

FORUM OF FEDERATIONS
AND
CENTRE FOR POLICY ALTERNATIVES

REPORT OF ACTIVITIES IN SRI LANKA
1ST-6TH SEPTEMBER 2002

TABLE OF CONTENTS

Introduction	3
Seminar on Constitutional Reform and Conflict Resolution: Federal Options	4
Plenary Discussions.....	12
Key points of Public Lecture by Bob Rae in Jaffna on Constitutional Reform and Conflict Resolution: Federal Options.....	14
Key points of meetings with academics from the University of Peradeniya, Kandy and the International Centre for Ethnic Studies (ICES), Kandy	16
Key Points of the Meeting with the Tamil National Alliance	18
Key Points of meetings with Treasury Officials and Senior Bureaucrats	19
Public Lecture on Constitutional Reform: The Canadian Experience	21
Contact Details.....	24

INTRODUCTION

The Centre for Policy Alternatives (CPA) and the Forum of Federations organised a series of seminars and dialogues with policymakers, politicians, academics and intellectuals on ‘Constitutional Reform and Conflict Resolution: Federal Options’, from 1st to 6th September 2002.

The Forum of Federations is a Canadian based international network of experts on federalism. The Forum provides technical expertise on power sharing arrangements, mechanisms for the protection of minorities and on fiscal devolution.

The delegation comprised of Mr. Robert Rae, former Prime Minister of Ontario, Prof. Will Kymlicka, the world renowned scholar on minority rights, ethnicity and multiculturalism, Mr. David R. Cameron, who has advised the Estonian Government on constitutional reform, national and sub-national governments in Russia on the management of their federation, Dr. J. Peter Meekison, Adjunct Professor in the Department of Political Science at the University of Victoria and Prof. Charles Jeffery. Prof. Jeffery is a British scholar who was involved in the design of the Welsh and Scottish models of devolution.

Given the critical juncture in Sri Lanka’s political and constitutional evolution and the serious challenges ahead relating to the structure of the State, CPA believed that it was important and opportune to discuss and explore the subject of federalism through a programme of seminars and lectures.

The programme commenced with a seminar in Colombo. This was followed by meetings in Jaffna and Kandy, the Forum delegation dividing into two groups for this purpose. In both places, the delegation met with civil society activists, academics and other key stakeholders. Mr. Bob Rae gave a public lecture at the University of Jaffna titled “Constitutional Reform: The Canadian Experience”. This was followed by a visit to the Vanni where Mr. Bob Rae and Prof Meekison met with the head of the LTTE political wing, Mr. Tamilchelvam. Throughout their visit the delegation was able to meet with a wide spectrum of stakeholders at the Track I and Track II levels. They met with all members of the government’s negotiating team except for Minister Rauf Hakeem and in addition to a representative cross section of civil society and academia; they also had discussions with members of the Tamil National Alliance (TNA), Treasury Officials and Senior Bureaucrats.

While it is difficult to capture the richness and complexity of every discussion, attempt is made in the following report to highlight the important points made during these deliberations.

SEMINAR ON CONSTITUTIONAL REFORM AND CONFLICT RESOLUTION: FEDERAL OPTIONS

2ND SEPTEMBER 2002

DR. PAIKIASOTHY SARAVANAMUTTU

Dr. Paikiasothy Saravanamuttu, Executive Director of the Centre for Policy Alternatives (CPA), stated that there was a lot of apprehension, doubt, misunderstanding associated with the very concept and idea of federalism. He went on to say that the Seminar was being held in the run up to the talks between the Government of Sri Lanka and the LTTE in Thailand commencing on the 16th of September 2002. In this context he noted that the seminar would invariably address questions relating to the devolution of power and federal mechanisms that would implicitly or explicitly surface during the negotiations.

Dr. Saravanamuttu went on to say that the federal idea was not a new one in the political discourse of Sri Lanka. Flagging a point that would later be discussed at length, he said that as early as the submissions of the Kandyan Sinhalese to the Donoughmore Commission and the speeches of Mr. S.W.R.D. Bandaranaike in the 1920s, federalism was talked about as a viable political structure for Sri Lanka. He noted, however, that the debate and discourse of the federal idea, had since then, distorted by bias, fears, anxieties and stereotypes.

Dr. Saravanamuttu highlighted the fact that Sri Lanka's political and constitutional evolution has been marked by the concentration of power rather than by an attempt to share it. He also said that a common argument against federalism in Sri Lanka is that Sri Lanka is far too small a country to have a federal system of government. He went on to say that another argument was that federalism could only emanate from a particular political culture, which Sri Lanka currently lacked. He also spoke of the importance of safeguards for minorities within federal arrangements.

MR. BOB RAE

Speaking next, Mr. Bob Rae, former Prime Minister of Ontario, made it clear that the Forum of Federations was not in Sri Lanka to espouse any one solution or path to solve Sri Lanka's long-drawn ethno-political conflict.

Mr. Rae then went on to say that the first key element of federalism is to remember that it represents the creative tension between two ideas. One is the provision for autonomy to be granted to regions, assemblies, which reflect local, regional and at times ethnically distinct cultural communities.

Mr. Rae went on to say that the nation state as a unitary state in which one group simply dominates and assumes a "winner takes all" position has a great challenge on its hands today. He said that on account of changing geo-political realities, and the onset of globalisation, the notion of sovereignty in the nation-state, is increasingly being perceived as less absolute than it once was.

He went on to say that the reality today is that nations have to compare themselves in terms of the demands of their population for economic improvement and that there is an increasing demand for economies which are more open, more flexible, more willing to respond to markets. Governments, he said, are increasingly finding that their overall policy directions have to become like the other countries around them. Increasing regional pressures, Mr. Rae said, were paving the way for greater degrees of regional and other kinds of co-operation.

Speaking on federalism, Mr. Rae said that there was no ready-made solution to apply to countries like Sri Lanka. Federalism, he said, could not be bought off the shelf, and how federalism is applied in any one country has to be informed and shaped by the political culture of that country itself. He said that whatever model of governance emerged from the negotiations in Thailand, it would not reflect the ideas of foreigners but will reflect the experiences of Sri Lankans.

The federal idea, as an idea of autonomy and an idea of unity at the same time, Mr. Rae said, was a way for a country to come together, not fall apart. Federalism, he emphasised, was not a magic bullet, and would not solve all conflicts and differences.

However, he also highlighted that since the end of the Second World War, the most dramatic conflicts in the world today are not between countries but within nation states. Mr. Rae went on to say that in the 21st century, if we are going to resolve these conflicts, it is clear that we will resolve them by dealing with the contradictions, imbalances and conflicts which take place within the structure of the nation state.

MR. DAVID R. CAMERON

Mr. David R. Cameron, who spoke next, said that the negotiations in Thailand would inevitably require a re-constitution of the Sri Lankan state. Stating that one of the primary virtues of federalism is that it offers real power to federally based communities within the framework of a single country, he went on to say that the outcome of the negotiations would involve some form of power sharing within a federal territory.

Constitutionalism, the rule of law, the respect of rights, democratic elections et al were seen by Mr. Cameron to be part and parcel of a federal form of government. Federal government is constitutional government, he said, and rules co-relating the federal units to one another and to the centre require a written constitution and an autonomous umpire in the form of an independent Judiciary, at the very least to oversee their operations and to settle disputes.

Representation of the regions and districts in the national legislature was also flagged as important by Mr. Cameron.

Federalism, Mr. Cameron went on to say, was a way of establishing peace and security, common values and an over-riding civic identity whilst still fostering pluralist democracy. He also said that it was a means of moderating human diversity, guarding against centralized tyranny by a minority or a majority and a way of preserving both individual and communitarian liberty.

He went on to flag the positive and negative aspects of federalism. Federalism he said, offer minorities at the national level the security of being majorities at the sub national level. It is a way of enhancing citizen

participation, a way of giving citizens multiple points of access to public power. It is a way of encouraging creative experimentation in the polity and society of sub national units. Successful initiatives could then be picked up by other jurisdictions and generalized at the level of the country as a whole. He went on to say that federalism was a way of delivering good government by bringing government closer to the people and improving administrative efficiency by enabling government to align public services to the specific needs of the local community.

On the down-side, Mr. Cameron said one of the criticisms of federalism was that it is a complex mode of government, slow to respond to change, ineffective in meeting challenges, inherently given to inequality and uneven development across jurisdiction and prone to wasteful duplication of functions and services. In addition, he said, it was also thought of as a system where it was difficult to define responsibilities and allocate them to the central government or federal units.

Another reservation he flagged was the question of minorities within minorities. Making a minority at the national level a majority at the state or provincial level simply reproduces the problem in the sub national level of there being other minorities that will be exposed.

Finally, he said that the fear of introducing federalism, especially in Sri Lanka, was because it was perceived to be a half way house en route to secession.

Answering his own criticisms, Mr. Cameron said recent studies had shown that federations have smaller, cheaper governments and that they are more efficient than unitary states. He went on to say that federations is pose no impediment to creation of wealth - some of the wealthiest countries in the world, he said, had federal structures.

Mr. Cameron said that though it is not possible to categorically dismiss the risk of secession, countries like Belgium, Spain, Switzerland, South Africa etc proved that federal systems could address and ameliorate secessionist tendencies.

Before ending his speech, he stated that it was clear that a new constitutional settlement had to include safeguards for basic rights and the protection of minority rights including language rights. It is otherwise hard to believe that minority groups that would be part of any final settlement could be persuaded to give their support to a new constitution and socio-political covenant.

MR. ROHAN EDRISINHA

Mr. Rohan Edrisinha, Director, Centre for Policy Alternatives (CPA), speaking next, said that it is in the interests of the Sinhalese majority at this particular point of time to be in favour of the federal idea. However, he also spoke strongly on the need for regional representation at the centre, and went on to say that the 1987 Indo Sri Lanka Accord which created the present Provincial Councils, the Mangala Moonesinghe proposals of the early 1990s, all the Constitutional Reform proposals between 1995 and 2000 and the August 2000 proposed Constitution did not have regional representation at the centre.

Mr. Edrisinha went on to say that it is in the interests of all communities to support a model that emphasises self rule and shared rule – the notion of a united autonomy within a united nation state. He

went on to say that a Constitutional set of proposals serious about devolution would necessarily have to take into account the reality that no central government would want to devolve power to regions.

Viewed from this perspective, Mr. Edrisinha said, the 13th Amendment and the present provincial council system was seriously flawed. Firstly there is no clarity with regard to the division of power. Power that is given is easily taken back. An example he quoted was Item Four on the Provincial List which when read carefully highlighted that a whole host of issues in local government was determined by legislation from the central government. Speaking on schools, the concurrent list, the powers of the President and the police, Mr. Edrisinha said that Sri Lanka has numerous laws which have undermined the 13th amendment.

Mr. Edrisinha said that Sri Lanka's constitution also prohibits judicial review of legislation. If laws are passed by the Central Parliament undermine devolution or any other provision in our Constitution once enacted, he said that the Courts have no power to review that legislation.

He said that as a result of all of this, Sri Lanka had a system of devolution that is extremely fragile and vulnerable. Mr. Edrisinha further stated that Sri Lanka's other constitutional and political challenges of the past two to three decades - authoritarianism, centralized political culture, patronage politics – could be addressed in some way by structures of federalism.

Touching on what Dr. Saravanamuttu had stated earlier, Mr. Edrisinha spoke of the historical development of the federal idea in Sri Lanka. He said that the founder of the Sri Lanka Freedom Party, Mr. S.W.R.D. Bandaranaike advocated a system a federal constitution as early as 1926, and then went on to briefly outline the federalist tendencies of the Kandyan Sinhalese, who had their pleas rejected by the Donoughmore Commission of 1927 and the Soulbury Commission of 1945. On all these occasions, he said, the Tamil leadership did not support the federal ideas or the federal options.

However, he went on to say that a number of Sinhalese political leaders after independence in 1948 felt that during colonial rule, it was the majority community who were the victims and not the minority. They felt that the minority community had been favoured by British rule, and that it was perfectly legitimate for the Government of Ceylon to attempt to redress the balance by favouring the majority after independence.

Mr. Edrisinha said that it was only a couple of years after independence that the Tamil political leadership started advocating a federal state. He said that in a sense, there were two routes advocated by the Tamil political leadership. One was getting involved in national politics, the other, power sharing. There were two political leaders who personified these two positions. One was Mr. G.G. Ponnambalam, who decided to participate in the national government, accept a cabinet post and address Tamil aspirations through that mechanism. The second was Mr. S.J. Chelvanayakam. He and his supporters founded the Federal Party in 1949 which was explicitly committed to the setting up of a federal state.

Mr. Edrisinha went on to flag the adoption of the 1972 constitution. The rejection of the separation of powers, the rejection of the notion of a bi-cameral legislature in favour of a unicameral legislature, Mr. Edrisinha said demonstrated that the informing ideology behind the constitution was the centralization of power. He went on to say that this was a key landmark in the deterioration of ethnic relations.

Speaking on the constitution was drafted in 1978, he said that it not only kept the unitary label but entrenched it to such an extent that to remove it you not only needed two thirds majority in Parliament but you also needed the support of the people at a referendum.

Speaking about the myths of federalism in Sri Lanka, Mr. Edrisinha said that one of the basic arguments seemed to be that if one moved from a unitary to a federal constitution, one would weaken the central government to such an extent that secession would be inevitable.

Mr. Edrisinha also said that the argument has been put forward that Sri Lanka could not become a federal state even if it wanted to, because for a federal state to be established you have to have two previously independent states coming together. This he said, proved that there was little understanding on the notion of devolutionary federalism, as opposed to an integrative federalism.

Before finishing his presentation, Mr. Edrisinha said that federalism with suitable modifications to address Tamil aspirations, federalism which would clearly be asymmetrical, would probably be a political solution or a compromise that would strike a fair balance between the interests of the Sinhalese community on the one hand and the Tamil community and minority groups on the other.

MR. H.L. DE SILVA

Mr. H.L. de Silva, speaking next, said that a reluctance to use the 'F' words was because of an acute consciousness of the mainstream political parties of the widespread unpopularity of any system of government that was suggestive of, or perceived as, a division of the country, coupled with a deeply felt apprehension and fear among the majority that it is a precursor to the eventual disintegration of the state. In consequence, he said, there has been what may be described almost a visceral fear of federalism as a demonic force, that will insidiously destroy the vitals of the state.

He went on to say that for a federal government to provide a viable and sustainable solution, there has to be greater and more sympathetic understanding of these popular fears and apprehensions of the mass mind and psyche of the majority. A genuine attempt, he said, must be made to disabuse the majority of these fears, attempt to inspire greater confidence and also provide an assurance that a federal system will not jeopardize the interests of the majority.

Mr. de Silva said that the merger of the two provinces in order to satisfy the demands of the Tamil minority was seen as the foundation for the demands of the separate state demanded by them. This, he said, overshadowed everything else in the devolution provided for in the 13th amendment and cast a pall of suspicion and feeling of deprivation in the minds of the Sinhalese and the Muslims of the Eastern Province. Furthermore, Mr. de Silva said, the lack of enthusiasm in implementing devolution in the rest of the country, where conditions were peaceful, cast doubts on the government's bona fides, and did not convince the majority or the minorities, that there would be adequate popular participation at the local level.

Mr. de Silva, explaining further, said that the expulsion of the Muslims and the Sinhalese minorities from the Northern and Eastern provinces and the ethnic cleansing carried out there by the LTTE on the grounds that those areas were for the exclusive use of the Tamil people, could not be justified, considering that the

Tamils living in other parts of the country were not habitually subject to this form of aggression. Considering that the number of Tamils living outside the Northern and Eastern province is large and said to even exceed that number, he also said it was hard to see how their grievances can be remedied by the grant of autonomy in the North and East through federal arrangements.

Mr. de Silva ended by flagging other imponderables, such as the creation of a separate state in the South East of Sri Lanka and another for the Indian Tamils forming part of the Central and Uva provinces. If the domino effect of a creation of the North and East were to lead to such a scenario, Mr. de Silva said the break up of Sri Lanka would be complete and we would be looking not at a federation but at a confederation instead.

DR. J. PETER MEEKISON

Dr. J. Peter Meekison, Adjunct Professor in the Department of Political Science at the University of Victoria, spoke next. He said that federalism, rather than destabilising country, could actually lead to a greater stability of socio-political structures. Also flagging the importance of engaging the majority in the deliberations and debates on federalism, Dr. Meekison said the guiding principles of federalism should be enshrined in the constitution.

PROF. G.L. PEIRIS

Prof. G.L. Peiris, Minister of Constitutional Affairs, speaking in the second session, spoke about the nature of the ethno-political conflict and also flagged several points which he thought were areas which civil society could help foster discussion, debate and nurture constructive ideas to help the peace process.

Prof. Peiris began by saying that the nature of the conflict and its history is such, that it is scarcely feasible to plunge straight away into an in-depth discussion of all the substantive issues. He spoke of the importance of a step-by-step approach, the importance of sequencing. He said that if the government were to talk about “core issues” it would not be a useful exercise at the present juncture, since the issues were too complex to be addressed at the outset of negotiations.

He said that the longer the period in which people get accustomed to the culture of peace, the more difficult it becomes for the war to be started again.

Prof. Peiris spoke on the culture of all inclusiveness, participatory values and mechanisms. He said that religious leaders, university professors and teachers, non- governmental organizations, the business community et al must be involved so that people feel that they have a stake in the peace process and are constantly making an input into it.

He went on to say that the interim process has to be carefully crafted in order to accord with the circumstances that exist in the country. Indeed no process of conflict resolution, Prof. Peiris said, can stand the test of time unless it addresses in earnest and sincerity matters which are rooted, which are anchored in the furtherance and consolidation of inalienable human rights.

Prof. Peiris warned against quick fixes. Patience, perseverance and dedication are all going to be called for, he said. But patience is not inexhaustible, he went on to say, and said that there should be enough

happening on the ground to sustain the confidence of the people, whose patience has been solely tried for decades in the past.

He also spoke of the need to organise political issues, economic issues and legal issues into a cohesive framework which is strong enough, and credible enough to sustain a complex peace process that inches its way forward.

PROF. WILL KYMLICKA

In the second session, Prof. Will Kymlicka, a world renowned scholar on minority rights, ethnicity and multiculturalism, said that the Tamils within Sri Lanka identify themselves as a nation and as a consequence see themselves as having rights of self government or self determination and also like other nations, as having a territorial homeland over which they wish to exercise self government.

He also spoke of countries in the West which faced the problem of sub-state nationalism. Canada faces it in Quebec, the United States faces it in Puerto Rico, Britain faces it with Scotland and Wales, France with Corsica, Belgium with the Flemish, Spain with Catalonia the Basque country, Italy with the German speakers of South Tyrol and Finland with Swedish speakers.

Prof. Kymlicka said that federalism was a potent tool to address the problems of sub-state nationalism. He went on to say that Western Democracies today deal with the phenomena of sub-state nationalism through constitutionally entrenched territorial autonomy, official language status and a wide range of high ranking public institutions which the minorities administer.

He asked how the success or failure of multi-national federalisms can be judged. One of the reasons why they can be judged as successes, he said, with the exception of the Basque country in Spain, is that they are all peaceful countries. This, he went on to say, is worth emphasizing because there are not that many political systems in the world today that can deal with the phenomena of differing nationalisms within a single state in a completely peaceful way.

He went on to say that these western multi national federalisms have learnt to deal on a day to day basis with the problem of competing nationalisms in a completely peaceful way and were of course democratic. These are not countries, he said, which are dealing with military coups or authoritarian regimes or party dictatorships. None of these countries had felt the necessity to abridge or abandon democratic principles in order to deal with the phenomena of nationalism.

He also pointed out that almost all the federal countries in the West were very prosperous and said that there are no grounds for saying that the adoption of multi national federalism had been economically harmful. Furthermore, he said that no country which has moved down the road of territorial autonomy subsequently tried to re-centralize power or undermine self government or official language rights of a sub-state national group.

Prof. Kymlicka dealt at length with the problem of secession in a federal system. The adoption of multi nationalist federalism, he said, had not removed secession from the agenda. There were, he said, political parties that actively supported it. There are candidates, who participated in public debates, wrote to

newspapers, took part in talk shows, got elected to Parliament, sit on Parliamentary committees, and yet, were speaking of secession as an enduring part of every day political life. Secessionist political mobilization in a federal system of government becomes, he said, de-escalated, a part of everyday politics.

He also said that the paranoia about secession in Western Europe has been eliminated largely because people know that even if a territory secedes, the seceding territory will be a liberal democracy that will protect everyone's human rights.

Prof. Kymlicka emphasised the point that that none of the Western multi national federations have broken up. He went on to say that in all the Western countries he had discussed, there is a dominant group politically and economically who had historically mistreated its minorities and tried to assimilate or exclude them. The adoption of multinational federalism is an attempt to make amends for the historical injustices that have been done to minority and sub-state national groups.

Prof. Kymlicka also said that in many parts of the world the relationships between State and minorities are securitized. First and foremost in the form of national security, because minorities are viewed primarily as potential collaborators with an external enemy often with a neighbouring state with which they may have some relation of kinship.

The success of multi-national federalism in the West was, he said, is in part tied up to the fact that state-minority relationships had been de-securitized. He ended by saying that the most plausible, most appropriate way of accommodating sub state nationalism was through federalism.

DR. DARINI RAJASINGHAM SENANAYAKE

Dr. Darini Rajasingham Senanayake, who spoke next, said that in the aftermath of 9/11 there appears to be a re-securitization of internal minorities at a number of different levels in countries in the West.

She also spoke about the problems regarding the unit of devolution in Sri Lanka and said that non territorial ways of thinking about autonomy might be more relevant for Sri Lanka.

Summing up her presentation, she said that the ethos of federalism is really about a different sort of culture and expressed her scepticism that a federal solution, if not properly construed, which tried to territorialize ethnic enclaves and ethnic majoritarianism, was a example of the path to hell paved with good intentions.

In the final presentation before the plenary discussions, Dr. Yuvie Thangarajah said that part of the problem in the East, within the context of the present peace process, was that the SLMC was perceived as part of the state instead of a party which represented regional concerns. Dr. Thangarajah vehemently denied that society was inherently violent and spontaneously combustible, and thought that it was the agencies of the State which were responsible for violence in society.

PLENARY DISCUSSIONS

Several interesting points were brought up in the plenary discussion. One was that federalism was only a bad word in Sri Lanka. The importance of educating the public on federal solutions and structures was also flagged as very important.

Mr. Bob Rae, speaking again, said that one of the hopes of people who have federal systems is that they help to generate that respect of sense of diversity, acceptance of diversity and even a celebration of diversity rather than resistance of suspicion of diversity or a hierarchical understanding of the various communities that exist in a society. He went on to say that this was the foundation of any good working system that was pluralistic in character. He also went on to say that state authorities should try their utmost to foster the political participation of non territorial minorities in a federal system.

Another participant said that problems of the kind seen in conflicts between ethnic groups cannot be resolved through constitutional mechanisms and reforms alone. The growth and development of a political culture that would seek to ameliorate problems of this kind was of equal importance.

Speaking about the LTTE, another participant said there is evidence to say that the LTTE is interested in a political solution. Going further, the participant said that fact of the ceasefire, international developments after September 11th 2001, and reluctance of the international community to allow the LTTE to continue with armed conflict all influenced the LTTE to seriously consider a political solution that involved something less than a separate state. The participant said that although one could not be fully certain on the bona fides of the LTTE, it was important to grasp the moment and see how, through a process of negotiation, alternative structures of government could address some of the concerns of the LTTE.

Some Tamil participants also stated that the desire for a separate state is very weak within the Tamil community.

Another participant raised a question about provisions for secession in federal or non federal constitutions. In reply, Mr. Bob Rae said that after the Canadian referendum in 1995, the government of Canada referred a series of questions to the Supreme Court asking the terms and conditions under which province can secede from Canada. The Supreme Court found that there were very particular circumstances under which such a right could be exercised - freedom from colonial rule or situation of an oppression that was so severe and so absolute, denial of all democratic rights – and that without these conditions, the right to secede could not be granted.

Mr. Rae went on to say that federalism is an exercise in nation building, it is not an exercise in nation dividing. He said that federalism was about the recognition of multiple identities of people within a larger civic structure to which all citizens would have a broader loyalty.

Another participant asked the question as to what the reasons were for secession from federations.

Answering the participant, the panel highlighted the role of elites. The very significant responsibility of the political elites, the political leaders of society, either in knitting the country together and accepting that there is a larger interest they all share, or doing the reverse, was identified as pivotal in the long term success of federal structures. In Czechoslovakia and Yugoslavia, the political elites had hidden agendas which were inconsistent with the preservation of the country.

A question was raised as to why secessionist tendencies should be tolerated, and why they remained, in federal states in the West. Prof. Will Kymlicka, answering this question, said that it is natural and almost inevitable in a free and democratic society that contains a group that thinks of itself as a nation that people would have different opinions. Freedom of opinion, he said, is about the expression and negotiation and mutual accommodation of a wide range of opinions.

He went on to say that he thought it normal and natural in a world of pluralism that people should talk freely about their national identities, about the way they want to govern themselves, including the boundaries within which they want to govern themselves. He ended by saying that federalism enables groups to move to any form of multi-culturalism and co-existence because it removes the threat that a dominant group will use, like settlement policies in the Sri Lankan case, as a tool against them.

KEY POINTS OF PUBLIC LECTURE BY BOB RAE IN JAFFNA ON CONSTITUTIONAL REFORM AND CONFLICT RESOLUTION: FEDERAL OPTIONS

2ND SEPTEMBER 2002

Prof. K. Sitrapalam, Professor of History, University of Jaffna, in his introduction, said that although Sri Lanka had become a mono-ethnic state after independence in 1948, it had, throughout its history, been multi-lingual and multi-ethnic, with the Sinhalese and Tamils as co-inheritors and co-partners of the Sri Lankan civilisation. He said that as a result of the failure of successive governments to address and accommodate the legitimate aspirations of the Tamil, the fight for equal rights and their survival as a distinct nationality was thrust upon them. He went on to say that as a result of this struggle, the Tamils consider themselves to be a distinct nationality occupying a contiguous territory as their traditional homeland with an economic, social and cultural identity. Prof. Sitrapalam also sees confederacy as a viable alternative to Eelam, the Tamil claim to separation.

Mr. Bob Rae first spoke about the history of constitutional development in Canada with special reference to Quebec, and spoke how the aspirations of the peoples of Quebec had been accommodated within a united country.

He spoke about the need for responsible government, one that abides by the rule of law. He spoke about a Charter of Rights for the entire country, one that would be safeguarded by an impartial and effective Supreme Court. Provinces in Canada he said were equal yet distinct. But, he said, provinces also needed to be accountable and efficient.

Speaking on how federalism works in practice in Canada, he said that the provinces had a great deal of autonomy for dealing with health, education, police, justice and road and highway development. Provinces also had access to a process of judicial review. He went on to say that a high degree of flexibility and freedom is given to provinces with regard to fiscal matters.

Mr. Rae said that federalism was growing worldwide as a means to accommodate an assertion of identity, to build local accountability and also to tackle the contentious power relations with the Centre and other regions.

As he did earlier, he said, was not a problem when considering federalism as an option for any country. He also said that federalism did not preclude autonomous units from co-existing and sharing daily exchanges with other units and the Centre.

Mr. Peter Meekison, speaking after Mr. Rae, first said that there was a strong desire for autonomy from the Tamil people, based on historical realities (a lack of respect shown to Tamil communities) and also based on a need for a just and lasting peace.

He emphatically said that federalism was the anti-thesis of secession, and then went on to flag some important points in a federal setup. Power and government he said, needed to be divided between the centre and the regions, a written constitution was essential, the ability for regions and provinces to manage their own finances, and due recognition for minorities in the autonomous regions.

Summing up, Mr. Rae said that the international community needed to impress upon the Sinhala majority that the country will be irreversibly divided if the aspirations and rights of the Tamils were not met.

KEY POINTS OF MEETINGS WITH ACADEMICS FROM THE UNIVERSITY OF PERADENIYA, KANDY AND THE INTERNATIONAL CENTRE FOR ETHNIC STUDIES (ICES), KANDY

2ND SEPTEMBER 2002

The meeting with academics and students of history from the University of Peradeniya saw much debate on federalism as a solution to the problems in Sri Lanka.

Mr. Charlie Jefferies spoke of the experiences in Northern Ireland, where the devolution of power, and the Good Friday Agreement, had served to quell tensions in that troubled region. He also spoke of Scottish and Welsh devolution, where the sharing of power had led to the accommodation of nationalist tendencies within the United Kingdom.

Prof. Will Kymlicka spoke about the experiences of Western countries in federalism and devolution, and re-iterating a point he had made in his speech on the 2nd, said that federalism was especially useful when dealing with sub-state nationalist movements.

Mr. David Cameron grounded the federal idea in a Sri Lankan context, and said that given what he knew of Sri Lanka's history and political development, he thought through federalism one could accommodate the aspirations of the Tamil people, and recognise them as a distinct nationality, within a united Sri Lanka.

The meeting with the academics and students was followed by lunch, over which much of the discussion continued.

The afternoon session was chaired by Prof. K.M. de Silva, Director of the International Centre for Ethnic Studies, Kandy. In his introduction, he spoke of the need to critically analyse the need for federalism in this country, and expressed his keen interest in this topic. Federalism he pointed out was not a panacea to the ills of governance, nor was it a means that would guarantee a just and lasting peace in Sri Lanka. He went on to say that he also thought that the time was ripe, however, for serious discussion and debate on how federalism could inform and shape a solution for the protracted ethno-political conflict.

The delegation from the Forum gave the same presentations as they did in the morning, with more emphasis on the technical aspects of Centre-Region power dynamics, fiscal devolution, concurrent lists, the Canadian experience with the federal idea, sub-state nationalism in Western Europe and the devolution of power in the United Kingdom.

In the discussions that followed, questions were raised as to whether it was appropriate to think of federalism as an answer to the ethno-political strife in Sri Lanka because the political culture was not conducive to the setting up of federal structures.

In answer to this, the panellists agreed that in practice, the 13th Amendment had many short-comings, but in theory, it was the basis for setting up rudimentary structures of decentralised governance in Sri Lanka. What they emphasised was that there was no federal solution which Sri Lanka could import and then expect to work. They also said that although the political culture in Sri Lanka was problematic, it alone should not preclude or prevent the search for and implementation of federalism, which they emphasised was a way in which Tamil aspirations could be realised within a united Sri Lanka.

Questions were also asked on whether federalism and the creation of an autonomous state in the North-East would be a stepping stone to ultimate secession. The panellists argued that secession, though attractive in theory, was rarely beneficial in practice. They said that the peoples in the North-East and the South shared many links, and will continue to do so in the future. Secession, they argued, was not viable provided the Sri Lankan State took measures to guarantee the rights and aspirations of peoples living in the North-East.

The members of the Forum also said that instead of leading to secession, federalism was a way of uniting the country. Although they could not fully rule out secession, the need for secession and the will power needed to achieve it, they said, would in time be diminished if a just and durable peace was established, with effective structures of governance.

Prof. Will Kymlicka went on to say that the freedom of opinion is about the expression and negotiation and mutual accommodation of a wide range of opinions, and that in a federal state, secession would be talked of within the framework of day to day politics. Emphasising a point he had made earlier, he also said that federalism enables groups to move to any form of multi-culturalism and co-existence because it removes the threat that a dominant group will use the threat of something like settlement policies in the Sri Lankan case, as a tool against them.

KEY POINTS OF THE MEETING WITH THE TAMIL NATIONAL ALLIANCE

5TH SEPTEMBER 2002

Mr. Kethesh Loganathan, Head of the Conflict and Peace Analysis Unit at the Centre for Policy Alternatives first introduced Prof. Will Kymlicka and the nature of the visit by the Forum of Federations.

Prof. Kymlicka then explained the centrality of his research inquiry and the discussion eventually turned towards the Tamil Question in Sri Lanka. The first question posed by Prof. Will Kymlicka was in relation to the argument placed by the Kandy ICES that federalism disregards the opinion of the Tamils living outside the North-East. The position taken by the TNA representatives was that if one is speaking of a federal structure within a united Sri Lanka that problem would not exist, but would however arise in the event of secession.

The discussion then moved in the direction of the nature of an interim administration and the elective principle. Mr. Suresh Premachandran, TNA, pointed out that in the event of an interim administration, it should only be there for a specified period (i.e. 2years) and should necessarily be followed by elections. This view did not necessarily reflect the views of the others. When a question was posed as to whether how the people of the North-East would respond to a referendum on the question of secession, Mr. Kumaraguruparan, (Tamil Congress and TNA) answered that the decision of the LTTE would be reflected in voting behaviour.

The discussion also focused on bi-lingualism and there was a consensus that the reasons for the non-implementation of the language policy (following the 13th Amendment) were a combination of lack of resources and a majoritarian mindset.

KEY POINTS OF MEETINGS WITH TREASURY OFFICIALS AND SENIOR BUREAUCRATS

5TH SEPTEMBER 2002

After a brief introduction by Rohan Edrisinha, Director, Centre for Policy Alternatives, Mr. David Cameron gave a presentation titled ‘Intergovernmental Fiscal Relations: The Canadian Experience’.

Mr. Cameron started by quoting Ronald Watts:

“The essential characteristic of federations is that they are composed of two (or more) orders of government and operate within a constitutional structure that combines shared rule through common institutions for certain specified purposes, and regional self-rule through the governments of the constituent territorial units for certain specified purposes.”

He then went on to highlight several important facets of federalism:

- The presence of two or more orders of government, each acting directly on its own citizens.
- A formal constitutional distribution of legislative and executive authority, and the allocation of revenue resources between the orders of government ensuring some areas of genuine autonomy for each order.
- The provision for the representation of distinct regional views within the federal policy-making institutions, usually provided by a federal second chamber.
- A supreme written constitution amendable only with the consent of a significant proportion of the constituent units.
- An umpire (in the form of courts or provision for referendums) to rule on disputes between governments.
- Processes and institutions to facilitate inter-governmental collaboration for those areas where governmental responsibilities are shared or inevitably overlap.

Mr. Cameron then outlined several salient features of the Canadian system, saying that though there were many varieties of federalism, all had to deal with the management of fiscal relations between centre and the states. In the Canadian case, he said:

- There was a high degree of provincial autonomy
- Significant revenue sources were held by both the Centre and the States
- There was significant economic inequality among the regions of the country
- On account of weak regional representation at the centre, there was a heavy reliance on intergovernmental relations, manifested in numerous meetings between state and centre politicians, and meetings between the Prime Minister and the Premiers of the provinces.

Speaking on the history of federalism in Canada, Mr. Cameron said by the end of the 20th Century, Canada had become one of the two most decentralised federations in the world, and that the relative power of the provinces vis-à-vis the federal government had grown enormously. He attributed this to several factors:

- The courts favoured the provinces in disputes between the centre and the provinces.
- Provincial revenue sources (corporate and personal income tax and other direct taxation) became very lucrative, whereas customs and excise taxes declined in significance.
- Rapid and effective decentralisation on account of modern Quebec nationalism, which began in the 1960s, coupled with the province-building ambitions of other provinces.

Mr. Cameron said that what started out as a highly centralised system, with federal and provincial responsibilities located in separate, water-tight compartments, had become an extremely decentralised system, with extensive overlapping and interrelating of federal and provincial responsibilities. This system, he went on to say, though very complicated and requiring elaborate inter-governmental relations, had moderated deep regional inequalities, and had proven to be enormously flexible and adaptable to new circumstances.

As part of his presentation, which deviated from his prepared text to address concerns of the audience, Mr. Cameron also spoke about the Public Services Commission in Canada.

PUBLIC LECTURE ON CONSTITUTIONAL REFORM: THE CANADIAN EXPERIENCE

6TH SEPTEMBER 2002

Dr. Paikiasothy Saravanamuttu, speaking first, said that there have been concerns within Sri Lanka's political debate that Federalism will be a precursor to the division of this country. Another argument against federalism was that was a luxury both in terms of the resources available in Sri Lanka and the size of the country. Going further, Dr. Saravanamuttu said that it was believed that Federalism can only come out of a particular prevailing political culture, alien to Sri Lanka. All these buttress the fact, he said, that that even the feeble attempts at devolution in Sri Lanka have been frustrated in practice because of a very unitary notion of the concentration of power.

Dr. Saravanamuttu ended by saying that we are at a critical juncture in our political and constitutional evolution and that serious challenges lay ahead relating to the structure of the State, to the division of power and to the relationships between the people that inhabit this island.

Mr. Bob Rae, former Prime Minister of Ontario, began his presentation by once again reiterating that the purpose of the visit by the Forum was to familiarise themselves with the nature of the debate and dialogue in Sri Lanka from a Federal perspective.

Speaking on Canada's own experience with federalism, he said that Canada had always been actively involved and engaged in looking at ways in which the Canadian federation had to be improved overall in order to be able to be effective and truly represent the interests and the views of all the people. He went on to say that the assertion of fundamental self-interest, the assertion of identity, rights of the individual as well as the collectivity have also been fundamental to Canada.

Mr. Rae said that those who are engaged in nation building cannot afford to take a parochial view of their own self-interest. However, he went on to say that any exercise in nation-building is an exercise not only in self-interest but one in solidarity as well.

Summing up the Canadian experience, Mr. Rae said, "our national dialogue is fundamentally a Federalist dialogue, it is a dialogue where we have come to accept democracy, accountability, equalization, the role of the courts in determining the balance of power between the provinces and central government and all governments and the individual."

Mr. Rae said that the unitary state which was in a condition of profound, tragic conflict. The first step to conflict resolution is to understand that there are conflicts, he said, which means that there are people who have different interests and who would express them in a variety of ways.

He went on to say that when he had given a similar speech in Jaffna he was struck by the fact that they were only interested in seceding and creating a Tamil state as the option that would make more sense, because they felt that decades of debate on the federal idea had gone waste. While they recognised in principle the

notion of divided powers, the concept of federalism, shared sovereignty and rule of law, a strong role for a constitutional court and respect for minorities etc, people thought it was not realistic. Mr. Rae went on to say that in Sri Lanka on one hand you have people who say that federalism will not go far enough and on the other hand there are others who say, even to go a bit towards federalism is to go too far.

Explaining further, he said that when people are in this mode it is very difficult for them to realize or appreciate that one of the keys to living in a modern complex State is that there are other people who have interests and other points of view which are different from one's own. His observation was that the challenge to both arguments was to ask who hold them – “What is your alternative?”

Mr. Rae said that the size of a country was irrelevant when considering federal structures, and went on to say that studies have shown that well-run federations are less expensive than overly bureaucratic and centralized States. Explaining further he said that there is substantial evidence around the world that the government that is closest to people is the government that is most efficient. Structures which are hierarchical tend to be the least efficient kinds of government in the world.

To the question whether federalism was a half-way house to the division and break up of the country, he said that historically this has not been the case. The undeniable experience of international history, he said, was that federalism allowed the country to express diversity, see a range of options and alternatives and gave people a stronger stake in the remaining part of the bigger whole. He went on to say that there are substantial arguments made that nothing could be more unifying, than the decision to create a federation.

There were many questions asked during the plenary session, and many issues raised. The question was asked that if politicians genuinely think that this constitutional change is good, whether it not be better if a through education of voters was carried out.

In response, Mr. Rae acknowledged that Canada had made mistakes, but admitted that perhaps the biggest one was Charlottetown, where a process of negotiating complex constitutional changes over a period of one year had to be given for public approval before the final draft. Mr. Rae said that in the six weeks given for public scrutiny of the document, there was no dialogue, no review, no intense process of education and participation by civil society that may have led to improvement or another round before the final draft. He reiterated the importance of involving the people in the process, and said that the chance of success was greatly reduced if they were not. He went on to say that South Africa was the best example in modern history of remaking a state and redrafting a constitution.

Summing up, Mr. Rae said that you need to turn constitutional questions from narrow, partisan issues to those which engage people on a permanent basis. There has to be a process of dialogue and education of the people.

To the question on whether the concept of the traditional homeland of the Tamils could be accommodated in the federal set up, Mr. Rae said that within any autonomous region there has to be a respect for minorities, transparency, rule of law and free and fair elections. If Tamils want different laws, he said, they must be codified, the courts must be transparent and decisions clear.

He went on to say that the federalism that we now see in many countries including Canada and our neighbour emerged from a situation where if not for federalism, there would have been secession.

Mr. Rae said that whatever solution is arrived at after a process of negotiations, it will be a Sri Lankan model which it will reflect what Sri Lankans agree will be better than the alternative of civil strife continuing with real damage to the economy. It's a problem of people embracing the change and this has always proved to be the most difficult exercise in every country, and will be so in Sri Lanka as well.

Speaking about civic identity and a Sri Lankan identity, Mr. Rae said it is a big mistake to think that the only identity that matters is your ethnicity. And it is also a mistake to think that it is possible in this day and age, to have a nation that reflects only one basic ethnicity. He said that to think so is a terrible mistake because nations are plural almost by definition.

Going back to his earlier point, Mr. Rae said that the rule of law and a realistic administration will reflect the interests of the people. One has to make an effort all the time, he said, to recognize that creating a federation is about creating a country, above the exercise of nation building that people are involved in together.

Summing up, Mr. Rae spoke of the need of the multiple identities of the people of Sri Lanka to be expressed in a peaceful manner. He also said that he strongly believed that the federalist route is probably the best to achieve this.

CONTACT DETAILS

Centre for Policy Alternatives

32/3, Flower Road,

Colombo 7,

Sri Lanka

Tel: 94-1-565204/6

Fax: 94-74-714460

Email: cpa@sri.lanka.net

Internet: www.cpalanka.org

Forum of Federations

700-325 Dalhousie Street

Ottawa,

Ontario,

Canada,

K1N 7G2.

Tel – (613)-244-3360

Fax – (613)-244-3372

Email: forum@forumfed.org

Internet: www.forumfed.org