Chapter XII

THE INTERIM SELF GOVERNING AUTHORITY PROPOSALS: A FEDERALIST CRITIQUE

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One of the most significant developments of the negotiations between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam between 2001 and 2003 was the agreement reached on 5th December 2002 in Oslo.

The so-called Oslo Agreement was recorded as follows:

> *"The parties agreed on a working outline defining the objective as well as a number of substantive political issues for negotiation...Responding to a proposal by the leadership of the LTTE, the parties agreed to explore a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking peoples, based on a federal structure within a united Sri Lanka. The parties acknowledged that the solution has to be acceptable to all communities...Guided by this objective, the parties agreed to initiate discussions on substantive political issues such as, but not limited to: Power-sharing between the centre and the region, as well as within the centre; Geographical region; Human Rights protection; Political and administrative mechanisms; Public finance; Law and order."*

While the Oslo agreement constituted a basis or a beginning which future negotiations were meant to spell out in a more concrete constitutional form, some basic assumptions could be made. There would be one juridical State, a united country. It would be federal in nature, i.e., multiple tiers government guaranteeing regional autonomy (self-rule) as well as national cohesion (shared-rule) on the

basis of a shared sovereignty among the peoples of the State. Sri Lankan federalism would also be asymmetrical, in the sense that by accommodating an ethno-territorial claim to political power, in the form of 'internal self-determination', the autonomy of the Northern and Eastern region would be qualitatively more than that of other regions. By qualifying the collective right of self-determination to its 'internal' aspect, secession is evidently ruled out from a satisfactorily negotiated constitutional settlement. Finally, the values of inclusive participation and deliberative consensus were acknowledged as critical in reaching durable political agreement, and presumably, as a cardinal constitutional value of a new Constitution.

The significance of the Oslo agreement was that it recognised the essence of the Thimpu Principles of 1985, for long seen as encapsulating basic Tamil nationalist aspirations but in a manner that assuaged some the fears of the Sinhalese and to a lesser extent the Muslim communities. The Thimpu Principles, for example, were ambiguous in that they referred to self-determination of the Tamil nation without specifying whether this right would be exercised within the Tamil nation state or whether it contemplated external self- determination. The Oslo agreement clarified that the LTTE was willing to explore an option of self-determination within one country. The Oslo formulation also offered a reasonable accommodation or compromise between a Sri Lankan Government committed constitutionally to protect a **unitary** state and the LTTE committed to the creation of a **separate** state. It also envisaged Quebec style **asymmetrical federalism** for the North and East which by implication would continue to be united or merged, with safeguards for the Muslim community which felt particularly vulnerable in such a merged North East region and the smaller Sinhalese regional minority.

There were sceptics across the ethnic divide. Many Sinhalese remained fearful of federalism, had concerns that even an implicit recognition of the homeland concept meant that the Tamils had a superior status in the North East, and had doubts about the good faith of the LTTE and the willingness of an organisation with maximalist objectives to opt for a compromise within a united country. Many

Tamil nationalists thought that the LTTE should not have presented what might have been a final compromise position so early in the negotiations and given the history of broken promises and failed implementation had doubts too about the bona fides of the Government of Sri Lanka. The Muslim community feared that the two party negotiation framework would be detrimental to its interests, continued to have an ambivalent attitude to the merger of the North and East and the homeland concept, and how these features would impinge on the rights of the Muslims. Notwithstanding the concerns outlined above, however, the basic principles enunciated in the Oslo agreement constituted a significant breakthrough in an effort to identify the political and constitutional framework for a final settlement. Much of the fear about the negotiation process was based on where it would lead to, that the contours of a final settlement or the core issues were not clear, that it would be open ended, legitimise the status quo in terms of territorial control and institutionalising, as it were, a separate state. The Oslo agreement provided such a broad statement of a final settlement that helped to allay the fears of many sceptics.

The negotiations collapsed many months later due to a variety of reasons. This was after it was decided to prepare a roadmap to build on the Oslo agreement. The focus of the negotiations shifted to interim arrangements when it became clear that the talks on a political solution would need a long time. In the meantime, rehabilitation and reconstruction work needed to commence, and since the LTTE desired to be a significant player in such initiatives it was reasonable that an interim mechanism be established to direct and coordinate the work. The design of the interim arrangements posed challenges. The Government of Sri Lanka wanted the arrangements to be consistent with the country's Constitution, whereas the LTTE wanted substantial control of the interim arrangements and was not concerned about whether the arrangements were consistent with a Constitution, the legitimacy of which it had never accepted.

It is important to evaluate the LTTE's proposals for the establishment of an Interim Self Governing Authority (ISGA) in

October 2003 in the light of this background: the breakthrough reached by the Oslo agreement and the understanding that an interim arrangement was desirable as part of the peace process. The ISGA proposals were prepared with the assistance of a distinguished group of Tamil lawyers and scholars from around the world and were the first set of concrete constitutional/political proposals offered by the LTTE.

The ISGA proposals consist of two main parts: a Preamble with 26 short statements or paragraphs which set out the historical background and context for the more specific proposals, and the second part with 23 clauses or paragraphs which are more substantive in character. The main criticism of the ISGA proposals is that when the document is viewed as a whole it is seriously deficient from both a constitutionalist and federalist perspective and that several statements in the preamble seek to lay out the basis for a justification for secession. The lack of commitment to basic principles of Constitutionalism, the almost complete absence of any recognition of the shared-rule dimension of federalism and the references to moral/legal justifications for secession, raised doubts about the LTTE's commitment to a long term solution based on the principles agreed upon in Oslo and were seized upon by opponents of the peace process to question the bona fides of the LTTE.

Positive Features

There were however several positive features in the ISGA proposals as well. The fact that the LTTE had for the first time submitted constitutional/political proposals for discussion was itself a positive feature. The first statement in the Preamble[47] – Preamble (a) demonstrated commitment to important constitutional principles such as the Rule of Law, human rights and the equality of all persons in addition to self-determination, which given the LTTE's reputation and history, was reassuring. The reference in several clauses to

[47] For convenience of reference, we have numbered the paragraphs in the preamble as a, b, c, and so on (reproduced as an appendix to this book), although such numbering does not appear in the original document

international norms and standards was another positive feature of the proposals.[48]

In the main text, Clauses 4, 5, 6 and 8 were positive features though they also contained inherent defects. Clause 4 subjected the laws and decisions of the proposed Interim Self Governing Authority to international human rights norms. However the institution responsible for the implementation of this laudable intention was a Human Rights Commission lacking independence as it was to be constituted by the ISGA, in effect the all-powerful executive of the region. Even if constitutional review of laws and actions of the ISGA were to be contemplated (this is unclear from the text of the proposals), the efficacy of such review would be undermined by the lack of independence of the Human Rights Commission.

The recognition of the equality of all religions in the North East in Clause 5 and the repudiation of the Sri Lankan Republican Constitutional tradition of affording to the religion of the majority 'the foremost place' and the use of the word secularism (it would have been better to use the phrase A Secular Region) was a positive feature, read with Clause 8 which echoed Section 29 of the Soulbury Constitution.[49] However here too it was unfortunate that Clause 8 introduced a limitation absent in Section 29 by prohibiting discriminatory legislation only with respect to culture or religion.

Clause 6 was positive in that it referred to the prohibition of discrimination on several grounds including religion, race or gender. However by affirming that the ISGA shall ensure that there was no discrimination, the framers of the proposals raise doubts about the commitment to actually enforce these principles.

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[48] See Preamble (x), Preamble (y) and Clauses 3, 4, 13.2, and 20

[49] Section 29 has important symbolic significance at the very least as it was referred to by Lord Pearce in *Bribery Commissioner v. Ranasinghe* (1964) 66 N.L.R. 73 at 78 as "the solemn balance of rights between the citizens of Ceylon, the fundamental conditions on which inter se they accepted the Constitution."

Noteworthy Features

There are several provisions which are significant as they underscore issues and arguments that should be seriously noted by all the stakeholders in the Sri Lankan conflict.

Preamble (f) refers to the series of failed attempts and lost opportunities in the history of the conflict such as the Bandaranaike-Chelvanayakam Pact of 1957 and the Dudley Senanayake-Chelvanayakam Pact of 1965. It is a reminder that the Tamil political leadership had initially sought solutions to problems and recognition of their aspirations through non-violence, dialogue, democratic means, and within a united country, and also that it was the Government of Ceylon / Sri Lanka that reneged on the promises made or agreements entered into.

Preamble (w) is also important as it highlights the fact that the representatives of the Tamil people did not participate in the indigenous constitution making processes in the country either in 1972 or 1978. Both of Sri Lanka's autochthonous constitutions were therefore not consensus documents involving the significant stakeholders. Since they both deleted Section 29 of the Soulbury Constitution the significance of which is highlighted by Lord Pearce's dicta in ***Bribery Commissioner v Ranasinghe*** mentioned above, and exalted the language and religion of the majority, the questions of legitimacy and inclusion raised in this statement are justifiable and important to remember.

Preamble (x) and (y) demonstrate the preferred strategy of the LTTE in negotiations on a political/constitutional solution and flow logically from the issue of legitimacy and relevance discussed in the previous paragraph. There is reference to a trend in international practice when dealing with protracted conflict to rely exclusively on agreements between the parties to the conflict based on parity of status and facilitated, monitored and underwritten by the international community. Many of the LTTE legal advisors who participated in drafting the ISGA proposals were fond of referring to

Sudan where attempts at conflict resolution were based on some of the features highlighted in these two statements in the preamble.

Negative Features

The 'Plenary Powers' of the ISGA

The objectives of the ISGA proposals are clear: the institutionalisation of some form of viable interim administration is imperative to progress in the peace process. However, the ISGA as it now stands is not easily countenanced by even the most liberal federalist in the South who is also concerned about the future unity of the island polity.

Paragraph 1 of Clause 9.1 of the ISGA proposal states as follows: "The ISGA shall have plenary power for the governance of the Northeast including powers in relation to resettlement, rehabilitation, reconstruction, and development, including improvement and upgrading of existing services and facilities (hereinafter referred to as RRRD), raising revenue including imposition of taxes, revenue, levies and duties, law and order, and over land." Paragraph 2 states: "These powers shall include all powers and functions in relation to regional administration exercised by the GOSL in and for the Northeast."

The power conferring general assertion here is that 'the ISGA shall have plenary power for the governance of the Northeast', with the operative term being the adjective 'plenary'. It then goes on by employing the term 'includes', to enumerate some of the more significant areas of competences such as RRRD, revenue raising powers, law and order and land, within the panoply of authority denoted by 'plenary power'. The term 'includes' is also used in the second paragraph to reclaim by way of an extension of 'plenary power', the powers and functions currently exercised by the government of Sri Lanka over the territory of the Northern and Eastern Provinces.

What does 'plenary power' mean in a legal and constitutional sense? 'Plenary' in a literal sense means without any limit, absolute. In the legal sense, it is the same as providing a Parliament with the power to legislate for the 'peace, order and good government' of a nation. As Jennings says in reference to the Soulbury Constitution, "...the phrase is the lawyer's way of stating absolute and complete power. Power to legislate on any subject whatever; it is a power as 'plenary and as ample as the Imperial Parliament in the plenitude of its power possessed or could bestow.'".[50]

The notion of a legislative body that is vested with plenary power is redolent of that fundamental, indeed quintessential, doctrine of British constitutional law, the supremacy, the omnicompetence of Parliament. It is perhaps not surprising that these notions find expression in the ISGA proposal, given the fact that influential advisors in the drafting of the proposals are Tamil nationalists as they are distinguished constitutional lawyers from a generation familiar with the Soulbury Constitution and British constitutional doctrines.

Clause 10 of the ISGA proposal states as follows: "Separate institutions for the administration of justice shall be established for the Northeast, and judicial powers shall be vested in such institutions. The ISGA shall take appropriate measures to ensure the independence of the judges. Subject to Clauses 4 (Human Rights) and 22 (Settlement of Disputes), of this Agreement, the institutions created under this clause shall have sole and exclusive jurisdiction to resolve all disputes concerning the interpretation and implementation of this agreement and any other disputes arising in or under this agreement or any provision thereof."

The breathtaking scope of this claim on behalf of ostensibly an interim arrangement with an initial lifespan of only four years needs no emphasis. However, it is nothing but a logical extension of the assertion of plenary power in the preceding clause. The Separation of

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[50] Sir Ivor Jennings (1953) ***The Constitution of Ceylon*** (OUP): p. 72; *Hodge v. The Queen* 9 App. Cas. 117

Powers as a first year student of Constitutional Law would know requires at the very least, the independence of the judiciary from legislative and executive influence and control. A mere declaration that the executive shall ensure that the judiciary be independent with no reference to the appointment and security of tenure of judges gives the title of Clause 10, an interpretation found in no basic constitutional law text book. There are other similar weaknesses. Clauses 3 and 4 provide that both the Elections Commission and the Human Rights Commission shall be appointed by the ISGA.

The LTTE objectives of framing Clauses 9 and 10 in this way seem to be two-fold. Firstly, to institutionalise the political facts of a standing army, police force, revenue raising capacity, informal control of the administrative machinery of the Northeast, and decision-making over land and resettlement. Secondly, by defining 'interim' in terms that are intensely political and exceptionally autonomous, to invert the negotiation and federalising process, seen by Southern eyes as an intra-State devolutionary exercise (a holding-together-federation), into a confederating exercise (a coming-together-federation).

How well does this interpretation of Clauses 9 and 10 approximate to our construction of the Oslo Declaration? By claiming plenary legislative, executive and judicial power it would appear that the ISGA proposals militate against the requirement of political unity. That is, the notion of federal unity is premised on the division and sharing of sovereignty, not on division *per se*. In committing to 'exploring' asymmetric federal options at Oslo, it is clear that the LTTE were contemplating a loose federation, a confederation or an association of sovereignty by covenant.

This is further underlined by several other clauses in the proposals. Clause 18 which evoked considerable criticism in the unitarian and majoritarian critiques of the ISGA, contains no shared rule aspects at all and asserts ISGA control over off shore resources and even access to the seas. Such a feature with no role for the national government would be unprecedented in federal constitutions. A shared-rule provision for resource/revenue sharing would have been more

compatible with the spirit of federalism and Oslo. A similar approach could have been adopted for natural resources as well.

Clause 14 which provides for District Committees is also very weak. The creation of District Committees is discretionary, only to enable the all-powerful ISGA to function effectively, is completely subject to ISGA control and violates basic principles of subsidiarity. Cause 15 also reaffirms the plenary powers of the ISGA.

The Financial Aspects of the ISGA Proposals: A Departure from Oslo

The fiscal and financial aspects of the ISGA proposals also demonstrate a departure from at least the spirit of Oslo and are extensions of the claims of (plenary) power discussed before.

While the ISGA proposals relate to a number of ways in which the finances of the ISGA are to be governed, the explicit reference to finances are to be found in Clauses 11, 12 and 13 of the document. These provisions seek to set out a sphere of financial authority akin to an independent State to the ISGA. The ISGA is to prepare an annual budget and is to administer the totality of funds devoted to the Northeast from Colombo as well as from the international donor community. Further, the government's recurrent and capital expenditure in the Northeast is subjected to the control of the ISGA.

These moneys are paid into three different types of funds: the Northeast General Fund (i.e., like the Consolidated Fund of the government), the Northeast Reconstruction Fund (NERF) and the Special Fund (for finances and resources for resettlement, rehabilitation, reconstruction and development that cannot be channelled through NERF).

The transfers from the government of Sri Lanka into the Northeast General Fund are to be on the basis of recommendations made by a Financial Commission appointed by the ISGA. In the words of Clause 11, "This Commission shall make recommendations as to the amount out of the Consolidated Fund to be allocated to the

Northeast. The GOSL shall make its good faith efforts to implement the recommendation." Moreover, in terms of Clause 12, "The ISGA shall have powers to borrow internally and externally, provide guarantees and indemnities, receive aid directly, and engage in or regulate internal and external trade." Clause 13 proposes the appointment by the ISGA of a separate Auditor General for the Northeast, who will audit the finances of the ISGA.

This basic framework for public finance departs significantly from the financial frameworks in conventional federations. For example, the stipulation that a separate Financial Commission appointed by the ISGA makes recommendations regarding transfers from the centre, which then the centre is expected to comply with in good faith, is contrary to a federal prescription for wealth-sharing in the sense that the centre does not seem to have any involvement in the way recommendations are decided upon. It is a wholly common sense expectation that the centre ought to be represented in a body that makes decisions on public finance, when the consequences of such decisions are paid for by the centre. Likewise, the powers of the ISGA with regard to international resource mobilisation (borrowing, aid, FDI) are extensive, but are unaccompanied by the competing principles found in federal financial systems about the role of the centre in such activities. Therefore, the framers of the ISGA, in their preoccupation with self-rule have totally neglected the shared-rule elements of the federal idea, and to that extent have compromised the values of the Oslo Declaration.

The way in which fiscal and financial arrangements are devised in federal-type systems is almost a discrete academic discipline, and a constructive critique of the ISGA proposals must delineate what federal type institutional arrangements would look like.

It follows that where several tiers of directly answerable government exist with usually exclusive jurisdiction over certain functions of government, the financial capacity of the various tiers needs to be viewed from a perspective that is different to how one would consider the finances of a unitary state, and even a unitary state that is de-centralised, de-concentrated or devolved. This is because in a

state with unitary characteristics, or a unitary state with devolutionary characteristics, regional administrations derive their authority and therefore their financial capacity from the express will of the centre, which is revocable by the centre at any time. Therefore the ultimate focus of public accountability is concentrated on the centre, while regional administrations are treated as its agents. The Sri Lankan state following the Thirteenth Amendment is an example of this. In federal states, the opposite is the case, even though widely varied arrangements exist for the levying and collection of taxes.

In a federation, each level of government needs financial resources that broadly match its expenditure responsibilities. This will depend on the particular division of subjects between the centre and the regions. In Sri Lanka under the Thirteenth Amendment, the devolved subjects of exclusive jurisdiction are provided in the Provincial Councils' List, the Reserved List contains those of exclusive central competence and the Concurrent List is an area of shared competence. The experience of federations shows similarities as well as wide divergences in the allocation of responsibilities. Matters like foreign policy, national defence and financial regulation are almost invariably handled by the centre, whereas responsibilities with regard to local infrastructure and services are regional matters. Divergences between states organised along federal principles is inevitable because they are always the result of particular political and historical experiences unique to each state. For example in Canada, where Quebecois secessionism based primarily on the French language, culture and history as distinguished from Anglophone Canada, shaped and influenced the federal organisation of the state with an emphasis on regional autonomy, one finds a wide variance in education and language policies between provinces. Generally however, federations will have regard to principles based on efficiency of delivery, non-replication, regional needs and preferences, equity and rights of national citizenship in making decisions about allocating subjects and corresponding expenditure responsibilities.

Ensuring each level of government has recourse to adequate financial resources in relation to its expenditure responsibilities is usually

done either by assigning adequate tax raising powers to each level, or by creating a system, typically with a framework in the Constitution, through which the proceeds of taxation raised by one government (most commonly the central government) are allocated between all levels of government. Sometimes, the federal principle that each constituent unit should have broadly the same resources available to it as the others, so as to enable it to provide broadly the same standard of services, requires a system for fiscal equalisation.

Most federations contain elements of both methods of resource provision and mobilisation, as well as of mechanisms for equalisation, although equalisation regimes are conspicuous by their absence in countries such as the USA (but regional imbalances are addressed by large federally financed programmes which are administered by the beneficiary state). Fiscal equalisation has the oldest history in Australia where the federation is based on the notion of a 'commonwealth' of states. The centre divides among and transfers to regions a fixed amount of revenue whereas in Canada, the central transfers are determined by the scale of the imbalances.

Another way of adjusting imbalances is the pro-active model that is found in India and South Africa. Freedom in both countries and socialism in the case of India gave those state-making processes potent ideological impetus. While cohesiveness of the national polity was a crucial consideration, democratic equality was an elusive reality to both states at their inception, and reducing severe economic disparities was a natural first step in this direction. In South Africa, the national government (centre) raises most of the revenue in support of national and provincial programmes, and some of the revenue for local government. However, while the provinces deliver most of the services included in the list of concurrent legislative competence, they raise less than five percent of their own revenue and therefore the provision of these services depends on the equitable sharing of national revenue. In South Africa, national revenue is divided into equitable shares for each of the three spheres of government – national, provincial and local, on the basis of recommendations of the Financial and Fiscal Commission. This Commission has independent constitutional standing and creates the

norms of financial distribution and fiscal equalisation between centre and regions and among regions. In Sri Lanka under the Thirteenth Amendment, Provincial Councils have only limited tax-raising powers, and they are dependent on transfers from the central government. Sri Lanka too has a Finance Commission established under Article 154R of the Thirteenth Amendment, which is somewhat similar to the Finance Commission of India, although the latter's mandate appears to be far wider than its Sri Lankan counterpart's constitutional sphere of activity. Our Finance Commission is charged with the duty of recommending to the President the principles to be employed in allocating funds to provinces and for the due apportionment of such funds between the provinces. The Constitution states that the commission must take into account "the need, progressively, to reduce social and economic disparities".[51]

Generally tax resources should be spent at the discretion of the level of government to which they are allocated, and that level of government should be accountable for its expenditure. In this respect, Germany is similar to South Africa in that the central government collects most of the tax revenue, but the regional governments are responsible for the delivery of programmes. In Canada, regions deliver most programmes and also raise over fifty percent of the total revenue. In the USA, the federal government spends the most and raises most of the taxes. The variance in possible arrangements for the imposition and expenditure of taxation is demonstrated also by the distinction made in the PA government's constitutional reform proposals of 1997. For particular taxes, the proposals envisaged a scheme whereby the centre levies the tax, but the region collects the proceeds. This would seem to have the advantage of promoting co-operative government as in South Africa, but also to enhance accountability by the simple expedient of providing the citizen two governmental flanks, central and regional, against which to pursue action in the event of dissatisfaction. While principles such as transparency, low tax administration costs, needs of redistribution, regional ownership of natural resources etc guide

[51] *vide* Art. 154R (5) (c) of the Constitution

federations in addressing this issue, at the end of the day, in the words of Prof. Ronald Watts, "the principle [is] that the government that has the nasty job of levying the taxes should ensure accountability by imposing the conditions under which the more pleasant task of spending the proceeds is undertaken."

The ISGA and the Right to Secession

Another feature of several provisions of the Preamble to the ISGA proposals is that they make statements that could form the basis for a legal argument in favour of secession. In the internationally acclaimed determination of the Canadian Supreme Court on the legality of the secession of Quebec from Canada, the court set out the conditions under which a people might be entitled to form a separate state under International Law. The court stated that such a right may exist in exceptional circumstances where a people is oppressed, or denied meaningful access to government to pursue internal self-determination. Another possible basis for a unilateral right to secession would be effectivity combined with international recognition, where, for example a de facto separate state has existed for some time and seeks and obtains recognition by the international community.

Many parts of the Preamble referred to instances and events that resonated with many of the conditions outlined in the Canadian advisory opinion. Preamble statements (g), (h), and (i), for example refer to Government persecution, discrimination, State violence and State orchestrated violence against the Tamil People, the Vaddukoddai Resolution of 1976 calling for a separate state, the armed struggle as self-defence, and the demand for self-determination after forty years of armed struggle. Preamble statements (m) and (n) refer to the Tamil people of the north east at the elections of 2000 mandating the LTTE as their 'authentic representative' and 'knowing that the LTTE exercises effective control and jurisdiction over the majority of the North East area of the island of Sri Lanka.'

The cumulative effect of these statements and Sudan-like precedents as in Preamble statements (x) and (y) is to argue a case for a unilateral right to secession under international law based on the principles enunciated in the Canadian Supreme Court decision on Quebec secession. While the LTTE certainly has the right to try to make such a claim, the question arises as to why it should be included in a proposal on an interim administration in the context of negotiations to reach a constitutional/political settlement based on the Oslo agreement within a united Sri Lanka. The preamble should rather have limited itself to why an interim arrangement was necessary as part of the peace process. Combining a case for secession with a proposal for an interim administration which contained features that were clearly far outside the existing constitutional structure of Sri Lanka was at the least singularly unhelpful as the opponents of the peace process and even the critics of federalism in Sri Lanka were thereby fed ammunition to attack the bona fides of the LTTE and its declared position that it was prepared to consider a reasonable alternative to secession.

Conclusion

The most powerful critique of the Interim Self Governing Authority, therefore, is that it was seriously deficient from both a constitutionalist and a federal perspective. It is ironic that the LTTE, Tamil nationalists and their legal advisors who have consistently challenged the unitary, majoritarian constitutional tradition in Sri Lanka, when given an opportunity to draft an interim constitutional document for the north east of Sri Lanka, should draft a document which is itself unitary, centralised, majoritarian in many respects and which, in typical Sri Lankan fashion as well, concentrates power in a single institution with little if any checks and balances. The concentration of power in the ISGA, its powers over the Human Rights Commission, the judiciary, the district committees, the lack of effective safeguards for human rights and political pluralism, and the complete absence of any desire for independent institutions, make the proposals unacceptable on the basis of first principles of constitutionalism.

Federalism is internationally recognised as a combination of shared-rule and self-rule. As argued earlier, a constitutional structure based on the Oslo agreement would probably translate into asymmetrical federalism with special powers for the North East, rather than a conventional federal arrangement. However, the ISGA proposals did not contain any significant shared-rule proposals, were exclusively about the self-rule dimension of federalism, and by including as well, certain provisions that went beyond the practices in most federations in the world, went beyond even an asymmetrical federal structure as for example found in Quebec, Canada, or the regions like the Basque region in Spain.

Finally, apart from the constitutional critique outlined above, at a political level, the centralist, extreme nature of the proposals with its references to possible justifications for secession, raised doubts about the LTTE's commitment to a constitutional settlement based on the Oslo agreement and strengthened the hand of hawkish elements within the Sinhalese and Muslim communities who were either wedded to the unitary, majoritarian structure of the Sri Lankan state or sceptical about any possibility of a reasonable political/ constitutional settlement with the LTTE.