About Constitutions, Economics, and Talks

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Peace Talks in Burma and Sri Lanka

There are similarities and differences in the negotiation scenarios of Burma and Sri Lanka. Both countries emerged out of colonial rule and became sovereign independent republics. They framed their respective secular constitutions although both countries are predominantly Buddhist. Both entered into a course of democratic change with a constitution and a parliamentary system of governance. Burma eventually succumbed to military rule, while Sri Lanka wavered before the change and managed to forestall seizure of power by the military. Sri Lanka switched over to a presidential system that preserved democracy. But unfortunately, both countries plunged into ethnic turmoil.

In Burma, the ethnic unrest was compounded by political turbulence. In Sri Lanka, the ethnic revolt took a turn for secession in the name of self-determination. The current movement in Burma is essentially political, aimed at the removal of the military junta. This movement has earned its legitimacy by its landslide election victory in 1990. Ironically, those elections were held by the junta. The current movement in Sri Lanka is one of armed struggle. It has broad support but has yet to earn legitimacy, while its demand for separation has been widely criticized. On the other hand, the Burmese struggle for democracy led by Daw Aung San Suu Kyi is a non-violent one, while her party is in place as a legally registered political party under the junta.

In Sri Lanka, after years of struggle, the contending parties are about to come to the negotiating table. In Burma, after decades of harsh military rule, the junta has finally started talks with the opposition. But the basic issue—a flawed constitution—is common to both. Centralization was the hallmark and denial of the
identity of ethnic minorities. There are some common questions that arise in relation to the talks, such as about agenda, time-frame, facilitation and confidence building. Regardless the answers to these questions, it is clear that the special rapporteur should finalize a memorandum of understanding which will envisage guidelines before the talks start. There has to be commitment by the parties regarding the normalization of everyday life. It has to arrange for an international committee to monitor the process of negotiation. The core issue is the political resolution of the conflict which should form the main substance of the negotiations. A new constitution would form the bedrock of a political solution to the aspirations of the people inclusive of ethnic minorities, although there has not yet been any consensus on even a provisional constitution.

There are many uncertainties. In the current process in Burma, the National League for Democracy has emerged as the primary and main representative of the people. This has been rightly done because of its massive victory in the election. This has given immediate priority to ending the political impasse. Whether the parties can live with the fast-emerging reality is the crux to finally deciding shape and substance of the negotiations.

About the Constitution of Future Burma

Every nation-state should have the primary framework to organize most of the affairs of the state and should be reasonably successful in providing a binding social order. However, in the situation of Burma, there have been failures in crucial areas. One of these is the area of aspiration of local ethnic minorities’ culture and rights. The centralized, repressive state system too often tends to either ignore or suppress this. There is a worldwide struggle to rediscover the notion of ‘state’. Nationalist groups, trying to reclaim cultural identities by creating autonomous or separate polities, are increasingly looking for supportive structures. Self-determination, secession, federalism, to name just a few structures, are the outcome of this yearning. The moderating position in the above dilemma may be the solution of some sort of centralization which is neither dis-integrating nor burdensome. It is important to consider this in the current constitution-drafting process in Burma.

If we consider the constitution of future Burma, the un-federal and anti-federal features of the 1947 Constitution could be delineated, because under these features the various states have no right to have their own constitutions, parliaments, and sovereignty over state resources. Other flaws of the 1947 Constitution are that the executive heads of state and judiciary are appointed by the central government and that they remain under the central government’s control; that the heads of state are not duly elected by the people and
can be thrown out of power at any time; and that the central government has been provided with too many revenue resources, making the individual states fall in line with its policies and principles. The 1947 Constitution also does not address the issue of decentralization. In a nutshell, the legal and constitutional issues of the constitution-drafting process in Burma have to be seriously sorted out. The exercise of this process, initiated by groups in exile, is time-consuming and progressing gingerly. The ongoing talks between the military junta and the leader of the democratic opposition have added urgency to evolving an agreed constitution.

The Balkans, Burma, and International Law

The Balkans, in southern Europe, provide a 600-year tale of division and multi-ethnic conflict. Reunification seems a near-impossible dream. This region is now to witness one more questionable act by the Western nations, led by the United States. Many in the rest of the world will have come to wonder why the Cold War friends and allies, such as Chile’s Pinochet, have been treated with kid gloves. The double standards in the treatment of these criminals is contrary to the basic concept of Rule of Law. All are not equal before law because Pinochet was an active collaborator of the U.S. in the Cold War. The aim of the Cold War was the elimination of the ‘evil ideology of communism’. So, since all is fair in love and war, the end justifies the means—never mind the Rule of Law.

By forcing Yugoslavia to surrender its former president, whatever his crimes were, due process of law was somehow flouted. The action of the West in linking badly needed economic aid to the extradition of the leader is seen as an act of humiliation. The time-honoured rules of conflict resolution were ignored. The extradition could have been carried out in a dignified and transparent way. It was indeed a moment of singular triumph for the international community to bring before its international court a top leader charged with war crimes, thereby vindicating the long arm of international law.

The Balkans have been torn apart by the destructive forces of hate, vengeance and multi-ethnic conflicts. The instant humiliation will only deepen bitterness and set the region back on the path of revenge and destruction, while Kosovo will provide a new chapter in the study of international law. The outcome of the ultimate scenario in different countries depends on the composition of the respective national governments which emerge out of national transition. All concerned forces in the conflict in Burma have to resolve the conflict and come to a settlement in the larger context of justice, reconciliation and Rule of Law. The Burmese transition partners may draw some lessons from this on their path of peaceful democratic change.
Religion, Economics, and Law under Military Dictatorship

In Burma, the military junta has not only rewritten the rules of economics, but also changed the tenets of religion and subordinated law to its dictates. A similar case study is available, namely Pakistan. The similarity of the hard-line military dictatorships is striking. In Pakistan, the Supreme Court Shariat Appellate Bench directed the government to adopt an interest-free economic regime by July 1, 2001. This is supposed to be in line with the Shariat law which Pakistan has adopted after declaring itself an Islamic State. According to that law, accepting interest in any form is un-Islamic: “Any amount, big or small, over and above the principal in a loan or barter transaction, whether obtained for consumption or for commercial or productive activity is prohibited by the Holy Koran”. The rulers had little concern that the Shariat law, in the context of globalization, would bring ruin to the country and that it would bring about fundamental changes in the banking and investment laws. The question is who is going to change the laws as there is no working legislature in Pakistan since the army intervened in October 1999. The attack on the interest system is basically an attack on the very foundations of the capitalist order on which the current economy of the country, indeed that of the whole world, is based. The confidence of potential investors has been shaken. Pakistan is drowning in debt. Its internal debt is $28 billion, external debt $35 billion. In a dictatorial state, the law-making power is in the hands of dictators who twist and turn the law to make it serve their interest, irrespective of the fact that in the long run they will be the first victims. The dictators in Burma are no exception. They abuse law to which they have to resort, but by and large they avoid resorting to law. They generate lawlessness and create an atmosphere of fear to perpetuate their rule. Fortunately they belong to an endangered species.

Endnote

* The author is an Executive Committee Member of the Burma Lawyers’ Council.