

How to resolve the political conflict

In our country, initiatives of foreign missions are viewed as undue interference and considered as infringement on sovereignty. But in Sri Lanka negotiations between the government and LTTE guerrillas are being mediated by a representative of the Norwegian government and the question of surrendering of sovereignty never came up. Similar things are happening in other parts of the world. If the conflicting political parties want to avoid uncertainty and possible chaos which may even lead to violence and civil war, we must find a way out on the basis of reality and not on vanity.

GM QUADER MP

THE main issue today in Bangladesh politics is how to have a smooth transition of power from one elected government to another. The present alliance government has come to the last leg of its term. The term expires on October 28 automatically as the parliament shall stand dissolved on that day, on completion of five years from the date of its first meeting as per Art. 72.3 of the constitution.

The present regime is to hand over power to a non-party caretaker government within fifteen days from that day as per Art. 58C.2 of the constitution. A new parliament would need to be formed with a general election of members of parliament within ninety days after parliament is dissolved (Art. 123.3) on October 28.

The new parliament would elect the prime minister (Art. 56.3) who in turn would form a government (Art. 55.1). The non-party caretaker government would hand over power to the newly elected PM immediately (Art. 58B.1) and the non-party caretaker government would cease to exist simultaneously.

The above shows the constitutional way of transfer of power from one elected government to the next with a non-party caretaker transitional government in between. The constitution describes formation of transitional government and its function.

The most important role played during the interim non-party

caretaker government is by the president. The chief adviser, along with the other advisers, and the election commissioners are the other dominant players of the interim government who would conduct the next general election.

The problem started when Dr. Badruddoza Chowdhury, elected president by the ruling alliance was forced to resign by the government party. Dr. Chowdhury was the founder secretary general of BNP. It was revealed that he had been forced out from his position for maintaining neutrality in performing his duties.

The spirit of the constitution is that the post of president would not belong to any political party and would be above both government and opposition as a guardian of the nation. Removal of such a senior party leader from the presidency on the grounds of his impartiality raised doubts about the intentions of the ruling party. It was apprehended that the government party may be planning to manipulate the next general election which would be held during the interim period and wanted a president totally loyal to them to provide necessary support in that respect.

The doubt took its root deeper when the government made an amendment to the constitution for increasing the retirement age of the High Court and Supreme Court judges by another two years. The action was justified by the government to deal with huge backlog of cases in the higher judiciary, which otherwise could not be managed

due to shortage of senior and experienced judges.

But it is seen that this has allowed the serving chief justice to continue during the interim period and made the position of chief adviser devolve on the last retired chief justice. The opposition parties opposed this constitutional amendment when they found that the person who has been predetermined by this to become the chief adviser of the next interim government had some time in the past served as an executive committee member of BNP. But the ruling alliance went through the amendment in spite of the said opposition. This has confirmed the apprehension of the opposition that the ruling party would try to exert undue influence during the election, using the support of the administration over people loyal to them.

The final blow to the confidence of the opposition came when government unilaterally appointed a chief election commissioner on retirement of the incumbent. Of course, the government was right when they pointed out that during the past regime also appointment of the chief election commissioner and other election commissioners was done in a similar way amidst protest by the opposition.

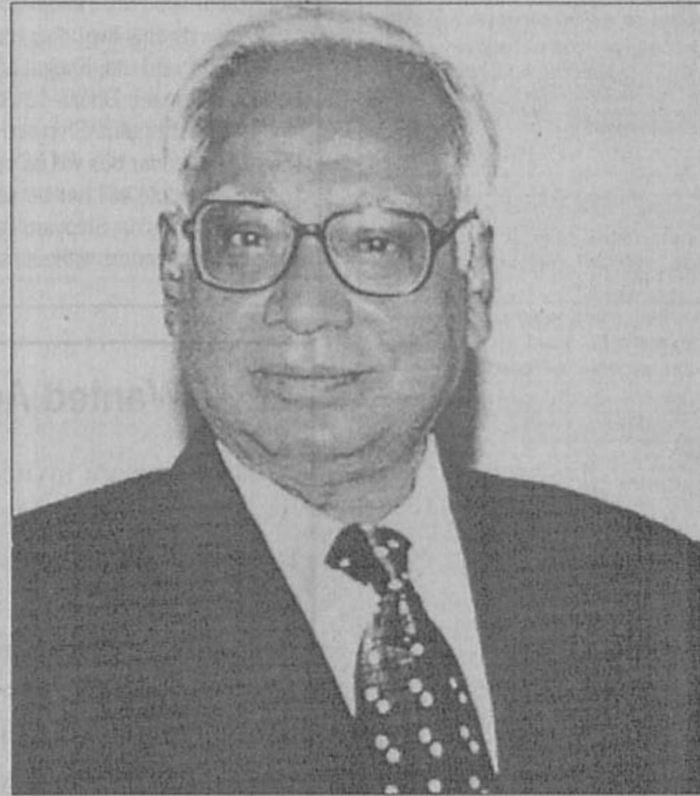
But the new CEC from the very beginning started taking actions one after another which left no scope to consider him anything but pro-government. His first action was in respect of preparation of a fresh voter list for the next general election. Generally, the voter list is supposed to be a continuous docu-

ment which would be changing in contents on an almost day to day basis. As such, it needs to be revised as and when necessary, that is before any election on the basis of the real situation in the field. There is hardly any logic to making a new voter list completely ignoring the existing one. Even if it is assumed that the existing one has lots of mistakes, it is possible that the wrongs can be corrected on the basis of reality.

The government party had always an accusation against the last government that they made a faulty voter list by including a large number of ghost voters in order to influence the election results in their favor. But that allegation seems doubtful as the present alliance government came out victorious in the last general election with a wide margin.

In spite of that, the chief election commissioner called all political parties (numbering about 150) for a dialogue to hear their views. Ultimately he decided in line with the government's desire for a voter list made afresh. The above decision was challenged by the other two serving election commissioners and the chief election commissioner became a minority in the EC. This raised a legal barrier for him to implement his decision unilaterally. Apparently, government came to his rescue at that time and two more election commissioners were given appointment within a record minimum time. The two newly appointed commissioners were alleged to be pro-government people. One reportedly held an office-bearer position of the ruling party in the past and the other was known to have close links with the ruling party decision makers.

Under the circumstance, the major opposition Awami League with its partners in the 14-party alliance put up a series of demands for amendment of existing non-party caretaker government sys-



tem and the election commission with a view to ensure free and fair elections in a neutral environment.

The major demands are removal of CEC and the other election commissioners and to replace them with people acceptable by all major political parties; selection of chief adviser as per Art. 58C.5 of the constitution, ignoring other provisions (sub-clause 3 & 4 of Art. 58C) in this regard, where it is stipulated that the chief adviser would be appointed in consultation as far as practicable with the major political parties; control of the defense services during the caretaker period by the chief adviser and not to president as stipulated in the existing constitution (Art. 61).

The government had ultimately agreed to sit with the opposition for a dialogue. But at the same time the PM started her campaign to

describe the reform initiative as a conspiracy hatched by the opposition to foil the democratic process. There have been quite a few letters written from one side to the other but both sides could not agree to sit together as yet.

In the meantime, the October 28 deadline is approaching fast. Now the question that is stirring the mind of the people is would it be possible to have a negotiated settlement and subsequent amendment before that date, and if not then what are the consequences.

Power is to be handed over by the present government as per the constitution on the due date. If no settlement could be reached by that time, the president may not have any option but to assume the responsibility of chief adviser of the caretaker government also as per provision of the constitution



(Art. 58C.6).

It is rumoured that the present government for some reason lost confidence in the president. This has created uneasiness for the government since the president may even have to assume simultaneous authority to act as chief adviser. The government is now looking for a more loyal president. It is also alleged that the president has been forced to submit his letter of resignation which has been collected by the PM before she left for Kuwait. It is suggested that the president fell sick subsequently. May these all be just rumours.

It must be remembered that the resolution of any conflict between two parties is possible with a bipartisan negotiation only if both have mutual trust and respect. Is there any reason to believe that it is true in the present context of

Bangladesh? If not, then appointment of an arbitrator who would have the authority to enforce his decisions may yield some result.

Could that be made possible? In our country, initiatives of foreign missions are viewed as undue interference and considered as infringement on sovereignty. But in Sri Lanka negotiations between the government and LTTE guerrillas are being mediated by a representative of the Norwegian government and the question of surrendering of sovereignty never came up. Similar things are happening in other parts of the world. If the conflicting political parties want to avoid uncertainty and possible chaos which may even lead to violence and civil war, we must find a way out on the basis of reality and not on vanity.

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Maliki's master-plan

A timetable for withdrawal of occupation troops from Iraq. Amnesty for all insurgents who attacked US and Iraqi military targets. Release of all security detainees from US and Iraqi prisons. Compensation for victims of coalition military operations. Those sound like the demands of some of the insurgents themselves, and in fact they are. But they're also key clauses of a national reconciliation plan drafted by new Iraqi Prime Minister Nouri al-Maliki, who will unveil it today.

ROD NORDLAND

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Those sound like the demands of some of the insurgents themselves, and in fact they are. But they're also key clauses of a national reconciliation plan drafted by new Iraqi Prime Minister Nouri al-Maliki, who will unveil it Sunday. The provisions will spark sharp debate in Iraq -- but the fiercest opposition is likely to come from Washington, which has opposed any talk of timetables, or of amnesty for insurgents who have attacked American soldiers.

But in Iraq, even a senior military official in the US-led coalition said Friday that the coalition might consider a timetable under certain circumstances. And the official was careful to point out that a distinction needs to be made between terrorists and the resistance.

Newsweek has obtained a draft copy of the national reconciliation plan, and verified its contents with two Iraqi officials involved in the reconciliation process who declined to be identified because of the sensitivity of the plan's contents. Prime Minister Maliki will present the document to the

National Assembly when it convenes on Sunday, and it's expected to be debated over the coming week.

Maliki has made reconciliation and control of party militias the main emphasis of his new government. This plan follows a series of secret negotiations over the past two months between seven insurgent groups, President Jalal Talabani and officials of the US embassy. The insurgent groups involved are Sunnis but do not include foreign jihadis like al Qaeda and other terrorist factions who deliberately target civilians; those groups have always denounced any negotiations.

The distinction between insurgents and terrorists is one of the key principles in the document, and is in response to Sunni politicians' demands that the "national resistance" should not be punished for what they see as legitimate self-defense in attacks against a foreign occupying power. Principle No. 19 calls for "Recognizing the legitimacy of the national resistance and differentiating or separating it from terrorism" while "encouraging the national resistance to enroll in the political process and recognizing the necessity of the participation of the national resistance in the national reconciliation dialogue."

The plan also calls for a withdrawal timetable for coalition forces from Iraq, but it doesn't specify an actual date -- one of the Sunnis' key demands. It calls for

"the necessity of agreeing on a timetable under conditions that take into account the formation of Iraqi armed forces so as to guarantee Iraq's security," and asks that a U.N. Security Council decree confirm the timetable. Mahmoud Othman, a National Assembly member who is close to President Talabani, said that no one disagrees with the concept of a broad, conditions-based timetable. The problem is specifying a date, which the United States has rejected as playing into the insurgents' hands. But Othman didn't rule out that reconciliation negotiations called for in the plan might well lead to setting a date. "That will be a problem between the Iraqi government and the other side [the insurgents], and we will see how it goes. It's not very clear yet."

The senior coalition military official, who agreed to discuss this subject with Newsweek and The Times of London on the condition of anonymity, notably did not outright rule out the idea of a date. "One of the advantages of a timetable -- all of a sudden there is a date which is a much more explicit thing than an abstract condition," he said. "That's the sort of assurance that [the Sunnis] are looking for."

"Does that mean the subject of a date is up for negotiation?" he was asked. "I think that if men of goodwill sit down together and exchange ideas, which might be defined either by a timetable or by ... sets of conditions, there must be

a capacity to find common ground," the official said.

The US ambassador to Iraq, Zalmay Khalilzad, in a recent interview with Newsweek referred to a "conditions-driven roadmap" rather than a timetable. Officially, the US position is that coalition troops would leave as soon as Iraqi government officials say they're able to handle their own security, which leaves some room for diplomatic wiggle if the Iraqis declare their own intended timetable.

Equally contentious from the US point of view is the idea of granting amnesty to insurgents who have attacked and killed American soldiers. That is almost taken as a given by Iraqi negotiators, however. The draft plan calls for the release of all security detainees being held without charges in the country, estimated at as many as 14,000, going far beyond Maliki's announcement two weeks ago that he would be releasing 2,500 such detainees. In addition, the draft plan suggests forming a committee to decide on release of those convicted of crimes already. In both cases, those convicted of common crimes or of terrorism would be exempted from the amnesty.

The devil will likely be in the details. Everyone agrees for instance that a bomb set off in a mosque is terrorism. But if a roadside bomb is set off targeting soldiers, but killing innocent bystanders -- is that resistance, or terrorism? "A lot will depend on the exact wording," says Othman.

Maliki's reconciliation plan will undoubtedly be the subject of protracted discussions, and not everyone in the Iraqi government is pleased with it. The document also calls for bringing militias and "death squads" under control -- a provision which the powerful Shia party, SCIRI, is not happy with, because it effectively equates militias with the insurgents. Maliki is also Shia but from the Dawaa party. And Sunnis, for their part, are reluctant to renounce the insurgency when they are still threatened by Shia militias, and by Shia-dominated police. "The Sunnis have only one card to play, the insurgency," says the senior coalition official. "They don't have enough population and they're not sitting on any of the resources. Therefore their political identity is almost entirely defined by the insurgency."

Breaking that Shia/Sunni impasse won't be easy. But as the US ambassador says, "Every war must come to an end," and few on any side in Iraq any longer believe they can kill their way to peace. The only alternative is to try to talk their way there.

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Let's renegotiate Phoolbari

Phoolbari coal project needs renegotiation for deriving equitable economic benefits for Bangladesh if fiscal regime is unreasonably favourable to the company and deprives Bangladesh of its legitimate economic interests from the exploration of its natural resources. Such renegotiation is essential not only for equitable adjustment in the fiscal regime of contracts as demanded by Bangladesh, but also for reducing the scope of future discontent which may ultimately pose threat to stability of the contract.

DR. ABDULLAH AL FARUQUE

THE exploration of natural resources, in particular, minerals and petroleum, is vital for accelerating economic growth, meeting domestic energy demands, reducing dependency on import of energy, local electricity projects, and employment opportunities of a country. The recent mineral agreement for exploration of coal in Phoolbari, which is the first of its kind in Bangladesh, has opened a new horizon for energy production. Coal is an important source of energy as it is environmentally clean, comparatively, and it has great potential for power generation and promoting local industries and agriculture.

However, any legal and contractual arrangement with international mineral company for exploration and development of coal should be transparent, equitable in terms of sharing economic benefits between host state and company from the project and competitive in terms of fiscal regime of contract in view of global scenario of comparable arrangements. In fact, an equitable fiscal regime in which respective 'government take' and 'company take' is allocated on the basis of risks and exploration costs is central to any contractual arrangement of mineral development.

Recently, it has been revealed from the various media reports and statements of energy advisor of government that fiscal regime of Phoolbari coal project is inequitable and heavily imbalanced against Bangladesh as the rate of royalty stipulated in the contract is far below the international standard in view of prevailing fiscal terms and conditions in similar arrangements of other mineral producing countries. It appears that royalty is one of the main fiscal mechanisms under the Phoolbari coal project through which economic rent for Bangladesh is determined. It is also revealed from media reports that contract was concluded in non-transparent process. As such, fairness in the contractual arrangement has been challenged by various quarters and consequently, its renegotiation has been demanded to rectify unfairness in economic terms and conditions of contract in order to ensure

protection of national interest. This write up highlights the justifiability of renegotiation of mineral agreements in general and Phoolbari coal project in particular.

At the outset, it should be recognised that the renegotiation and adjustment of petroleum and mineral contracts is an accepted practice in the natural resources industry. The underlying rationale of renegotiation of such contracts usually revolves around the necessity of ensuring equity and fairness in contractual arrangements so that legitimate interests of both parties are protected. Renegotiation of mineral agreements can occur for various reasons during the life-time of the mineral contracts which are usually of long duration.

Firstly, the perception of initial unfairness and unconscionability of the contract terms which may be caused due to lack of information and the weak bargaining position of one of the parties, may prompt the weaker party to demand the revision of the contract at the later phase of contract performance. This initial unfairness can cover inequitable fiscal arrangement such as the projected 'government take' or 'company take' under the contract in question imbalanced against one of the parties to the contract.

Secondly, it is not unusual that changes of circumstances may occur during the life of the mineral contract that alter materially the parties' expectations with respect to the outcome and the desirability of the continuation of the contract. In the circumstances of change, in most cases, the intention of the parties and the commercial and economic rationality suggests that contract should be adjusted by renegotiation, revision or modification of its terms and conditions in order to continue the contractual relationship rather than its abrupt end.

Thirdly, long-term contracts like mineral agreements can never be perfectly drafted because the parties' ability to predict all the events that may affect the contract in future is limited. The fact that mineral and petroleum contracts are negotiated under conditions of considerable complexity and uncertainty means that it is not possible for the parties to specify in

advance every conceivable contingency in the contract.

Moreover, the transaction costs of negotiating every possible future change and ex-ante specification of contract details may be too high to discourage the parties to narrate the future contingencies in detail and how to mitigate them. Thus, these kinds of contracts are bound to be incomplete in specification of detailed terms of some of its aspects, which necessitates renegotiation or adaptation of the contracts in future.

Finally, renegotiation of mineral agreements can also be triggered by a comparative scenario of better terms and conditions in areas such as fiscal arrangements, price structure, methods of production, and marketing and development of the production area in similar agreements. Thus, the host government may request a renegotiation of the contract if there are substantially better fiscal terms in favour of other host states in similar kind of agreements. In renegotiating the contract in such circumstances, parties look at the terms of parallel or more recent agreements, tax or investment legislation of other countries so that it can be internationally competitive and fair to both parties.

However, renegotiation of a mineral contract is not a unilateral process and it may be asked by the companies prompted by the consideration of the economic viability of continuation of the project in its original form. On many occasions, renegotiation can create more favourable conditions and terms for the companies. In many cases, a renegotiation may be invoked by both parties for achieving their mutually reinforcing economic interest of the project, for preserving good future relationship and maintaining their reputation in the global marketplace. Thus, renegotiation is essentially a consensual process of change in the terms and conditions of the contract in order to redefine the rights and obligations of the parties under the contract.

The renegotiation can take place either by way of process prescribed by the provisions of the contract or extra-contractual procedures, since contracts do not always prescribe the procedures to renegotiate or revise the contract. The scope of renegotiation of mineral

agreements may vary widely depending upon the circumstances of each case and the nature of disagreement among the parties on the issues involved. It may be so broad as to cover the revision of whole contract or may be narrow, requiring changes of only a specific provision or provisions of the contract.

Indeed, in modern mineral contracts, provisions for renegotiation or a revision have become commonplace and it is increasingly realised that these clauses can facilitate orderly change in the contract. Even in the absence of an express provision for renegotiation or revision of contract, international mineral industry practice dictates implied obligation on the part of the parties to renegotiate the contract if such renegotiation becomes inevitable for reasons mentioned above. Given the long-term nature of the contract and considering the economic rationality of the continuation of the contractual relationship, it seems logical that the parties should undertake renegotiation as an implied obligation.

However, fairness and good faith should always be the basic criteria of renegotiation or revision of the mineral contracts. Renegotiation should be based on mutual cooperation and trust. The goal of equity and fairness in the contractual outcome is the primordial issue of contract revision and adaptation. In the case of a contract which is perceived to be an inequitable arrangement from the very beginning or becomes an exploitative one subsequently, the renegotiation of such a contract on the basis of mutual understanding can bring fairness and equity in the contractual outcome.

From the above, it is discernible that Phoolbari coal project needs renegotiation for deriving equitable economic benefits for Bangladesh if fiscal regime is unreasonably favourable to the company and deprives Bangladesh of its legitimate economic interests from the exploration of its natural resources. This may be argued from the perspective of initial unfairness of contract caused by the rate of royalty and other economic terms and conditions under the contract, which is not fair judged by the parameters of existing international standards. Such renegotiation is essential not only for equitable adjustment in the fiscal regime of contracts as demanded by Bangladesh, but also for reducing the scope of future discontent which may ultimately pose threat to stability of the contract.

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Iraqi Prime Minister Nouri al-Maliki