attitudinal. In recognising that Sri Lanka is a country made up of different peoples; it has conceptually grasped the reality that the concerns of different ethnic communities must be addressed up-front as a core issue. The Report seeks to foster concord among “the constituent peoples of Sri Lanka”, an excellent phrase, and makes a declaration of plurality (“multi-ethnic, multi-lingual, multi-religious and multi-cultural character of the Sri Lankan society”).

Unfortunately, the Majority has felt constrained to balance this out with near paranoia about threats to sovereignty and fears of secession (Section 4). Given the LTTE’s Eelam stance and given that the bottom line of a solution, in so far as the South is concerned, is an assurance of the indivisibility of sovereignty, a firm commitment to this principle is obligatory. However, the Report has gone too far in evoking excessive presidential powers and focussing excessive authority in the Centre to the detriment of devolved Provincial democracy. One such undesirable provision is granting the President the right to dissolve Provincial Governments if he/she feels that sovereignty is threatened.

In India, for many years, the Centre was vested with similar powers, which have been abused. In the US and other truly federal dispensations the Centre is denied such powers. Neither the US Administration nor Congress can dissolve State Legislatures, nor can the President dismiss noncompliant elected State Governors who can be removed only by impeachment. The Report envisages appointed Provincial Governors and Chief Ministers from the elected Legislature; such duplication is avoided in the US. Appointees are always pliant recipients of political patronage, removable at will, unlike elected leaders who derive their authority from the people. Vesting excessive powers in the President and the Centre, though couched in the language of safeguarding sovereignty, will in the end come to serve more petty ends.

Asymmetrical Devolution

It is welcome that the Report envisages Asymmetrical Devolution in two respects, though it fights shy of using the term. One, the merger of the Northern and Eastern Provinces for a period of ten years to be followed by a referendum, and secondly, special provisions for the areas of

Muslim and Sinhalese concentration in the Eastern Province. It is necessary and appropriate that an asymmetrical principle (what befits the N-E is not necessarily what best fits the rest of the country) has been introduced; this is the meaning of learning from elsewhere and then designing a system that best suits the Sri Lankan situation. An autonomous zone with an appropriate role for the Up-Country Tamils is also envisaged. The Muslim and Sinhalese sub-territories in the East are to be non-contiguous.

Delineating the sub-territories and the autonomous zone, designing the devolved powers to be vested therein, and defining their relationship with the larger units within which they are embedded, are going to be very challenging tasks. The Report leaves this issue in the form of a large number of possible options in Article 6.10(A to D), presumably to be adumbrated in the final report.

It is a pity that the Majority lacked the courage to go all the way and solve this problem by taking the Asymmetrical Principle to its logical conclusion. The Northern and Eastern Provinces should be treated as a special unit for obvious reasons, but the rest of the country does not need seven Provincial Legislatures and Provincial Governors at all. In the N-E a crisis of ethnic identity and a civil war justifies special asymmetrical arrangements. The rest should have been left alone (as in the Scotland-England case), or been limited to, say just two units.

The present Provincial Council system has been a failure; little has been achieved in terms of devolving power down to the grassroots and there is corruption, waste and duplication. Administrative decentralisation, not an excessive number of units of devolution would much better fit the needs of the South. Seven constitutionally empowered Provincial Legislatures in the South with constitutionally devolved powers to make Provincial laws, levy taxes, appoint judges, determine school curricula, administer police forces and make sundry regulations, would be utterly counterproductive in a country of Sri Lanka's size.

Subject to this concern the DLF broadly and in principle agrees with the approach to Power Sharing (Section 5, but see next paragraph), Distribution of Powers (Section 7), provisions for Up-Country Tamils (Section 12), Individual and Group Rights (Section 15) and Land (Section 17). We reserve our comments on Local Government (Section 13) and the Public Service (Section 14 seems overly complicated), for the time being.

The DLF agrees that the size of the Central Legislature should be no more than 180 and that post-devolution a Second Chamber limited in size to about 60 will be needed. However we have reservations whether the latter should be elected entirely by the Provincial Legislatures (Section 5.1e). It would seem more appropriate to establish a mixed method of selection including members directly elected on a district basis. We are also disappointed that there is no mention in the Report of doing away with the all-proportional method of parliamentary elections. And Sub-section 5.2a entitled "The Provinces" is quite opaque; it is not clear what the authors are attempting to say.

In respect of Section 8 on the Judiciary we have some concern, especially in respect of the N-E devolution unit, that the Provincial High Court is unduly subjugated to the Supreme Court and the Court of Appeal. The overlong concurrent list in Section 7 suggests that this topic has not been thought through sufficiently.

In respect of the all-important topic of Fiscal Devolution (Section 9) the Report adverts repeatedly to the provisions of the Constitutional Bill of 2000. This Section consists almost entirely of textbook principles of fiscal devolution; obviously specific and concrete proposals are still a long way off in the drafting. The devil, in the end, will be in the details. However, the DLF agrees that it would be more appropriate to return to this matter later, after having had the Report's principal recommendations endorsed by the APRC and the APC.

Language

We do not disagree with the contents of Section 16, but we note a particularly glaring omission. The importance of the English language, both as a world language of communications and technology and as a link language, has not been adequately emphasised. A great deal of

damage has already been done to youth from underprivileged social classes by the short-sighted policies of ultra-nationalists who have cut them away from a window of opportunity into the modern world and also fostered cultural insularity. Furthermore, because of its utilitarian advantages young people can be more easily motivated to pick-up English than a second national language; hence in many cases it will become the preferred inter-ethnic link language. These advantages should be recognised and capitalised on.

Defence

The Report skirts around the main issue - the integration of the armed forces of the State and the LTTE - in favour of general platitudes about sovereignty, security and the defence (Section 10). Even here the structure proposed for the police force seems to be overly complex and convoluted. This arises from the Majority Report's expectation of up to eight units of devolution. We have argued above that a two-unit model, or at least a model with a much smaller number of units, is more appropriate. In such a case each unit will be large enough to dispense with some elements of the overlapping structure that has been proposed.

We support the concern about making the virtually mono-ethnic police force multiethnic, but do not agree that it cannot be done at an accelerated pace.

On the crucial question of integrating and transforming two exclusively mono-ethnic armed forces into a single national force, there is experience elsewhere to learn from. In Zimbabwe three armies were integrated after the 1983 settlement. In Nepal, at this very moment, an imaginative programme is under way to combine two armies into one; practical steps are being taken to separate and confine the two armies into cantonments, and a new Armed Forces Act is being prepared to pave the way for eventual integration.

Annexure to the Report

We support the recommendations in the Subsection on Implementation of Language Provisions. The Subsection titled Security Concerns should be entitled Eliminating Human Rights Violations – there is no point hiding from the truth for reasons of political correctness. The recommendations in the Subsection on Relief and Rehabilitation is not adequate in that it fails to call for the immediate reopening of the A9 and other land routes. The Subsection on High Security Zones speaks unrealistically of the “decommissioning of LTTE arms” as opposed to our proposal for integration of the forces made above. Notwithstanding these limitations we support the spirit in which the Annexure has been prepared.

Conclusion

The critical comments contained in this DLF communiqué are made for the purpose of public discourse and in a spirit of constructive engagement. Overall we believe that the Majority Report is an adequate starting point to commence negotiations with the LTTE and other Tamil and Muslim entities. We would strongly oppose any further watering down of these proposals by the APRC, the APC, the Government or the PA-UNP under the terms of their joint MoU. A watered down version would serve no purpose; it would fail as meaningful set of initial proposals for negotiations.

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