

Volume 2, Issue 1, March 2018

Dum Vivimus Vivamus. The Tamils in Sri Lanka: a Right to External Self-determination?

Thamil Venthana Ananthavinayagan

Research Articles*

DOI:

10.14658/pupj-phrg-2018-1-2

How to cite:

Ananthavinayagan, T.V. (2018), *Dum Vivimus Vivamus. The Tamils in Sri Lanka: a Right to External Self-determination?*, *Peace Human Rights Governance*, 2(1), 23-50.

Article first published online

March 2018

*All research articles published in PHRG undergo a rigorous double-blind review process by at least two independent, anonymous expert reviewers

Dum Vivimus Vivamus. The Tamils in Sri Lanka: a right to external self-determination?

*Tamil Venthan Ananthavinayagan**

Abstract

With its independence in 1948, Sri Lanka enshrined the sole human rights protection in its first post-colonial constitution. Art. 29.2 aimed to safeguard minority rights in this multi-religious and multi-cultural country. This approach, however, never translated into actual protection of the country's minorities. Minorities' rights were deliberately targeted to expand public space for the ethnic majority, the Sinhala. Sri Lanka shifted from parliamentary democracy to a militarised ethnocracy, perpetuating the Sinhala-Buddhist approach to nation-building, while alienating and isolating minorities – such as the largest minority group, the Tamils. The two autochthonous constitutions from 1972 and 1978 were, as renowned human rights scholar Dr. Neelan Thiruchelvam formulated, instrumental to further foment the ethnocratic state order. Against this background, the conflict/civil war between the Sri Lankan government and Tamils/Liberation Tigers of Tamil Eelam can be seen as an illustration of Foucault's theory of biopolitics where the social body must ensure the maintenance of its survival, is entitled to kill others and wars are carried out to ensure its own existence. This leads to the following questions, which the paper aims to answer: was post-colonial nation-building in Sri Lanka based on ethnocidal politics to either assimilate or annihilate minorities within Sri Lankan ethnocracy? In consequence, if ethnocidal politics drove ethnocratic nation-building in Sri Lanka, isn't the failure to accommodate the right to internal self-determination opening the gates to the right to external self-determination of the Tamils, giving effect to art. 1.2 of the United Nations Charter and being a precursor for a remedial right to secession?

Keywords: *biopolitics, minorities, self-determination, ethnocracy, ethnocidal politics, human rights*

* Lecturer for Public International Law at Griffith College, Dublin,
e-mail: tamil.ananthavinayagan@griffith.ie.

Introduction

This paper examines the evolution of the Tamils' quest for the right to self-determination against the background of colonial policies and post-colonial ethnocratic nation-building. It will consider if different governmental measures driven by an ethno-religious state ideology created the framework for ethnocidal politics that alienated and isolated Tamils as a participatory force in the country. Before the inquiry, the article will, first, consider the colonial antecedents in the country. What is the contribution of colonial rule to the formulation of contemporary public discourse of Sri Lanka? Second, the article will examine the methods, means and impact of ethnocratic nation-building on the country's post-colonial society: did exertion of fully-fledged biopolitics alienate, disenfranchise and exclude Tamils? For this purpose, the author will reflect on Foucault's concept of *biopower* and apply it to the Sri Lankan case. Third, the paper will scrutinise the current discussion revolving around the highly disputed and contested formulation of the Third Republican Constitution. In case the internal self-determination of the Tamils in the form of an accommodation of minority rights and protection thereof fails, should not Sri Lankan Tamils invoke their (external) right to self-determination more than ever before? For this purpose, the article seeks to, fourth, elucidate the international legal formulation and implications of the right to self-determination in a national setting such as Sri Lanka. Fifth and finally, the article will eventually strive to answer if ethnocidal politics and refusal to grant minority rights in a new constitution compel Tamils to resort to a remedial right to secession as an inherent part of the right to self-determination. There is sufficient discussion in academic scholarship revolving around the right to self-determination of minorities and especially around right to self-determination of Tamils in Sri Lanka. But the question regarding a remedial right to secession as a corollary to the right to self-determination (or even as inherent to it) was not explored – especially if the accommodation of minority rights fails once again in light of the discussion on the Third Republican Constitution. This article will, eventually, aim to answer this.

1. Colonial History: Formation of Identities and a Myth Becoming Truth

Sri Lanka is an island in the Indian Ocean, renowned for its fascinating culture, breathtaking landscapes and warm hospitality. Or, as Howard Wriggins nearly poetically wrote, a '[s]mall pear-shaped, tropical island barely twenty-five miles to the southeast of the tip of India where the

waters of the Bay of Bengal meet the Arabian Sea' (Wriggins 1980, 11). The country is home to various ethnicities and four major religions of the world (Sir Jeffries 1962, 4). According to the Socio-Economic Data 2016, issued by the Sri Lankan Central Bank in 2015, the majority population of Sri Lanka, the Sinhala, make up to 74.9 percent of the population, followed by the Tamils with 11.2 percent, the Indian Tamils with 4.1 percent, the Sri Lankan Moors with 9.3 percent and "others" with 0.5 percent (Central Bank of Sri Lanka 2016). However, the country's idyll is badly tarnished due to the bloody civil war that ravaged the country for three decades between 1983 and 2009, with an ethnic conflict that lasts for far longer. The author argues that the ruling elite classes have used ethnic factors to execute a *divide-et-impera* tactic, exploiting religious nationalist sentiment to govern for their purposes – a tactic that developed a life of its own. Therefore, '[e]thnic diversity is not used as a factor of synergy in social development; rather it is used as a factor of division to extend upper class rule' (Gamage 1997, 365). It would go beyond the scope of this article to elaborate on the rich and decisive historical landmarks that have contributed to the current dynamics in majority and minority rights, but certain important chapters shall be considered to explain and elucidate historical antecedents of ethnocentric state-crafting.

1.1. Creation of Identities

Sri Lanka was governed by three different colonisers, the Portuguese, Dutch and the British. It was especially the latter who fomented the creation of identities through the introduction of census in the country (Wickramasinghe 2006, 44). Their form of colonialism introduced a new manner to look at identities through formalised technological rule, while enumerating groups in the census. The conceptualisation of ethnicities had profound impact on the development of ethnic consciousness and identities (Wickramasinghe 2006, 45).

Sri Lanka's population has always been heterogenous, but only the British created three distinct ethnic groups, (or as they called it, 'races'): the Sinhala, Tamils and the Moors (Winslow and Woost 2004, 4). They believed that the three basic racial groups were distinct racial entities, having inherent racial, biological differences, manifested in culture, character, appearance, aptitude (Rogers 1993, 101). During colonial rule, the two linguistic communities were increasingly racialised, the stepping stone for the construction of a '[b]ipolar ethno-religious imagination, enabling the current configuration of identity politics which constructs Sinhalese and

Tamils as mutually exclusive and collectively exhaustive of the island's diverse and hybrid communities' (Rajasingham Senanayake 2009, 8).

1.2. Creation of the Unitary State

Before the arrival of the colonisers, the island was ruled by three different kingdoms, two Sinhala, one Tamil and various chieftaincies (Farmer 1963, 16-17). It was only with the arrival of the British that the whole island was united under one administrative unit with the conquest of the Kandyan kingdom and the signing of the Kandyan Convention in 1815 (Wickramasinghe 2006, 29). The Colebrooke-Cameron Commission, an enquiry dispatched by the Colonial Office in London to investigate finances, administration and judicial system, recommended to the British colonial administration the creation of an administrative unit to govern the island as a whole (Farmer 1963, 37) – this was a landmark recommendation that had long-term consequences on contemporary Sri Lanka.

The Commission believed the idea of uniform administration would be a remedy to the ethnic and cultural divisions that prevailed in the country. This unification, so the assumption, would pave the way for the birth of a modern nation (modeled after European states and their homogenous approach to nation-building) and the incorporation of all different ethnicities into one single society and space (Wickramasinghe 2006, 29). The result of this enquiry was the Colebrooke-Cameron Constitution, setting out the legal parametres within which the country was administered, a political representation along racial lines in Legislative and Executive Councils (Nissan and Stirrat, 1990, 28). This new constitution paved the way to the strong resentment of Sinhala-Buddhist towards any power-sharing models with the minorities, penetrating the majoritarian consciousness of being a single entity, where any devolution would lead to fragmentation of the unitarian and centralised state, reflected in Chapter I, art. 2 of the current Second Republican Constitution. Asange Welikale writes:

[I]nformed by a widely resonant but highly manipulated nationalist Theravada Buddhism, this position has defined postcolonial state-building as a process of restoring the Sinhala-Buddhist nation to its historic precolonial status as the rightful owners of the state. In the *vamsa* tradition of Sinhala-Buddhist historiography, Sri Lanka is not only *Sihaladeepa* (the island of the Sinhalese) but also *Dhammadeepa* (the island of the *dharma* [emphasis added]). In modern terms, the unitary state is the natural form of centralized government that is required to defend the Sinhala-Buddhist patrimony, especially against the historical 'other' – the Tamils (Welikale 2015, 326).

1.3. Creation of Elitism

The introduction of indigenous rule in Sri Lanka, based on construction of identities created a sense of elitism, patronage and lack of democratic culture (Kumarasingham 2013, 129-130; Sir Jeffries 1962, 67; Jupp 1978, 2). To this end, the Donoughmore Commission, dispatched in 1929 to undertake constitutional reform, introduced universal franchise based on territorial representation, making the country the first of the earliest colonies of the British Empire to receive universal suffrage (Sir Jeffries 1962, 67).

Bandarage writes that:

[T]his extension of parliamentary democracy signified the beginning of what came to be seen as a 'reconquest' of power by the Sinhala Buddhist majority who had been marginalized during 400 years of colonial domination and a diminution of the power of minorities, especially the Sri Lankan Tamils who had 'benefitted' from colonial rule (Bandarage 2009, 36).

The fixation on a Westminster culture that was inherited from the British, along with centralisation of power along with urban, elite-dominated parties prevented the spread of democratic culture in the country and ushered in the failure of political integration (Kumarasingham, 2013, 131). And, more dauntingly, the ethnic compartmentalisation became deeply entrenched and legally formalised, crucially with the Donoughmore Constitution from 1931 and the First State Council that foresaw the emergence of the native government. This intensified elite domination and triggered a narrow social, communal, sectional spirit (Kumarasingham 2013, 120-121, 174-175).

1.4. Failure of Minority Protection

In preparation for the independence of Sri Lanka, the British dispatched the final commission to the country to lay the groundwork for post-colonial rule, headed by Lord Soulbury (Wriggins 1980, 90-91). The Soulbury Constitution, the first post-colonial Constitution of Sri Lanka, never foresaw a bill of rights. The drafters of this Constitution were cautious about this, foremost Sir Ivor Jennings and Lord Soulbury, while they feared the development of a litigation industry, they wanted to create a traditional colonial constitution based on the British model with the power of the legislature unfettered. Both believed that neither Supreme Court, nor Privy Council had any experience in the interpretation of a bill of rights and wanted to prevent the assumption that liberty was protected under Sri Lankan, but was not protected under British rule (Parkinson 2016, 42-43). For this reason, Sir Ivor Jennings and others suggested an anti-discrimination clause, greater representation in

parliament and, finally, public officers in an independent commission to oversee protection of minorities. The result of the negotiations was art. 29.2 of the Soulbury Constitution, which set out:

[N]o such law shall –

- (a) prohibit or restrict the free exercise of any religion; or
- (b) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or
- (c) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions
- (d) alter the constitution of any religious body except with the consent of the governing authority of that body, so, however, that in any case where a religious body is incorporated by law, no such alteration shall be made except at the request of the governing authority of that body (Soulbury Constitution).

Analysing the Soulbury Constitution, Asange Welikale explains that nation-building and political development led the vision of the ‘[c]onstruction of an inclusive, modern, civic Sri Lankan national identity, and render the pre-modern linguistic, religious, and cultural communalisms redundant’ (Welikale 2012, 4). But the post-colonial history displayed that the model pursued in the Soulbury Constitution was badly equipped to address ethnic disparity and protect the minorities (Welikale, 2012, 4). To this end, Lord Soulbury held in the Foreword to B.H. Farmer’s book that:

[I]t did not take long to discover that the relations of minorities to majorities, and particularly of the Tamil minority in the northern and eastern provinces to the Sinhalese majority further south, were in the words of the Commission’s report ‘the most difficult of the many problems involved’. The Commission had of course a cursory knowledge of the age-long antagonism between these two communities (...) The Commission devoted a substantial portion of its report to this minority question, and stated that it was satisfied that the Government of Ceylon was fully aware that the contentment of the minorities was essential not only to their own well-being but to the well-being of the island as a whole. (...) Needless to say the consequences have been a bitter disappointment to myself and my fellow Commissioners. While the Commission was in Ceylon, the speeches of certain Sinhalese politicians calling for the solidarity of the Sinhalese and threatening the suppression of the Tamils emphasised the need for constitutional safeguards on behalf of that and other minorities (...) As Sir Charles Jeffries has put it in his admirable book, *Ceylon – The Path to Independence*, ‘The Soulbury constitution

(...) had entrenched in it all the protective provisions for minorities that the wit of man could devise'. Nevertheless, in the light of later happenings, I now think it is a pity that the Commission did not also recommend the entrenchment in the constitution of guarantees of fundamental rights ... (B.H. Farmer 1963, Foreword).

1.5. The Mahavamsa: as the Permeating State Philosophy and Historical Guarding Rail of Sri Lanka

The literary source of Sinhala-Buddhist nationalism is the Mahavamsa, the reference point for the majority to spread their ideology in Sri Lanka (Spencer 1990, 6). This chronicle replicates the arrival of Buddhism and the Buddha's alleged visits to Lanka, and recounts the fortunes of several Sinhalese kings. The Mahavamsa is in the interest of religious and political leaders, while being exploited by contemporary Buddhist nationalist ideology to further their power claim (Frydenlund, 2005, 8). The myth says that Sri Lanka is a sacred land, since Buddha chose the island of Lanka for the chosen people, the Sinhala, to live in it and to protect the Buddha's teaching. Two core concepts were expounded by nationalists: dhammadipa and sinhadipa. This means that the island (Sinhala: dipa) should be guided by dhamma and/or the Sinhalese. Dhammadipa means the 'island of righteousness', and the term refers to a moral obligation, a duty prescribed by the Buddha, for the Sinhalese to protect Lanka and the Buddha (Frydenlund 2006, 8). This left little room for any non-Sinhala to navigate and have space. Battles are described here, most famously the battle for the Kingdom of Anuradhapura between a Tamil king, Elara, and a Sinhala king, Duttugemenu, presented by Sinhala nationalists as a metaphor for the struggle between the Sinhala and Tamils, leaving the Sinhala as victors and rightful owners of the country (Weiss 2011, 15-17). The Mahavamsa, hence, '[g]lorifies the killing of Tamils and any other races that do not adhere to Buddhism to be a historically acceptable phenomenon. It asserts that non-Buddhists are equivalent to beasts' (Srisakanda Rajah 2017, 32). All in all, the '[r]ole of Buddhism and the Mahavamsa is comparable to Christianity and the Bible in Europe that have provided a source for nations' claims "to be a chosen people, a holy nation, with some special divine mission to fulfil' (Gaul 2017, 169).

1.6. Concluding Comments

As it was outlined earlier, colonial rule had decisive impact on contemporary Sri Lanka – with intention or not. Anagarika Dharmapala, an early Sinhala revivalist of Sinhala-Buddhist nationalism, exploited the

Mahavamsa myth to consider all who were not Sinhala-Buddhist as enemies of the state (McConnell 2008, 64). His agitations, teachings and pamphlets led to the first documented inter-religious riots in 1916 between Buddhists and Muslims (Weiss 2012, 24-28). Dharmapala's followers followed a strong religious inspiration and, later, converted it into a Sinhala identity, providing the assembly point for the formation of a comprehensive form of a collective, nationalist ideology (Jayasundara-Smits 2011, 77). Increasingly with the independence in 1948, '[a] single, discrete Sinhalese Buddhist category has been rhetorically opposed to all the rest, who then are by reduction not Buddhists, not Sinhala speakers, and, in some eyes, not true Sri Lankans' (Winslow and Woost 2004, 5).

2. Post-colonial History: Ethnocracy, Biopower and Ethnocidal Politics

The previous section outlined that the colonial impact cannot be ignored in Sri Lankan state crafting. Politicians belonging to elitist families, empowered and encouraged by the rising nationalist-fundamentalist revival in the country, exploited the blossoming Sinhala-Buddhist sentiment to entrench their power through ethnic outbidding (DeVotta 2005, 142). The Sinhala-Buddhist majority sees themselves as the rightful heir to the country and its alleged ancient tradition, a sense and calling that remained largely dormant during colonial times, but was invoked after the end of the colonial era to set the stage for the ancient conflict with the enemies to Sinhala-Buddhism, the Tamils (Spencer 1990, 3). In this section, the author will elucidate certain legislation that disenfranchised minorities and expounded the role and narrative of the majority, while initiating the transformation from a liberal democracy to ethnocracy in Sri Lanka. Oren Yiftachel defines ethnocracy in his critical assessment of Israel's policy of Judaizing the Palestinian territories as '[a] non-democratic regime that attempts to extend or preserve disproportional ethnic control over contested multi-ethnic territory' (Yiftachel 1999, 368). Ethnocidal politics corroborates and underpins a gradually emerging ethnocratic state order. Mounir Chamoun writes:

[S]i j'attache une importance particulière au processus génocidaire, c'est parce, sous-tendu par des tendances racistes, il se maintient partout où des conflits éclatent: c'est bien le cas actuellement du Darfour, de l'Irak, de l'Afghanistan, du Sri Lanka, et de temps à autre, de l'Inde ou d'autres pays à composition pluriethnique. (...) Le point de départ se situe dans une perception de soi comme tenant de la vérité universelle et de ce fait investi d'une mission de conversion des peuples conquis, à la parole bienfaisante et à la culture sous-jacente.

Cela impliquait, par voie de conséquence, une lutte, pour ne pas dire une guerre, contre toutes les valeurs autochtones, touchant surtout la langue, la religion, l'histoire et les traits fondamentaux de la culture originaire. On peut considérer que c'est souvent le prix à payer pour l'instauration d'un ordre nouveau ou pour la création d'un ensemble national (Chamoun 2008, 42,45).

Before elaborating upon discriminatory policies against minorities, it is useful and necessary to invoke Michel Foucault's concept of biopower. The concept will provide a broader explanation for governmental behaviour in Sri Lanka and pave the ground for a theoretical understanding of governmentality. Biopower explains the mechanisms and tactics of power focused on different layers of life concerning individual bodies and populations (Foucault 1998, 137-139). To this end, biopower is concerned with enhancing the life of its populations through state-led intervention measures and sanctions that control the development of life (Foucault 1998, 140). Essentially, the ruler has the power over life and death, the right to kill as a '[r]ight of the social body to ensure, maintain, or develop its life' (Foucault 1998, 136). This means that '[w]ars are no longer waged in the name of a sovereign who must be defended', but they are waged '[o]n behalf of the existence of everyone' (Foucault, 1998, 137). Michel Foucault suggests that life is the privileged stakes of power and that '[m]odern man is an animal whose politics places his existence as a living being in question' (Foucault 1998, 143). Racism, in this vein, introduces a '[c]aesuras between what must live and what must die within the life of which power has taken control' (Genel 2006, 49). Racism introduces a biological scheme under which it differentiates and separates between inferior and superior races within one populace (Foucault 2003, 255). Racism, to this end, creates the biological link to the superior race, creating a healthier and pure race. Enemies to the superior race are, in this respect, migrating from being political adversaries to biological threats. Racism, finally, is thus understood by Foucault as '[t]he precondition that makes killing acceptable' in 'a normalizing society' (Foucault 2003, 256). This is the valid point through which biopower must pass for exercising sovereign power, the right to decide over life and death.

Michel Foucault explained:

[T]he very essence of the right of life and death is actually the right to kill: it is at the moment when the sovereign can kill that he exercises his right over life. It is essentially the right of the sword. So there is no real symmetry in the right over life and death. It is not the right to put people to death or to grant them life. Nor is it the right to allow people to live or to leave them to die. It is the right to take life or let

live. And this obviously introduces a startling dissymmetry (Foucault, 2003, 240-241).

This theoretical background helps to understand the early developments in post-colonial Sri Lanka, where a new populist movement exploited the Sinhala-Buddhist revivalism in 1956. The country celebrated the two thousand five-hundredth year since Buddha's death to restore the island's historical legacy as the above mentioned Sihaladipa and Dhammadipa. This new populist movement, under leadership of SWRD Bandaranaike, the later prime minister of the country, appealed to the growing social and economic grievances in the countryside (Bandarage 2009, 42). The emphasis on the unique ethnic patrimony of the Sinhala Buddhists came to have a divisive impact on the multi-ethnic and multi-religious society of Sri Lanka. Voted into office with a landslide victory in 1956, the new government under SWRD Bandaranaike enacted one of the most decisive and divisive Acts to initiate ethnocidal measures: the Sinhala Only Act 1956.

2.1. Legal Measures to Dominate Public Space

The 1956 Sinhala Only Act (officially the Official Language Act) initiated the gradual legal evolution of ethnocracy, being the prescriptive parameters for the minorities, confining their space to operate. The enactment of the Prevention of Terrorism Act in 1979 further demonized anyone critical and opposing the unitary ethnocratic state order (Coomaraswamy and de los Reyes 2004, 275). The Sinhala Only Act from 1956, compelled Tamils, who were not fluent in the Sinhala language, to leave their positions or they were expelled from state employment (Wilson 1974, 21). This Act stipulated:

[T]he Sinhala language shall be the one official language of Ceylon: Provided that where the Minister considers it impracticable to commence the use of only the Sinhala language for any official purpose immediately on the coming into force of this Act, the language or languages hitherto used for that purpose may be continued to be so used until the necessary change is effected as early as possible before the expiry of the 31st day of December, 1960, and, if such change cannot be effected by administrative order, regulations may be made under this Act to effect such change. (Official Language Act).

The intended effect of ethnocidal politics was achieved: following the implementation of the Act, the number of Tamils in the civil service fell from 30 percent to 6 percent (Harris 1990, 213). With the use of the law, an effect of battle was effectuated: the dismissal of non-Sinhala Tamils (Srisakanda Rajah 2017, 29). Prime Minister SWRD Bandaranaike, who was initially supportive

of a dual language policy, began to give expression to the growing sentiment that parity between the regionally dominant Tamil language and the local Sinhala language could inevitably lead to the annihilation of the latter (Bandarage 2009, 42). It was with this Sinhala Only movement that Tamil leadership started to advocate for a federal state (Nesiah 2001, 58). The Sinhala Only Act was the stepping stone for disaggregation of Sri Lanka's different ethnicities and it was used and exploited as '[c]ollective entity presented as an extended family allegedly united by its communal particularism, by continuity, by common roots, a common past, and a common future.' (Weber 2003, 388). It was a landmark event in the populist mobilisation of ethnic nationalism that eventually affected and transfused the policies of all Sinhala-dominated parties for the decades to come, setting off a process in which all dropped support for the Tamil language having equal legal status. (International Crisis Group 2007, 5). Noteworthy is, against this background, to revisit the words of Michel Foucault:

[I]t seems to me that power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organisation; as the process which, through ceaseless struggles and confrontations, transforms, strengthens, or reverses them; as the support which these force relations find in one another, thus forming a chain or a system, or on the contrary, the disjunctions and contradictions which isolate them from one another; and lastly, as the strategies in which they take effect, whose general design or institutional crystallization is embodied in the state apparatus, in the formulations of the law, in the various social hegemonies. (Foucault 1998, 92– 93)

The inter-ethnic violence that started shortly after the Sinhala Only Act in 1958 were the early signs of a severe looming conflict between majority and minority, the Sinhalasation of public space and assertion of ethnic dominance (Jupp 1978, 354). Followed by the island-wide ethnic riots, the First Republican Constitution in 1972 guaranteed fundamental rights for all religious groups, but granted Buddhism the foremost place in Sri Lanka and reinforced the cultural dominance of the majority. In education, the policy of standardisation, implemented in the 1970s, created a quota system for university admissions which discriminated against Tamil students (Jones 2015, 5).

DeVotta correctly asserts:

[O]utbidding stems from politicians' desire and determination to acquire and maintain power and may be practiced in varied contexts. Yet whenever it incorporates race or ethnicity it marginalises minority communities, exacerbates interracial or polyethnic tensions,

and undermines the state's ability to function dispassionately. When a government in a polyethnic state utterly disregards minorities' legitimate preferences and instead cavalierly institutes policies favouring a majority or other community, which is precisely what ethnic outbidding engenders, those marginalised lose confidence in the state's institutions. (DeVotta 2005, 142).

Furthering this thought, Giuseppe Burgio holds the view that:

[I]l progetto nazionale che presieduto alla creazione dello Stato-nazionale tanto in Italia quanto in Sri Lanka interroga oggi una democrazia (tanto la nostra quanto quella di Colombo) che sembra sapersi basare solo sull'esclusione dell'Altro, capace di includere un 'noi' solo attraverso la negazione (più o meno sanguinaria) di qualcun altro. Il progetto nazionale sembra mettere in crisi una democrazia che è sì governo del popolo, ma di un popolo inteso in senso "etnico-culturale" e quindi escludente. Anche nelle democrazie esiste cioè un legame che unisce pericolosamente la nazione alla violenza politica. (Burgio 2014, 19)

The Tamils were the unwelcomed interlopers, the '[p]referred Others, designated as targets of exclusion and derision' (Weber 2003, 392). Hence, the Sri Lankan state apparatus used the law as a means of battlefield method and created conditions conducive to, not only discrimination, but especially alienation and expulsion of the Tamils. In effect, this resulted in the expulsion of the indigenous Tamils from the civil service and universities; and created conditions for the Tamils' exodus to opt for migration and escape to own survival and advancement (Sriskanda Rajah 2017, 55-57). The state applied the violence of law, relying on police brutalities and military violence when Tamils took the streets to face violence of Sinhala-Buddhist extremism and aggression.

The Tamil minority never resorted to violence before the secessionist movement started in 1972, but conducted peaceful demonstrations (Nissan and Stirrat 1990, 35-37). It was only with the emergence of Tamil militias and the Liberation Tigers of Tamil Eelam in 1970s, that the state and its armed forces exerted the fully-fledged power and violence through the sword of the law against any Tamil (Burgio 2014, 55). '[I]n Sri Lanka's biopolitics of defending the race/ species it fostered and securing the ethnocratic state order, law became the symbol of terror, and the manifestation of the power to kill the 'enemy' race/ species' (Sriskanda Rajah 2017, 55-57). Furthering the thought of Michel Foucault, Giorgio Agamben enunciates:

[I]t is as if every valorization and every "Politicization" of life (which, after all, is implicit in the sovereignty of the individual over his own existence) necessarily implies a new decision concerning the threshold

beyond which life ceases to be politically relevant, becomes only “sacred life,” and can as such be eliminated without punishment. Every society sets this limit; every society – even the most modern – decides who its “sacred men” will be. It is even possible that this limit, on which the politicization and the exceptio of natural life in the juridical order of the state depends, has done nothing but extend itself in the history of the West and has now – in the new biopolitical horizon of states with national sovereignty – moved inside every human life and every citizen. Bare life is no longer confined to a particular place or a definite category. It now dwells in the biological body of every living being (Agamben 1995, 89).

In 1970, a former member of parliament, Navaratnam, emerged as a spokesperson on a secessionist platform and challenged one of his former comrades from the Federal Party. The Federal Party nominated K.P. Ratnam Navaratnam’s contender. It was a showdown between a secessionist platform and federalist platform, in which Ratnam won easily. The party leader of the Federal Party, S.J.V Chelvanayakam echoed in the night of electoral triumph:

[W]e have for the last 25 years made every effort to secure our political rights on the basis of equality with the Sinhalese in a united Ceylon ... It is a regrettable fact that successive Sinhalese governments have used the power that flows from independence to deny us our fundamental rights and reduce us to the position of a subject people ... I wish to announce to my people and to the country that I consider the verdict at this election as a mandate that the Tamil Eelam nation should exercise the sovereignty already vested in the Tamil people and become free. (S.J.V. Chelvanakayam).

With the *Vaddukoddai Resolution* Tamil political leadership enunciated the right to self-determination against the background of continued oppression, discrimination and ethnocidal politics. To this end, the Resolution summed up the series of ethnocidal measures expounded against the Tamils:

[D]epriving one half of the Tamil people of their citizenship and franchise rights thereby reducing Tamil representation in Parliament,
 (b) Making serious inroads into the territories of the former Tamil Kingdom by a system of planned and state-aided Sinhalese colonization and large-scale regularization of recently encouraged Sinhalese encroachments, calculated to make the Tamils a minority in their own homeland,
 (c) Making Sinhala the only official language throughout Ceylon thereby placing the stamp of inferiority on the Tamils and the Tamil Language,

- (d) Giving the foremost place to Buddhism under the Republican constitution thereby reducing the Hindus, Christians, and Muslims to second class status in this Country,
- (e) Denying to the Tamils equality of opportunity in the spheres of employment, education, land alienation and economic life in general and starving Tamil areas of large scale industries and development schemes thereby seriously endangering their very existence in Ceylon,
- (f) Systematically cutting them off from the main-stream of Tamil cultures in South India while denying them opportunities of developing their language and culture in Ceylon, thereby working inexorably towards the cultural genocide of the Tamils (Vaddukoddai Resolution).

The Tamil leadership demanded the right to self-determination, as it saw the rights of the Tamil people disregarded and ignored in the process of creation of ethnocracy (DeVotta 2016, 77). Sriskanda Rajah writes that:

[I]n Sri Lanka, following its transformation as an ethnocracy, its biopolitics over the Tamil population was tilted in favour of this premodern sovereign power: the Tamils became a subject race who could either be put to death or allowed to live at the discretion of the state and the race/ species that it managed/ fostered (Sriskanda Rajah 2017, 48).

2.2. Extra-legal Measures to Dominate Space

While there are numerous episodes of extra-legal measures that, through application of violence, annihilated Tamil lives and expanded livelihood of the Sinhala-Buddhist majority, the focus in this subsection will be on Black July 1983, the *ignis fatalis* that initiated the civil war that lasted for 26 years (Yass 2014, 67). Following an ambush by the Liberation Tigers of Tamil Eelam, the predominant Tamil militia, on the Sri Lankan Army, killing 13 soldiers in the northern part of Sri Lanka in 1983, a nationwide pogrom took place, killing thousands of Tamils (Richards 2014, 14). Asange Welikale writes:

[B]lack July 1983, which without doubt epitomises the darkest moment in the contemporary history of Sri Lanka. The unspeakable tragedy of this pogrom, a kind of social delirium tremens that afflicted our society for a few days, and in which we took leave of both our senses and our morality, requires no retelling. It transmogrified our society, and changed the trajectory of its historical evolution onto a path that ensured, and promises, suppurating conflict for years (Welikale 2008, 9).

The racial violence of July 1983 is so distinctive and unique, not only in relation to the death and destruction it caused, it stands out as an example

how Sri Lanka used its power over death as part of its biopolitics of defending the race/ species it managed/ fostered, while securing the Sinhala Buddhist ethnocentric state order, which was based on ethnic entitlements and nationalist rhetoric, turning the state into an '[e]thnic provocateur' (Sabaratnam 1990, 213). The Tamils were at the mercy of the Sinhala Buddhists. Any Sinhala Buddhist who thought it fit to kill a fellow Tamil had the power to do so; the government presided over this mass killings and pogroms without any intervention – the Tamils were simply denigrated in their status as *homer sacer* (Sriskanda Rajah 2017, 64).

To sum up, the use of the terror of 'lawlessness' in July 1983 paved the way for the state to not only assert the Mahavamsa based sovereignty claim of the Sinhala Buddhist people and the power of death that they had over the Tamils, but also produced three effects of battle: the elimination of a section of the 'enemy' race; destruction and possession of parts of their properties; and the expulsion of a section of them from the Sinhala areas, and to an extent from the island's shores (Sriskanda Rajah 2017, 64-65).

3. The Third Republican Constitution and the Challenge to the Ethnocentric, Unitarian Biosystem

The new Sri Lankan government, under pressure by the United Nations to make amendments to the current human rights infrastructure, is in preparation of the introduction of the Third Republican Constitution (after 1972 and 1978), with the goal of sufficient human rights protection and a power-sharing model that accommodates minorities, towards '[b]uilding the modern Sri Lankan State in the 21st century' (Wijayalath 2016, 1). The 1st and the 2nd Republican Constitutions were, as Edirisinghe argues, partisan documents and both suffered from the following basic flaws:

1. They were designed to promote the political vision and ideology of the party in power;
2. They entrenched rather than countered majoritarianism; and
3. They were designed with the convenience of the executive, rather than the empowerment of the People as their primary motivation or rationale (Edirisinghe, 2016).

What is problematic, however, is that the criticism against the introduction of a Third Republican Constitution is growing. Recently, a retired Major General of the Sri Lankan Army spoke of traitors who are trying to divide the country and, hence, the new conclusion of the new constitution must be prevented (Pararajasingham 2017). Dr. Jayatissa de Costa, a President's Counsel, argued that the whole process of drafting a new constitutional

might even be unconstitutional and, further, that Sri Lanka is too small to opt for a federalist state solution (Daily News 2017). Finally, in a move to persuade and pacify the powerful Buddhist clergy, the Sri Lankan Prime Minister expressed that ‘[i]n the process of preparing the new constitution ... the president and myself have agreed to maintain the priority given to the Buddhism in the constitution as it is’ (Reuters 2017).

Dayan Jayatilleke, former Permanent Representative of Sri Lanka to the United Nations in Geneva, writes in a recent intervention on this matter that:

[T]hus the new Constitution is an effort to sabotage and destabilize the State, Sri Lanka as a country and the Sinhalese as a community. It is an attempt to neutralize the numerical strength that the Sinhalese have, which gives the community a leading role on the island. The project for a new Constitution is the project for an anti-Sinhala Constitution! (Jayatilleke, 2017).

Hence, in face of the growing opposition and resentment regarding substantial changes to the current constitutional setting, it begs the question what the right to self-determination under international law entails. For this reason, the paper will highlight the development of the right to self-determination under international law in the next section and expound to what extent it can be invoked by Tamils in the country.

4. The Right to Self-Determination: the Right of Minorities?

The right to self-determination underwent a considerable historical development, a natural consequence of the American and French Revolutions (van den Driest 2014, 14). The former US President Woodrow Wilson sketched out in his ‘Fourteen Points’ speech that ‘[s]elf-determination is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril’ (Wilson 1918). Third World scholarship, however, sees Wilson’s remarks in pursuit of a liberal agenda, while self-determination didn’t extend in his world view to peoples from the Third World (Senaratne 2015, 325). However, it was only with the creation of the United Nations and the wave of decolonisation through which the vague idea of self-determination ushered in the United Nations Charter in art. 1.2, art. 55 c, art. 73, art. 76 b.

All the provisions relating to self-determination in the United Nations Charter did not constitute a right, as they were too vague and complex. The International Covenant on Civil and Political Rights and the International Covenant Economic, Social and Cultural Rights, were the first international

human rights instruments which legally enshrined the right to self-determination. To this end, art. 1 of the International Covenant on Civil and Political Rights spells out:

[A]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (ICCPR 1966).

And art.1 of the International Covenant Economic, Social and Cultural Rights stipulates:

[A]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (ICESCR 1966).

In their General Comment No.12 the United Nations Human Rights Committee further elucidates this right by stating:

[T]he right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants (United Nations Human Rights Committee 1984).

It is true that '[t]he principle of self-determination occasionally operates in tension with territorial integrity' (Brewer 2012, 245). The right to self-determination of peoples, was the '[b]edrock of the decolonisation agenda of the UN, following its inclusion in the UN Charter', (Grütters 2017).

Fabry argues that:

[W]hatever the right to self-determination meant outside the colonial context—it became typically interpreted as an 'internal' right consisting of a mixture of rights to political participation and minority rights since the citizens of existing states, whether ex-colonies or not, came to be deemed to have had their 'external' right to independence already realized—it excluded non-consensual secession from the territory of a state (Fabry 2015, 500).

The United Nations General Assembly passed the central document of decolonisation, Resolution 1514 (XV), which was the legal impetus for the United Nations Security Council Resolutions 183 (1963) and 218 (1965) and the Advisory Opinions of the International Court of Justice in the West Saharan and Namibian case (Fabry 2015, 499). The highly celebrated Resolution 2625 (XXV) must be seen in the context of the Resolutions 1514

(XV), 183 and 218, being the document that represents the common ground of the United Nations members (Chowdhury 1977, 87). With this Resolution, the United Nations General Assembly adopted the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Noteworthy in this Declaration is the following paragraph:

[T]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people (Declaration on Principles of International Law concerning Friendly Relations and Co-operation 1970).

The right to self-determination can be subdivided into two rights: the internal and external right to self-determination. The meaning of the right to internal self-determination was led by the International Court of Justice in the Western Sahara case into the fora of international law, as they saw self-determination as a right that is '[d]efined as the need to pay regard to the freely expressed will' (International Court of Justice 1975) of the peoples concerned. This core meaning wins more prominence where the political status or political interests of a people are under threat (van den Driest 2013, 95). This very right requires effective participation in a society, allowing people to freely determine their fate in political, economic social and cultural matters – this must be achieved through power-sharing models, federalism or autonomy (van den Driest 2013, 95). But, as Antonio Cassese argued, the right to self-determination must stress the internal dimension to overcome problems of democracy and to accommodate the aspirations of minorities (Cassese 1995, 359). But he also didn't ignore a possible allowance for exceptional cases '[w]here factual conditions render internal self-determination impracticable' (Cassese 1995, 359).

And yet, the aspect of the external dimension of the right to self-determination cannot be ignored. Fabry writes that:

[D]espite more than half a century of effort, international society cannot tame self-determination claims which stand outside of the post-colonial consensus. Given that a key justification behind that consensus was that privileging territorial integrity of states over non-consensual self-determination claims would foster interstate and intrastate peace and stability around the world, this is a sobering conclusion (Fabry 2015, 502).

There are grievances that groups within multi-ethnic groups have, like the Tamils in Sri Lanka and they cannot be ignored with a reference to territorial

integrity of nations and non-interference. Art. 27 of the International Covenant on Civil and Political Rights states that:

[I]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language (ICCPR 1966).

Michel Seymour correctly holds that there is special right to secede, a natural consequence of the right to self-determination in its external dimension,'[s]ome kind of privilege, similar to a special provision occurring in a particular contract' and when '[c]ultural groups could legitimately secede to rectify some past injustice' (Seymour 2007, 397). The next section will provide a closer investigation of this right to secede against the background of the discussion presented on the Tamils in section 1 and 2.

5. Right to Secession as an Inevitable Consequence to the Exercise of the Right to Self-determination in the Face of Ethnocidal Oppression?

Contemporary international law interconnects the right of certain groups to govern their own affairs with human rights norms, especially in the cases of minorities and indigenous peoples. This is even more relevant where certain groups are subject to domination by an ethnic majority, where minorities suffer from gross human rights violations and are alienated from participation in governance. In consequence, is remedial secession as an exceptional measure the solution for people under suppression? Most academic works argue that the right to remedial secession wins prominence and legitimacy under international law as it springs from the right to self-determination or else it is justified on the grounds of morality (Mancini 2008, 1). It is indeed true that nations states deny that the right to self-determination also includes the right to secede, fearing the fragmentation of international state order (Welhengama and Pillay 2013, 252). Moreover, the the Sixth Committee of the United Nations, however, held in their final report

[c]oncerning the principle of self-determination, it was strongly emphasized on the one side that this principle corresponds closely to the will and desires of peoples everywhere and should be clearly enunciated in the Charter; on the other side, it was stated that the principle conformed to the purposes of the Charter only insofar as it implied the right of self-government of peoples and not the right of secession (United Nations 1945).

In the Aaland Islands Question, a report presented to the Council of the League of Nations by the Commission of Rapporteurs the Commission, was of the view that:

[T]o concede to minorities, either of language or religion, or to any fractions of a population the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure, would be to destroy order and stability within States and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of the State as a territorial and political unity (International Committee of Jurists, 1920).

If this general assumption is applied, one may ask what the ‘community’ is to which the Tamils shall ‘belong’. Would it truly create a condition of anarchy if the Tamils opted for a situation where they choose remedial secession? In the Quebec case, the Supreme Court of Canada held in an *obiter dictum* the view that

[T]he recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through internal self-determination – a people’s pursuit of its political, economic, social and cultural development within a framework of an existing state. A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances (Reference re Secession of Quebec, 222).

Judges Wildhaber and Ryssdal held in their concurring opinions in *Loizidou v. Turkey* before the European Court of Human Rights that the right to self-determination is the tool to reclaim own human rights and international standards of democracy (*Loizidou v Turkey*, 535). While it is true that a right to remedial secession cannot rely solely on an *obiter dictum* from Canada and two concurring opinions before a regional human rights court, it is equally true that ‘[a]bsence of a right to unilateral secession does not imply that such an act is illegal’ (Vidmar 2010, 41). The author holds the view that if ethnocidal politics appropriates public space for the minorities, then a remedial right to secession must be a precursor to the right to self-determination. As it was outlined above, international law has recognised the right of peoples under former colonial subjugation to become an independent nation under the invocation of self-determination. However, in the Sri Lankan case it is pertinent to ask if the Tamils are not still subject to alien domination and have never gained true independence, let alone have they exercised a right to self-determination. Was the departure

and the rule of a minority, the British only replaced by the arrival and the rule of the majority, the Sinhala?

There are different justifications to opt for the remedial right to secession: first, economic gap; second, functional stability; third, cultural preservation; and fourth, remedy for past injustices experienced. Worthy of consideration is also the written submissions of states in the Advisory Opinion of the International Court of Justice in the case on the Unilateral Declaration of Independence of Kosovo: here, the Czech Republic argued, for example:

[i]t is widely recognized in doctrine that contemporary international law does not know any rule prohibiting a declaration of independence or, more generally, a secession. International law neither prohibits nor promotes secession; it does, however, take new factual situations into account and accepts the political reality of a successful secession. In that sense, secession is considered “a legally neutral act the consequences of which are regulated internationally (Written Statement of the Czech Republic, ICJ, 2009).

More interesting is, however, Germany’s written statement to the International Court of Justice. Germany held the view that while the right to self-determination should as a rule be exercised internally, the same right ‘[m]ay exceptionally legitimize secession if this can be shown to be the only remedy against a prolonged and rigorous refusal of internal self-determination’ (Written Statement of Germany, ICJ, 2009). Van den Driest argues that the persistent violation of the right to internal self-determination must be accompanied by:

[t]he presence of gross human rights violations and discriminatory treatment of a people. Both factors are related to the requirement of the denial of internal self-determination and, as such, some scholars have contended that the fulfilment thereof may be derived from the lack of participatory rights and representative government. (...) The essential touchstone for a right to remedial secession, however, is that of the denial of internal self-determination’ (van den Driest 2013, 312).

In the case of Sri Lanka, following the reasoning in the 1 – 3 section, the author is of the firm opinion that there is a persistent denial and refusal to include the Tamils in the country-making. To this end, it will now depend on the success or failure of a Third Republican Constitution to determine the fate of the Tamils. The act of recognition on the international plane can, in its universal collective nature, nourish the nascent stages of statehood (Vidmar 2010, 55).

Conclusion

The right to self-determination, in its essence, liberates peoples from the shackles of the past and shall pave the way for a society free from subjugation. In the Sri Lankan case, the British colonial government was replaced by an ethnocratic government, threatening the very existence of the Tamils through the application of ethnocidal politics and application of biopower, rendering them subject to bare life. The Tamils, as the minority group, were *ipso facto* an alien element and were alienated from building a national character and culture by the majority group. The Tamils were anomalies, elements seen as weakening the dominant nation-state (Musgrave 1997, 10).

Rajasingham Senanayake writes that:

[p]roduction and consolidation of the modern bipolar imagination has entailed two parallel but distinct processes: 1) the ethnicisation of politics, whereby ethno-religious identity as such has become the dominant fault line of public debate, political action and collective historical consciousness; and 2) the politicisation of groups and individuals, whereby ethno-linguistic and, to a lesser extent, religious markers, become the salient category of identity in the private domain and individual consciousness (Rajasingham Senanayake 2009, 3).

As it was outlined earlier, legal and extra-legal measures have alienated Tamils from effective participation in the state-building in Sri Lanka. These different measures targeted a range of rights, not only civil and political rights, but also economic, social and cultural rights. The violation of the latter set of rights is having grave repercussions on a minority population like the Tamils in Sri Lanka, as they are not considered as part of the society and become estranged. Different political and legal efforts for ethnic accommodation in Sri Lanka have failed. Linguistic-nationalism with its fully-fledged fervor impeded any inter-communal dialogue, so that so that language was continually used as a '[w]eapon in the nationalist armory and as an identifier' (Weber 2003, 396). Moreover, the current discussion evolving the Third Republican Constitution are not satisfactory. Ayesha Kalpani Wijayalath correctly asserts:

[k]eeping aside short-term political gains, it is imperative for the Sirisena-Wickremesinghe government to learn from past experience and genuinely attempt to consolidate democracy and forge a new constitution based on democratic principles with value for human dignity that will reflect the aspirations of all the people in the island (Wijayalath 2016, 9).

Sri Lankan governments, however, were never prone to inclusion of Tamils – rather the contrary. Extremists forces were always too strong. It may be argued, as it was done in the past, that numerous Tamils received high-ranking posts, such as Chairwoman of the National Human Rights Commission, Chief Justice of the Sri Lankan Supreme Court, Permanent Representative of Sri Lanka to the United Nations, Central Bank Governors. All this will be used to testify and silence critics of Sri Lanka's ethnocentric state-building approach. On a recent visit to Sri Lanka, however, the United Nations Special Rapporteur on minority issues asserted:

[H]istorically, ethnic and religious identities have defined power and social relations, leading to tensions and social divisions between the majority and minority communities as well as between minorities. These long-standing grievances, and the failure of successive Governments to effectively address them, precipitated conflict and, eventually, a long civil war that seriously damaged the social fabric of the country, (United Nations 2017, 3)

It must be ascertained that public space in post-war Sri Lanka is an iconography of militarised majoritarian superiority in its marginalizing totality and dominating virtuality. The right to self-determination, hence, entails their rights and freedoms to be respected and accommodated, as space needs to be granted to develop an inclusive citizenship. Otherwise, in case this fails yet again, the ultimate remedy for the violation of the right to self-determination is the inherent right to secession for Tamils as life can be only lived if life is allowed.

References

Books

- Agamben, G. (1995) *Homo Sacer: Sovereign Power and Bare Life*, Stanford: Stanford University Press.
- Bandarage, A. (2009) *The Separatist Conflict in Sri Lanka*, Abingdon: Routledge.
- Burgio, G. (2014) *Oltre la nazione*, Rome: Ediesse.
- Cassese, A. (1995) *Self-determination of Peoples*, Cambridge: Cambridge University Press.
- Driest, S. F. van den (2013) *Remedial Secession: A right to external self-determination as a remedy to serious injustices*, Antwerpen: Intersentia.
- Farmer, B.H. (1963) *Ceylon: A Divided Nation*, London: Oxford University Press.

- Foucault, M. (1998) *History of Sexuality:1*, London: Penguin Press.
- Foucault, M. (2003). *Society Must be Defended: Lectures at the Collège de France, 1975-76*, New York: Picador.
- Harris, N. (1990) *National Liberation*, London: I.B.Tauris.
- Sir Jeffries, C. (1962) *Ceylon: The Path to Independence*, London: Pall Mall Press.
- Jones, R.N.B. (2015) *Sinhala Buddhist Nationalism and Islamophobia in Contemporary Sri Lanka*, Maine: Bates College.
- Jupp, J. (1978) *Sri Lanka – Third World Democracy*, London: Frank Cass.
- Kumarasingham, H. (2013) *A Political Legacy of the British Empire*, London: I.B. Tauris.
- Kumarasingham, H. (2016) *Constitution-making in Asia*, Abingdon: Routledge.
- Musgrave, T.D. (1997) *Self-Determination and National Minorities*, Oxford: Oxford University Press.
- Spencer, J. (1990) *Sri Lanka: History and the Roots of Conflict*, London: Routledge.
- Sriskanda Rajah, A. R. (2017) *Government and Politics in Sri Lanka: Biopolitics and Security*, Abingdon: Routledge.
- Thusnet, M. and Khosla, M. (2015) *Unstable Constitutionalism*, New York: Cambridge University Press.
- Weiss, G. (2012) *The Cage*, London: Vintage Books.
- Welikale, A. (2008) *A State of Permanent Crisis. Constitutional Government, Fundamental Rights and States of Emergency in Sri Lanka*, Colombo: Centre for Policy Alternatives.
- Wickramasinghe, N. (2006) *Sri Lanka in the Modern age: A History of Contested Identities*, London: Hurst Publishers.
- Winslow, D. and M.D. Woost (2004) *Economy, Culture, and Civil War in Sri Lanka*, Bloomington: Indiana University Press.
- Wilson, A.J. (1974) *Politics in Sri Lanka 1947–1973*, London: Macmillan.
- Wriggins, H.W. (2015) *Dilemmas of a New Nation*, Princeton: Princeton University Press.
- Yiftachel, O. (2006) *Ethnocracy: Land and Identity Politics in Israel/Palestine*, Philadelphia: University of Pennsylvania Press.

Articles in journals:

- Brewer, E.M. (2012) ‘To Break Free from Tyranny and Oppression: Proposing a Model for a Remedial Right to Secession in the Wake of the Kosovo

- Advisory Opinion', *Vanderbilt Journal of Transnational Law*, 45, 245-292.
- Chamoun, M. (2008) 'Génocide et ethnocide: exterminer pour survivre', *Topique*, 1:102, 41-49.
- Chowdhury, S.R. (1977) 'The Status and Norms of Self-Determination in Contemporary International Law', *Texas International Law Journal*, 12:129, 72-85.
- Coomaraswamy, R. and de los Reyes C. (2004) 'Rule by Emergency: Sri Lanka's Postcolonial Constitutional Experience', *International Journal of Constitutional Law*, 2:2, 272-295.
- DeVotta, N. (2005) 'From ethnic outbidding to ethnic conflict: the institutional bases for Sri Lanka's separatist war', *Nations and Nationalism*, 11:1, 141-159.
- DeVotta, N. (2016) 'A Win for Democracy in Sri Lanka', *Journal for Democracy*, 27:1, 152-166.
- Fabry, M. (2015) 'The Right to Self-determination as a Claim to Independence in International Practice', *Ethnopolitics*, 14:5, 498-504.
- Gamage, S. (1997) 'Post-independent political conflicts in Sri Lanka: Elites, ethnicity, and class contradictions', *South Asia: Journal of South Asian Studies*, 20:s1, 359-395.
- Gaul, A. (2017) 'Security, Sovereignty, Patriotism—Sinhalese Nationalism and the State in Sri Lankan History Textbooks', *Ethnopolitics*, 16:2, 161-178.
- Genel, K. (2006) 'The Question of Biopower: Foucault and Agamben', *Rethinking Marxism*, 18:1, 43-62.
- Jayasundara-Smits, S. (2011), 'Contemporary Sinhala-Buddhist Nationalism in Sri Lanka: The Relevance of a (Neo-) Marxist Interpretation', *The Open Area Studies Journal*, 4, 73-85.
- McConnell, D. (2008) 'The Tamil people's right to self-determination', *Cambridge Review of International Affairs*, 21:1, 59-76.
- Nesiah, D. (2001) 'The claim to self-determination: A Sri Lankan Tamil perspective', *Contemporary South Asia*, 10:1, 55-71.
- Rajasingham Senanayake, D. (2009) 'Buddhism and the Legitimation of Power: Democracy, Public Religion and Minorities in Sri Lanka', *ISAS Working Paper*, 99, 1-20.
- Seneratne, K. (2013) 'Internal Self-Determination in International Law: A Critical Third World Perspective', *Asian Journal of International Law*, 3, 305-339.

- Seymour, M. (2007) 'Secession as a Remedial Right', *An Interdisciplinary Journal of Philosophy*, 4:50, 395-423.
- Vidmar, J. (2010) 'Remedial Secession in International Law: Theory and (Lack of) Practice', *St Antony's International Review*, 6:1, 37-56.
- Weber, E. (2003) 'The myth of the nation and the creation of the "other"', *Critical Review*, 15:3-4, 387-402.
- Welikale, A. (2012) 'Some Constitutional Aspects of Sri Lanka's Post-war Reconciliation Debate: The LLRC Report and the TNA Response', *Oxford Transitional Justice Research Working Paper Series: Debates*, 1-7.
- Wijayalath, A. K. (2016) 'Forging Sri Lanka's Third Republican Constitution', *ISAS Insights*, 325, 1-9.
- Whengama, G. and Pillay, N. (2013) 'Minorities' Claim to Secession by Virtue of the Right to Self-Determination: Asian Perspectives with Special Reference to Kosovo and Sri Lanka', *Nordic Journal of International Law*, 82, 249-282.
- Yass, S. (2014) 'Sri Lanka and the Tamil Tigers: Conflict and Legitimacy', *Military and Strategic Affairs*, 6:2, 65-82.

Chapters in books:

- Mancini, S. (2012) 'Secession and Self Determination', in: Rosenfeld M. and Sajo A. (eds.), *Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University Press, 481-500.
- Nissan, E. and Stirrat R.L. (1990) 'The generation of communal identities, in: Spencer, J. (ed.), *Sri Lanka: History and the Roots of Conflict*, London: Routledge, 19-44.
- Rogers, J.D. (1990) 'Historical images in the British Period', in: Spencer, J. (ed.), *Sri Lanka: History and the Roots of Conflict*, London: Routledge, 87-106.
- Sabaratnam, L. (1990) 'Sri Lanka: The Lion and the Tiger in the Ethnic Archipelago', in: Pierre L. van den Berghe (ed.), *State Violence and Ethnicity*, Colorado: University Press of Colorado, 187-220.
- Welikale, A. (2015) 'Constitutional Form and Reform in Postwar Sri Lanka', in: Thusnet, M. and Khosla, M. (eds.), *Unstable Constitutionalism*, New York: Cambridge University Press, 320-354.

Reports:

- International Peace Research Institute (2005), *The Sangha and its Relation to the Peace Process in Sri Lanka*, Oslo: PRIO.

International Crisis Group (2007), *Sri Lanka's Human Rights Crisis*, Asia Report No. 135, Colombo/Brussels: International Crisis Group.

The Centre on Conflict, Development and Peacebuilding, (2014), *An Institutional History of the Liberation Tigers of Tamil Eelam*, Working Paper 10-2014, Geneva: Centre on Conflict, Development and Peacebuilding, Graduate Institute of International and Development Studies.

Judgments/written statements et al.:

European Court of Human Rights, *Loizidou v. Turkey* [1995] 15318/89 ECHR 10

International Court of Justice, *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Inst. of Self-Government of Kosovo*, [Advisory Opinion] [2010] ICJ Rep 2010.

International Court of Justice *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* (Request for Advisory Opinion), written proceedings [2010] retrieved from: <http://www.icj-cij.org/en/case/141/written-proceedings> (accessed: 20/12/2017).

International Court of Justice, *Western Sahara* [Advisory Opinion] [1975] ICJ Rep 12.

Supreme Court of Canada, *Reference Re Secession of Quebec*, [1998] 2 SCR 217.

Legislation/ Declarations/International legal documents:

United Nations Charter (1945).

United Nations General Assembly Resolution 1514 (XV).

United Nations General Assembly Resolution 2625 (XXV).

United Nations General Assembly Declaration on Principles of International Law concerning Friendly Relations and Co-operation (1970).

United Nations Security Council Resolutions 183 (1963).

United Nations Security Council Resolutions 183 218 (1965).

United Nations Sixth Committee, UN Doc A/C 343 I/1/16, 6 United Nations Conference International Order Docs 296 (1945).

United Nations Report of the Special Rapporteur on minority issues on her mission to Sri Lanka, A/HRC/34/53/Add.3 (2016).

United Nations Human Rights Committee, General Comment 12, Art. 1 (Right to Self-Determination) (1984).

International Covenant on Civil and Political Rights (1966).

International Covenant on Economic, Social, and Cultural Rights (1966).
 Report Of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands question (1920).
 Official Language Act, No. 33 (1956).
 Vaddukoddai Resolution (1976).

Online resources:

Jayatilleke, D. (February 2017) ‘The Strategy for an Anti-Sri Lankan Constitution’, retrieved from: http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=161047, (accessed: 20/12/2017).

Central Bank of Sri Lanka (June 2016) ‘Socio-Economic Data 2016’, retrieved from: http://www.cbsl.gov.lk/pics_n_docs/10_pub/_docs/statistics/other/Socio_Econ_Data_2016_e.pdf (accessed: 20/12/2017).

Chelvanayakam S.J.V, Q.C. M.P., Leader of the Tamil United Liberation Front (February 1975) ‘Victory Speech’, retrieved from: <http://tamilnation.co/selfdetermination/tamilelam/7504sjvstatement.htm> (accessed: 20/12/2017).

Daily News/Bandara, K./de Costa, J. (November 2017) ‘Sri Lanka is too small to have a federal state – Dr. Jayatissa De Costa’, retrieved from: <https://www.pressreader.com/sri-lanka/daily-mirror-sri-lanka/20171107/282355450015890> (accessed: 20/12/2017).

Edirisinghe, R. (January 2016) ‘The need for a new constitution for Sri Lanka’, retrieved from: <http://groundviews.org/2016/01/08/the-need-for-a-new-constitution-for-sri-lanka/> (accessed: 20/12/2017).

Grütters, D. (October 2017) ‘Catalonia: The Right to Secede and the Right to Self-Determination’, retrieved from: <http://ohrh.law.ox.ac.uk/catalonia-the-right-to-secede-and-the-right-to-self-determination/> (accessed: 20/12/2017).