

(Continued from last week)

Sustainable Development

The Supreme Court judgement in the Eppawala Fundamental Rights case (June 2000), also discussed the concept of sustainable development. This judgement is republished in full in the third book in the Eppawala trilogy, *Pugwash, Globalisation and Eppawala, Pugwash Betrayed or Eppawala Betrayed?* The following somewhat lengthy but informative quotation is relevant in the present context:

"It has been the policy of successive governments during the past three decades that the Eppawala mineral deposit should be put to use. In fact, Lanka Phosphates Ltd. the 6th respondent, under a Licence issued by the Geological Survey and Mines Bureau, has been, mining about 40,000 metric tons of rock per annum for crushing and marketing to enterprises making fertilizer. That modest operation, the petitioners explain, caused them no concern.

However, in view of the escalation of the amount to be mined under the proposed agreement to 26.1 million metric tons within thirty years from the date of the signing of the agreement, the petitioners fear (a) that existing supplies will be exhausted too quickly; and (b) that the scale of operations within the stipulated time frame will cause serious environmental harm that would affect their health, safety, livelihood, as well as their cultural heritage. The petitioners do not oppose the utilization of the deposit. However, they submit that the phosphate deposit is a 'non-renewable natural resource that should be developed in a prudent and sustainable manner in order to strike an equitable balance between the needs of the present and future generations of Sri Lankans.

In my view, due regard should be had by the authorities concerned to the general principle encapsulated in the phrase 'sustainable development', namely that human development and the use of natural resources must take place in a sustainable manner.

There are many operational definitions of 'sustainable development'. However, they have mostly been variations on the definition of the United Nations Commission on Environment and Development, chaired by Gro Harlem Brundtland, Prime Minister of Norway, in its report in 1987, - 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.

Some of the elements encompassed by the principle of sustainable development, that are of special significance to the matter before this court are: first, the conservation of natural resources for the benefit of future generations - the principle of inter-generational equity; second, the exploration of natural resources in a manner which is 'sustainable' or 'prudent' - the principle of sustainable use; the integration of environmental considerations into economic and other development plans, programmes and projects - the principle of integration of environment and development needs. International standard setting instruments have clearly recognized the principle of inter-generational equity. It has been stated that humankind bears a solemn responsibility to protect and improve the environment for present and future generations. (Principle 1, Stockholm Declaration). The natural resources of the earth including the air, water, land, flora and fauna must be safeguarded for the benefit of present and future generations. (Principle 2, Stockholm Declaration). The non-renewable resources of the earth must be employed in such a way as to guard against their future exhaustion and to ensure that benefits from such employment are shared by all humankind. (Principle 5, Stockholm Declaration). The right to development must be fulfilled so as to suitably meet developmental and environmental needs of present and future generations. (Principle 3, Rio De Janeiro Declaration). The inter-generational principle in my view, should be regarded as axiomatic in the decision making process in relation to matters concerning the natural resources and the environment of Sri Lanka in general, and particularly in the case before us. It is not something new to us, although memories may need to be jogged.

Judge C G Weeramantry, in his Separate Opinion in the Danube dam case (Hungary v. Slovakia), (supra), referred to the "imperative of balancing the needs of the present generation with those of posterity." Judge Weeramantry referred at length to the irrigation works of ancient Sri Lanka, the philosophy of not permitting even a drop of water to flow into the sea without benefitting humankind, and pointed out that sustainable development had been already consciously practiced with much success for several millenia in Sri Lanka. Judge Weeramantry said: "The notion of not causing harm to others and hence sic utere tuo ut alienum non laedas was a central notion of Buddhism. It translated well into environmental attitudes, 'Alienum' in this context could be extended by Buddhism to future generations as well, and to other component elements of the natural order beyond man himself, for the Buddhist concept of duty had an enormously long reach."



Eppawala revisited //

Contemporary law makers of Sri Lanka too have been alive to their responsibilities to future generations. Thus section 17 of the National Environmental Act makes it a mandatory duty for the Central Environmental Authority to "recommend to the Minister the basic policy on the management and conservation of the country's natural resources. In order to obtain the optimum benefits therefrom and to preserve the same for future generations and the general measures through which such policy may be carried out effectively.

The call for sustainable development made by the petitioners does not mean that further development of the Eppawala deposit must be halted. The Government is not being asked, to use learned counsel's phrase, to "sit back and do nothing."

In my view, the human development paradigm needs to be placed within the context of our finite environment, so as to ensure the future sustain ability of the mineral resources and of the water and soil conservation ecosystems of the Eppawala region, and of the North Central Province and Sri Lanka in general. Due account must also be taken of our unrenowned cultural heritage. Decisions with regard to the nature and scale of activity require the most anxious consideration from the point of view of safeguarding the health and safety of the people, naturally, including the petitioners, ensuring the viability of their occupations, and protecting the rights of future generations of Sri Lankans.

Thus, apart from protecting the ancient cultural landscape of Kalaweve-Jayaganga, for pragmatic and not for sentimental reasons, the need to conserve the non-renewable Eppawala apatite for our own use for centuries to come is at issue. In the context of the future unavailability of phosphate fertiliser, the folly of trading it off as a commodity for exhaustion in just 30 years as proposed, is described in the following enlightening, interesting, and even entertaining comments from the Eppawala judgement:

"The Secretary of the Ministry of Industrial Development in his affidavit stated that "with the development of technology and market conditions, a mineral deposit may also cease to be a resource as happened to the time industry in the world with the advent of plastic..." Sustainable development requires that non-renewable resources like phosphate should be depleted only at the rate of creation of renewable substitutes. What is the known renewable substitute for phosphate? Herring and Fantel as we have seen, refer to a "continuing phosphorous demand". Does the first respondent assume that plants will need no phosphorous? On that matter Professor O A Illeperuma of the Department of Chemistry, University of Peradeniya, with some asperity had this to say

by D. L. O. Mendis

(P 11) "There are some wise-cracks who say that scientists will develop new plants which will grow without phosphorous. Anyone with even a rudimentary knowledge of science knows that phosphorous is an essential component of our bone structure and when such varieties of cash crops are indeed possible then we will have humans with no bones who will probably move around like jellyfish!".....

Feasibility Studies

Coming to the alleged need to await the results of the Feasibility Study, as stated by Dr Ranasinghe, in his article, your readers should be informed that this could lead to complications as in the case of the proposed Moragahakande project in eastern Rajarata. In that case, as much as two hundred million rupees has been spent on Feasibility Studies, over the years, and the engineers concerned are brain-washed into pushing for implementation of the project, without considering alternatives. This subject has again been raised after the change of government in April, and will be dealt with separately as and when necessary. However, in regard to Eppawala an early word of caution is necessary, as stated in the following:

The danger is that the WTO may be invoked to promote the Eppawala phosphate rock project on the grounds that abrogation of the deal will be WTO - illegal. This will certainly sound strange to most readers who are unaware of the deadly nature of the WTO, and this includes some prominent economists in Sri Lanka today; but this is precisely what anti-WTO protests at Seattle sought successfully to draw global attention to. As is well known, those protests were effective, and the Seattle WTO meetings ended in disarray, as documented in this book.

(The reference is to WTO, Globalisation and Eppawala after Seattle, Sri Lanka Pugwash, p. 5. This book, edited by me, was published after I returned from Seattle after the anti-WTO protests in 1997)

Some more references to Dr Ranasinghe's Daily News article are necessary. He describes how, when he was Director of the Geological Survey department, "realizing the immense future potential of the Sri Lanka mineral sands", the GSD undertook a tour in 1993 to Australia promoting mineral resources of Sri Lanka. He says that

"Consequent to this tour, a leading Australian mining company, applied for exploration licences from the GSMB covering the coastal areas from Aruakkalu north of Puttalam down to Chilaw. After nearly four years of exploration, the company reported to the Australian Stock Exchange, and the Media in October 1998, the discovery of a 1.07 billion tonne combined 'Indicated and Inferred' categories resource of

heavy mineral sands of 7.2% grade, at 1% cut-off value. Unfortunately, the company had to suspend all local operations in 2002 whilst in the process of carrying out further feasibility studies".

It would appear that the Australian tour and the subsequent application from a "leading Australian mining company" and the "report to the Australian Stock Exchange", indicate an initiative taken by Australia and not by Sri Lanka, to exploit our non-renewable mineral resources. Can this be justified? What about local scientists and entrepreneurs? Did we not have a Stock Exchange in 1992?

But, although Dr Ranasinghe and his colleagues have ignored local enterprise, the Committee for the Protection of Eppawala apatite has most certainly not. Field research for the use of the finely powdered apatite mixed with compost, as a fast acting fertiliser for paddy, has been going on for some time on the initiative of Eppawala Hamuduruwa. Incidentally this is well known in India too. Recently there was even a TV announcement by a Peradeniya University Professor about this. This may also be linked with the above mentioned joint research study by the Weeramantry International Centre for Peace Education and Research, Colombo, and the McGill Center for Sustainable Development Law, Ottawa.

In conclusion, Dr Ranasinghe has referred to "the name of the game" as if he were discussing Murali's doosra. He should be reminded that Eppawala is one of the most precious non-renewable mineral deposits in the heart of Rajarata. It has been extracted by quarrying not mining, by local enterprise at the sustainable rate of up to 40,000 tons per year, for the past 30 years. This is documented in the Eppawala judgement and elsewhere, for example in the first published paper "Planning the Eppawala Phosphate rock project using Appropriate Technology", in the Institution of Engineers (1974). This describes the work started by a team of enthusiastic persons in the Ministry of Planning and Economic Affairs Regional Development Division who started the Eppawala project on an employment intensive basis, after the first insurrection in the early 1970s. Subsequently, engineers and scientists in the Institution of Engineers and in the Universities have expanded the scope of the project for increased value addition, without unnecessary foreign collaboration, and these possibilities remain. All that is needed is government backing in the form of a firm policy of non-dependant development.

In summary, Eppawala contributed to the fertility of ancient Rajarata, that was responsible for the enormous economic surpluses seen in the incredible ancient civilisation. The irrigation system that functions to this day, and the stupendous religious edifices like the Anuradhapura stupas, still the tallest brick structures ever built on earth, are part of this wonder of the world. If however, the multinational corporations and their local agents have their way, this priceless resource, this national treasure, will be exhausted in just another 30 years, against the wishes of local people, in the process destroying the ancient water and soil conservation ecosystems of western Rajarata. 30 years is, metaphorically the blink of an eye, compared with the age of the deposit, and even compared with the centuries old civilisation, which it still sustains.

It appears however that all is not lost, on account of the recent assertion of peoples electoral power, first in Sri Lanka, and then in India, where the struggle against the multinational corporations has been going on for a long time. We are reminded of the gross injustices against people at Bhopal and at Narmada, and the struggle against patenting of basmati and neem, and the privatisation of water. Names like Vandana Shiva, Mehda Patkar, and Arundati Roy come to mind in this context, following in the inspiring tradition of the immortal Mahatma, whose salt march for example once brought the mighty British Raj to its knees. The least we can do is to be in touch with them and learn from them, Medha and Arundathy especially in Narmada, Vandana everywhere.

In conclusion, I think most of your readers will agree that the rules for the Eppawala big match: Committee for the Protection of Eppawala phosphate vs. Multinational Corporations and their local agents, must be changed. We must simply refuse to play under the grossly unfair terms and conditions on a far from level playing field, in the deadly game of globalisation, under the rules of the WTO. Our own laws will have to be invoked, well in time for this, in particular the amendment to the antiquities ordinance, which former Archaeological Commissioner, Dr Siran Deraniyagala has drawn attention to as follows:

The water heritage of Sri Lanka comprises two elements, the natural heritage and the man-created (cultural) heritage Should this heritage resource with which Sri Lanka is blessed be diminished in any manner, the government will stand accused of neglect of the country's birthright. (From the Introduction in Water Heritage of Sri Lanka, Sri Lanka Pugwash publication; 2002)

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