

Keynote speech by M.A. Sumanthiran, 3rd April 2018,
Research Congress,
Inaugural session of the Post Graduate Institute of Humanities and Social
Sciences, University of Peradeniya

The Vice Chancellor of the University of Peradeniya, Dean of Faculty of Arts, Director, Post Graduate Institute of Humanities and Social Sciences, Ven. Professor Gnanananda and Members of the Maha Sangha, and my dear friends;

Let me first tell you how elated and happy I am to have been invited to make this keynote address at a very important session such as this - the Research Congress Inaugural session of a Post Graduate Institute that delves into matters that are of utmost importance to our country. Not just at this particular moment but I think for a long time, these issues have been the reasons for the cause for much of the strife in this country and academic research in these areas would have, I think, contributed to lessen those polarizations that we've had for almost 100 years. Why do I say 100 years? Because the topic that's given to me is about constitutional reforms and the constitution making exercise from a Northern perspective, and looking at it from a Northern perspective, I think this whole exercise is nearing a century, and we still haven't resolved it.

If I had to take our minds back to the time this whole exercise began in the early 1900s - the attempt at independence, or at a different status to this British Colony, was being explored. The Ceylon National Congress pursued that. But it was in 1911, I think, Sir Ponnambalam Arunachalam started a separate movement called 'The Tamil League'. So there started a division in the polity of this island. Not that this island had been always one single unit. It was only in 1833 after the Colebrooke-Cameron Reform Proposals that the island was made one administrative unit for administrative convenience. Until 1833 it was administered as three different units. As you in Kandy know, Kandy ceded to the British the last in 1815. Prior to that, the other two kingdoms at different times had fallen to the different colonial conquerors. But after the British took over the whole island in 1815, it was decided by the British that this island must be administered as one unit.

I have often wondered how it would have been if they'd made a different decision. They could have made two different decisions. One, they could have decided to continue as three separate units. Or, they could have decided to annex the island of Ceylon as part of the Empire in India. Both were quite plausible. If they decided to annex this island as part of India - I say that because it was the same British company that had the interest in India at the relevant time - The East India Company. If you look at the map of India today, there are two sets of islands, Nicobar and Andaman islands, which are further off the Indian coast than Sri Lanka is. But those two islands are part of India. Why? Because the British decided to rule those as part of India. But they decided to rule Ceylon as a separate entity. So this decision could have gone either that way, or, if there was no Colebrooke-Cameron proposal they could have continued as three separate units.

So it's due to an accident of history, or rather a decision made in St. James' Court, that we became one unit in modern times. Be that as it may, in 1926 the idea of a constitution for Ceylon, as it was being discussed, received a new idea from the Oxford returnee, S W R D Bandaranayake. He wrote six letters to the Ceylon Morning Leader newspaper then, arguing that the best model for Ceylon was a Federal Arrangement. He was the first proponent of the Federal idea publicly like that. Six letters. I have read all those six letters. In the last - I think in the 5th letter - he even says that the model of the federal arrangement must be that which is extant in Switzerland. And as you know, Switzerland is actually a confederation. Twenty six (26) Cantons, and power is devolved more in Switzerland than in any other federal arrangement. Perhaps the USSR in the past, but today the most extent to which power is devolved in a federal arrangement, is Switzerland. And S.W.R.D. Bandaranayake's suggestion was that the Swiss model was the best model for Ceylon. He didn't stop with that. He didn't stop with writing 6 letters to the newspapers. He went to Jaffna and delivered a lecture - just as I'm doing today here in Kandy, coming from Jaffna - he went to Jaffna and delivered a lecture promoting Federalism. He tried to sell the idea of Federalism to Jaffna in 1926, all in the same year. Of course Jaffna was not ready to accept it.

In the 1931 elections to the State Council, the Jaffna Youth League, then presided over by Mr. Handy Premanayagam, I think, called for 'Poorna Swaraj' - total independence for Ceylon. They boycotted the election. They boycotted the elections to the extent that no one contested from Jaffna. No one even dared to contest that boycott, and the State Council was left without a representative from Jaffna. So the federal idea of S.W.R.D. Bandaranayake was roundly rejected by Jaffna in the 1920's and 1930's.

In 1931, as you know, when the Donoughmore Commission came, the Kandyan Chiefs made a representation for a Federal Constitution for Ceylon. That was repeated to the Soulbury Commission in the late 1940s as well. The Kandyan League then made written representations for a Federal Constitution for Ceylon. But in the 1940s it was not only the Kandyan wisdom that said the Federal idea was the best for this island, but the Ceylon Communist Party also passed a Resolution in 1944 arguing that Ceylon must have a Federal Constitution. That was the first political party - it is not the Federal Party that called for a federal arrangement first in Ceylon - it was the Ceylon Communist Party in 1944 - five years before the Federal Party was even born - who passed a resolution for a Federal Constitution. And the Keunemann-Vythilingam proposals contain detailed suggestions as to how the Federal Arrangement was to be made.

Around that time the Tamil demand was a very unrealistic and even unfair one. Mr. G. G. Ponnambalam, King's Counsel, called for balanced representation - fifty-fifty as it is known. It's not quite fifty-fifty, if it is balanced representation. But still, from the benefit of hindsight, I'm able to say that that was an unfair and impractical proposal that was made, which was not accepted.

Perhaps due to that the Ceylon Independence Order-in-Council was adopted in Britain in 1947. By the way, our first Constitution was not passed in Sri Lanka, as you may know. It was passed in Buckingham Palace. As much as the decision to keep this island as one unit was made in Britain, the first Constitution that we got in Independent Ceylon was passed in the British Parliament as an Order-in-Council. That was adopted rejecting the federal idea that came only from Kandy. Perhaps, if the Tamil leaders at that time had asked for a federal arrangement, that might have been granted. But that was not to be. A simple constitution with a simple majority rule was brought into operation, albeit with one safeguard in Section 29 that limited the powers of Parliament to make legislation either conferring on one community certain benefits or privileges that are not given to other communities, or depriving a community of certain privileges that the other community was enjoying. The Section 29 safeguard proved to be totally ineffective, because one of the first few (pieces of) legislation that was passed in Independent Ceylon in 1949 was the Citizenship Act. Why do I say it was ineffective? Because in the first Parliament – the 1947 Parliament – there were seven Members of Parliament in a Parliament of...I'm not sure how many members there were, but less than hundred. Seven members were from the upcountry Tamil community. When the Citizenship Act was passed, all of them lost their Citizenship – including those seven members who were in Parliament. So Section 29 was wholly ineffective because not just another privilege, but the fundamental feature of citizenship of a country was lost by a simple Act that was passed. It was then – following legislation called 'The Indo Pakistan Citizenship Act' – after the passage of those two, that the Federal Party was born on the 18th of December 1949, of which I am a member today. The ITAK is its official name, but it has always carried the name 'The Federal Party'. During election results you will see it as 'FP'. That's actually not its official name, but it's always known as 'The Federal Party'. In its first convention held in Tricomalee in April 1951 it passed a Resolution calling for a federal arrangement.

The Federal Party from 1956 onwards has won all the elections until today from the Tamil areas. Earlier it was from all Tamil speaking areas but since the 1970's at least, from all Tamil areas. So the democratic verdict of the Tamil speaking People of this country since 1956 has been for a federal arrangement.

In between there was a blip in 1976 when the Federal Party together with the All Ceylon Tamil Congress and The Ceylon Workers Congress formed the Tamil United Liberation Front and called for a separate state. In the 1977 General Election there was a mandate granted from all Tamil areas except one constituency – Kalkuda in the East which they lost by some 500 votes – all other Tamil areas the TULF won.

Now I must retrace, go back again in time. After the Federal Party made its position clear in 1951 and contested and won the 1956 elections and onwards, it made pacts with several leader of this country. As you all know, in 1957 itself with the same S.W.R.D. Bandaranayake, thirty one years after he propounded the federal idea, the Banda-Chelva Pact was signed. And as you know Bandaranayake came out of his house in Rosemead Place and tore the pact and said 'I cannot implement it'. I have

met a Venerable monk, a very senior member of the Buddhist Clergy, who is 85 years old this year, who told me that he was one of those who sat outside Bandaranayake's residence in Rosemead Place and demanded that the pact be abrogated. He told me this about three or four years ago and he told me, "I now realize what a big mistake I made as a young monk". Nevertheless, that was abrogated, but Bandaranayake himself was killed, perhaps for making that pact and also agreeing to the reasonable use of Tamil.

If one looks at section 29 of the Soulbury Constitution, at the time it was made if they had asked for examples of the kinds of legislations that are prohibited by section 29, one could easily have said 'the Official Languages Act' - conferring on one community a privilege that the other community does not have; expressly prohibited, nevertheless that was passed. No amount of legal challenges proved to be effective.

The Federal Party then made a pact with Dudley Senenayake in 1965 and even joined the National Government of Dudley Senenayake. Mr.M Thiruchelvem, Queen's Counsel, became a Minister to the Senate. But in three years when Mr. Senenayake said that 'I cannot implement this Pact', Mr. Thiruchelvam resigned, and the Federal Party left the Government.

So two agreements, made with two Prime Ministers of this country, from two different political parties were unilaterally abrogated. Those two pacts did not provide for a federal arrangement, by the way. They did not say 'Federal', but the Federal Party was willing to compromise, first on Regional councils on 1957, and in 1965 with District Councils.

After those two failures came the 1970 General Elections at which the United Front Government received a mandate with a two thirds majority in Parliament, and they started drafting the Republican Constitution for Sri Lanka - an autochthonous Constitution, meaning from the soil itself.

Our neighbor India also got independence in 1947. And soon thereafter, they did not get a constitution from Britain, by the way. There was no constitution given by Britain to India. They were told to draft their own constitution. And August 1947 through to January 1950, they drafted their own constitution. For two years, or a little more than two years, by a Constituent Assembly, headed by the Chairman of the Constituent Assembly, Dr. B. Ambedkar, the leader of the so called 'untouchable' community in India. So you see the difference. Who did they make the chairman of the Constituent Assembly to draft the constitution for the Independent India? The minority of minorities, an 'untouchable' was made the Chairman of the Constituent Assembly in India, and in 1950 they adopted that Constitution. It's a secular constitution. It provided for linguistic states. The concept is that of linguistic states; so different language groups were given autonomy. It's not called Federal. The Indian constitution doesn't describe itself as either Unitary or Federal. It is called 'Union of India.' And thirteen languages were made official languages of India. That

was in 1950. And in 1965, when Singapore bifurcated from Malaysia, four languages including Tamil were made official languages of Singapore. But sandwiched between these progressive measures, in 1956, we made Sinhala the only official language of this country. We didn't have to make four languages or thirteen languages as official languages. We only had two languages.

The 1970 to 1972 exercise was not one that reflected what happened in India between 1947 and 1950. It was just one party that held sway. Not even the UNP supported the 1972 constitution. The Federal Party put forward a few demands to the basic resolutions that were put forward. So for the first time, Buddhism was given foremost place- so there was no equality of religions. For the first time - 1956 was ordinary legislation - but for the first time, Sinhala was given the official language status in the Constitution itself - so there was no equality amongst the language groups that inhabited this island. Every one of the amendments to the basic Resolutions that were proposed by the Federal Party were defeated by a majority vote. 86-14, 85-13, 85-16; those were the votes at the Constituent Assembly. And once all six Resolutions were defeated, Mr. S. J. V. Chelvanayagam announced in the Constituent Assembly that even the most basic demand - the last of the Resolutions that they proposed was not federal, not even devolved powers to regions, it was to make Kachcheris elected bodies. Mr. V. Dharmalingam, who proposed that Resolution said, 'if you can't make it federal, if you can't devolve power to provinces or even districts the way we want, the United Front Election Manifesto says that we will make Kachcheris elected bodies. Your own election Manifesto says that Kachcheris will become elected bodies. Do that! That was the last of the Resolutions that was also defeated - 86-14 or something like that. They defeated their own election mandate, and it was then that Mr. Chelvanayagam said 'We have tried everything. I have made two pacts with two Prime Ministers that were unilaterally abrogated. We have participated in the Constituent Assembly and we have made very reasonable proposals, the last one of which is not even ours. It is YOUR idea, and you have refused it. So we will not participate in the deliberations of this Constituent Assembly anymore'. And he also said that 'We will not walk out and make this a drama. From tomorrow we will not come.' And that was how the Federal Party left the Constitution making process in the 1970s.

And then Mr. Chelvanayagam resigned his parliamentary seat and challenged the Government to hold a by-election, which was delayed by two and a half years and eventually in 1975, it was held and he won. His opponent was Prof. C. Sundaralingam, that Charitha referred to; the colorful figure then in Tamil politics, who was the first person in the 1950s to have propounded the separate state idea. He wrote a small booklet - Eelam - spelt differently, 'EYLOM' - the beginnings of freedom struggle. He challenged...I am sorry... Sundaralingam did not contest, it was P. Ponnambalam for the Communist Party. Sundaralingam also challenged Mr. Chelvanayagam previously, in 1970 I think. Anyway, that's how the Separatist Movement started. In 1974, TUF was formed, 1976 the TULF came, and in 1977 - the Separate State mandate. Meaning, that the Tamils of the country had not received their due place in the constitution making exercise of this country. That was the

complaint. If by majority vote you dismiss everything, then this is where we will proceed.

I have a story that a friend of mine says and I have said it many times, so pardon me if you have heard this before. There was a family of four children, fairly well to do. During school holidays they decided that they must go on vacation. There were three girls and one boy. The girls were interested in going to the beaches. So they said "we must go to the beach". The boy was interested in climbing rocks. So he said "we must go to the up-country". They couldn't resolve the conflict. So the parents said "we are democratic family, let's take a vote". So naturally they went to the beach. The next holiday came and the same problem arose. The girls stood on their heads and said that "we must go to the beach again". So, being a very democratic family, they took a vote and they went to the beach the second time also. When the third holiday came, the boy said that "twice we have done it. This time at least, we must go up-country." They said "No, no, we are a democratic family. The majority will must prevail. The majority rule is the bedrock of democracy. So we will go to the beach again." What does the boy do? He refuses to eat - that's a Satyagraha campaign. He refuses to eat. He says, "I won't eat." He protests. But it happens over and over again. What does he do? He starts breaking plates in the house - he turns to violence.

That is what happened. All democratic efforts were spurned. Even pacts that were signed were unilaterally abrogated, and participation in the Constitution making process in the Constituent Assembly, even with very reasonable demands, suggestions that came even from the other side, were rejected. And so, the Tamil community said, you have left us out of the National life of the country, then let us go our own way. That was the resolution that was adopted for a Separate State. But of course, we have come a long way from that today.

In 1987, the Indo-Lanka Accord was signed - a bilateral international treaty between two countries, which is still effective and valid. This provided for Provincial Councils and so we have Provincial Councils today - a reasonable extent of devolution of powers to all provinces. And it might interest you to know that in the present constitution making exercise in the Steering Committee... by the way, I am not a co-chair of the Steering Committee. The Prime Minister is the Chair of the Steering Committee. Dr. Jayampathy Wickramaratne and I are co-chairs of a Management Committee which handles the secretariat...we invited all the Chief Ministers to come and make submissions. And the Northern Chief Minister did not turn up. The Eastern Province Chief Minister did not turn up. But the other seven Chief Ministers and the Leaders of Opposition of those seven Provincial Councils turned up. All those seven at that time were UPFA controlled. And all of them in their submissions wanted the powers of the Governors reduced. In fact, one of the Chief Ministers wanted the post of the Governor abolished. He said "we don't want a Governor." All of them wanted Police powers. All of them wanted land powers. These are the seven provinces other than the North and the East. It is all recorded. And in the Interim Report of the Steering Committee, the Principles of Devolution

are set out. There is a note that says all of these are suggestions of the seven Southern Chief Ministers and Leaders of Opposition. So in the present exercise, what is contained in the Interim Report with regard to devolution of powers are suggestions from the South; not from the North or from the East.

You know of the processes that happened - in 1993 there were the Mangala-Moonesinghe Select Committee proposals, between 1995 and 2000 August there were three proposals including a Constitution Bill during President Chandrika Kumaratunga's time, and in July 2006, President Mahinda Rajapakse appointed an APRC, All Party Representative Committee, and an Expert Committee to advise them. At the Inaugural Meeting in July 2006, President Mahinda Rajapakse made a speech in which he said that there must be meaningful devolution. People in their own localities must control their destiny. These are his words, not mine. Nevertheless, the APRC report has not been implemented. Neither has the multi-ethnic Expert Committee Report. So there has been a consensus with regard to a final outcome.

And in 2015, January, there was a change of regime, and later in August the new Parliament came. Very soon thereafter a Constitutional Assembly was formed on the 9th of January 2016, consisting of all Members of Parliament, and a Steering Committee with representation from all political parties in Parliament. And we have been participating in these proceedings responsibly, because in 1989, the Tamil political party publicly announced that we have abandoned the call for a separate state. So within a united, undivided and indivisible country - we have suggested the word 'indivisible' also- we have asked for sharing of powers in such a way that majoritarianism will not be the order of the day; that other communities in this island will also have their due share of power to the extent that they will be proud Sri Lankans as much as anybody else is. But for that to happen, there must be equality of status. A majority community that boasts of a majority of 70% or more, need not fear that their status in the country will diminish. It's a substantial majority that cannot be tampered with easily. The fact that they are a majority community must mean something, and it will mean something. In the affairs of the whole country, the central legislature will retain to itself certain areas of governance; competence of certain areas - crucial areas like the country's defense, the economic outlook, foreign affairs and various other matters. But with regard to day-to-day affairs of the communities the decision making can be...for the Uva Province, it can happen in Moneragala or Badulla - Colombo need not decide. It can happen in Jaffna or Vanni in the North - Colombo need not decide. Devolution is not so much towards identifying separateness, but it is more about power to the people at the periphery where they can themselves make decisions.

So it is with that view that we have participated up to now in the constitution making process in a very constructive way, for which we have suffered greatly electorally at the last local government elections. Most people in this part do not realize how much the TNA has suffered. In 2013, in the Northern Provincial Council

election, TNA got 78.9% of the vote - near 80%. At the last Local Government election, we have got 35% of the vote. The only reason is that we are participating in a constitution making process. Our people don't have faith. We have been branded traitors, and fools - more than traitors, fools. They keep telling us 'don't you know the history of the country from 1957 onwards? Even pacts have been abrogated. This will never happen. You are imagining, and you are sending us down the drain again.' We participated with the *bona fide* belief that something will come out; and that it must come. There is no redemption for this country unless this issue is settled. I will repeat that. There is no redemption for this country unless there is an agreement between all the communities of this country. It must be acceptable to the Sinhalese, the Buddhists; it must be acceptable to the Tamils, the Hindus; it must be acceptable to the Muslim people; to all the people - like it was possible in India more than 50 years ago.

All the people of the country must agree as to what our constitution must be. It is not impossible to make that agreement. Because unless we all agree - that is the social contract upon which we can agree to live as one country. If that agreement is not there, then the country remaining as one entity is in serious peril. I am not saying this to alert anybody or threaten separation. I think what I am saying is a reality. And for all our sake, we must strive to achieve that consensus. It is not difficult to achieve. If the seven Southern Provinces have asked for something, if that be granted, we will gladly accept that today. That is how easy it is to achieve that consensus. But we are today - and I mean today and tomorrow - at crossroads, wondering whether this whole exercise of the last two and a half years is about to collapse. The unfortunate history of our country, we thought, ought not to be repeated. We will wait till tomorrow, to see what happens. Thank you.