

# Forum of Federations

700-325 Dalhousie Street  
Ottawa, Ontario K1N 7G2 Canada  
Tel.: (613) 244-3360 Fax: (613) 244-3372  
www.forumfed.org  
Email: forum@forumfed.org

# Forum des fédérations

700-325, rue Dalhousie  
Ottawa (Ontario) K1N 7G2 Canada  
Tél.: (613) 244-3360 Téléc.: (613) 244-3372  
www.forumfed.org  
Courrier électronique : forum@forumfed.org

Forum of Federations, Winnipeg, May 11-12, 2001

## Roles of Constituent Governments

By John Kincaid, Lafayette College

*Notes for an Address*

- I. What to call this activity?
  - A. Protodiplomacy, but proto means first in time, original, or primitive.
  - B. Paradiplomacy, but para means along side of, to one side, aside from, or secondary.
  - C. Subnational diplomacy, but subnational implies that states, cantons, provinces, *Länder*, and the like are below or inferior to national governments and, thus, also inferior in the field of international relations.
  - D. Constituent diplomacy captures the idea that states, provinces, cantons, *Länder*, and the like are constituent units of federal polities. In the United States, for example, the states are co-sovereign constitutional polities with the federal government, not sub-national governments.
    1. Subnational diplomacy might be appropriate in some cases, such as the international activities of Japanese provinces, because Japan is a unitary, though somewhat decentralized, polity.
    2. Constituent diplomacy also captures the international activities of regional and local NGOs, which are constituent citizen associations.
  - E. Indeed, today, regional-type governments--such as provinces, states, cantons, *Länder*, republics, autonomous communities, and the like--as well as

metropolitan areas, cities, stateless nations, nationality or ethnic groups, NGOs, and individual citizens, such as former Presidents Carter and Clinton, Jesse Jackson, and Ted Turner in the United States, are all engaged in various forms of international activity, to say nothing of business corporations.

1. In addition, departments and bureaus of national governments increasingly engage in their own relevant international activities, which are more or less controlled by the national executive or legislature, depending on the country's structure of bureaucratic control and accountability. The "reinventing government" and "new public administration" movements popular in the United States and elsewhere encourage entrepreneurial bureaucratic activity.
- F. Another question is whether "diplomacy" is the appropriate word. For the most part, I think "yes" because the activities of constituent governments involve non-violent government-to-government relations across national borders; external representation in the international arena; intergovernmental agreements, compacts, and quasi-treaties; and considerable skill in dealing with people.
- II. Constituent diplomacy is now characteristic of virtually all democratic federal polities. It also occurs in a growing number of quasi-federal countries, such as Spain, as well as non-federal countries, such as Japan.
- A. It seems safe to predict, therefore, that constituent diplomacy will become a characteristic of nearly all nation-states during the twenty-first century.
- III. The reasons commonly given for the rise of constituent diplomacy in recent decades are (1) globalization and (2) regional integration, such as the European Union and the North American Free Trade Agreement (NAFTA).
- A. Although this argument is correct, it is only partly, or secondarily, correct. The primary reason is democratization.
- B. Globalization occurred in the late nineteenth century, and arose again after World War II. Constituent diplomacy, however, began slowly in a few democratic federations after the second wave of globalization was underway, and often for economic or cultural reasons that had little or nothing to do with globalization. Meanwhile, non-democratic regimes did not tolerate such activity. Constituent diplomacy then spread to other countries as democracy spread to those countries. Although the Basque Country, for example, may have engaged in illegal international activities under the Franco dictatorship, only after Franco's fall and the establishment of decentralized democracy in Spain could the Basque Country and Catalonia legally and legitimately engage in constituent diplomacy. Again and again, as dictatorships collapsed, constituent diplomacy reared its head.
- C. The human rights movement, which is part and parcel of democratization, has been another key factor. This movement has encouraged not only individual

persons to assert rights but also nationality and ethnic groups, especially stateless nations, to assert group rights as distinct societies deserving recognition, self-government, and a voice in national and international affairs.

1. Consequently, contrary to long-standing Marxist and Western sociological theories of industrialization, modernization, and globalization, we have seen in recent decades a tremendous flowering of linguistic, national, ethnic, racial, and religious identities. Furthermore, the very tools of globalization--such as the telephone, television, and internet--have become, despite fears of American cultural imperialism and the spread of English, tools for reconstructing cultural identities, projecting them globally, and engaging in constituent diplomacy.
- D. A third key factor has been market liberalization, which creates a competitive free-market environment not only for businesses but also for constituent governments and NGOs. Indeed, market liberalization itself has now given rise to constituent diplomacy even in some non-democratic countries, such as the People's Republic of China. A command economy cannot very well tolerate constituent diplomacy, nor can an excessively planned economy tolerate unplanned constituent diplomacy that might not fit into the current five-year plan.
- E. A fourth important factor has been the economy, culture, and policies of the United States of America which, unlike the end of World War I, chose not to retreat behind its borders after World War II, but rather to build international institutions, drive globalization, support democratization, and provide security for construction of the European Union.
1. The world, of course, is not always happy with U.S. policies, but I am making an empirical statement, not a normative statement that U.S. policies are necessarily benign or altruistic.
- F. Globalization, therefore, is as much a context for constituent diplomacy as it is a cause of constituent diplomacy. Democratization, human rights, and market liberalization have all occurred during the current era of globalization. In turn, globalization, and especially its communications tools, have helped to drive democratization, human rights, and market liberalization. These factors all began to become highly interdependent during the 1980s, thus producing an era of globalization that is different from the globalization that occurred in the late nineteenth century.
- IV. It is also important to distinguish between globalization and regional integration, such as the EU and NAFTA.
- A. Regional integration has a broader and deeper impact on constituent governments than globalization. This is especially true of the EU, where the term "constituent diplomacy" may no longer be applicable within the EU.

- B. This point was made by the German *Länder* when they obtained changes in the Basic Law as the price of Germany's approval of the Maastricht Treaty. The federal government's exercise of its constitutional foreign affairs powers with respect to the EU had created an open flank through which the federal government could invade the constitutionally protected powers of the *Länder*. Germany's relations with the EU, argued the *Länder*, were no longer international or foreign relations, but rather domestic intergovernmental relations. Hence, the *Länder* obtained significant changes in the Basic Law that give them a direct voice in Germany's participation in EU policymaking on matters that affect the *Länder*.
  - C. The recent changes in the Swiss constitution also give the cantons a larger, more direct voice in foreign affairs. Article 55 provides for the cantons to participate in all decision-making processes with regard to international cooperation. The Swiss already had a statute regulating the participation of the cantons in foreign policy.
  - D. In the relatively new Belgian federal arrangement, regions and language communities have full external competence in matters under their control, and Belgium is dependent on its regions and communities for representation in the EU and other institutions, such as the OECD and UNESCO.
  - E. Not all EU member-states have undertaken such constitutional change, in part because not all member states are federal.
  - F. In turn, constitutional change is much less pressing for federations engaged in primarily economic integration, such as NAFTA, where Americans certainly, and probably Canadians and Mexicans too, do not contemplate an ever deeper, political union. Under such conditions, states and provinces are likely to be able to work out statutory, judicial, and administrative arrangements to accommodate their concerns. Any need for constitutional change is likely to arise from other problems in these federal systems, not from constituent diplomacy per se.
  - G. Nevertheless, NAFTA and the WTO do pose long-term challenges to constituent governments, especially as enforcement of rules against non-tariff trade barriers accelerates during the next two decades.
- V. Constituent governments engage in international activity essentially for four reasons.
- A. One is economic, mainly trade, especially the export of goods and services; inward investment for economic development and tax-base growth; and tourism. Trade, investment, and tourism are all highly competitive in the global arena. They are also location specific, that is, regions in federal systems produce different goods and services, have different economic development needs, and offer different tourist attractions. In this respect, constituent governments must compete in the global marketplace.

- B. Another reason is cultural, whether it be friendly cultural exchanges popular with many citizens, such as little old ladies with blue hair in the United States; more concerted efforts to achieve global recognition of a region's distinct cultural and/or linguistic identity; or desires to connect with compatriots in diaspora abroad.
  - C. A third reason is political--to protect one's position or status in international arrangements; to seek security against aggression; to assert a nationalist identity and legitimacy and, thereby, achieve global recognition; to seek independence as a nation state; to satisfy domestic political interests, such as citizens concerned about nuclear proliferation, environmental protection, or human rights some where; and/or to satisfy the megalomania of regional leaders.
  - D. A fourth reason is cross-border housekeeping, namely, the need to resolve numerous cross-border issues, such as wandering cows and water pollution, between contiguous regions divided by an international border. There are, for example, many housekeeping agreements between Canadian provinces and U.S. states.
  - E. Cross-border housekeeping and economic activity are likely to produce the least intergovernmental conflict, followed by cultural activities and then political activities, which are the most likely to cause intergovernmental conflict.
- VI. Constituent governments do, and can, perform ten roles with respect to international affairs. In delineating these roles, however, I am assuming that the constituent governments wish to remain a part of their federation. I will not, therefore, address the issue of independence-minded, or secessionist, regions.
- A. One role is that of partners with the federal or national government in foreign-policy development. I say "partner" because constituent diplomacy begins at home in trying to ensure that one's national government recognizes and endeavors to accommodate one's foreign-policy interests.
    - 1. The constituent governments also need to cooperate with each other in some respects and to recognize that they share a common interest and common fate as members of a particular federal nation-state, even while they also have divergent interests and compete with each other in certain fields. In a world in which the nation-state is still the legal foundation of international relations, there is an advantage in recognizing the supportive and protective role of one's nation-state.
    - 2. The extent of partnership depends largely on the constitutional arrangements that already incorporate constituent governments in the make-up of the federal government and on the habits and traditions of intergovernmental cooperation and consultation that already prevail in domestic policymaking.

- B. Two, constituent governments serve as pressure points in foreign-policy making by lobbying federal officials to protect their interests in the global arena and to include their interests in foreign-policy making.
  - 1. Such lobbying is most often done by regional and local officials.
- C. Three, constituent governments are self-governing political communities whose laws and policies have international implications. As globalization increases interdependence worldwide, then previously domestic dimensions of self-government have international consequences that can advance or retard one's position in the global arena.
  - 1. Self-governance also allows constituent governments to project themselves directly into the international arena, sometimes with potent force, as in the case of U.S. state and local governments which have wielded their enormous financial muscle against apartheid in South Africa and Swiss banks holding assets belonging to victims of the Holocaust.
- D. Four, in the role they are perhaps best known for, constituent governments are vigorous promoters of their own interests in the global arena, whether those interests be economic, cultural, and/or political. They advertise, send representatives to foreign countries and international organizations, conduct high-level diplomatic and trade missions abroad, open offices in other countries, and so on.
- E. Five, constituent governments are increasingly parties to agreements with foreign governments, especially equivalent constituent governments abroad.
- F. Six, constituent governments sometimes serve as proxies for their nation-state, especially where formal diplomatic relations are under stress and informal communication through regional and local officials can become important, or where an obstreperous constituent government can annoy or insult a foreign government while the federal government denies any role in the matter.
- G. Seven, constituent governments serve as public education and opinion forums on matters of foreign policy and globalization. As smaller arenas, they can facilitate citizen participation, and they can mobilize citizen opinion for impact on the national government or international arena.
  - 1. The phrase "think globally, act locally" captures the spirit of this role quite well.
- H. Eight, constituent governments are problem solvers on the world scene. Constituent governments can play direct roles in easing cross-border tensions and resolving cross-border problems; they can develop innovations and disseminate them worldwide; and they can often provide the kinds of practical

technical assistance to regional and local governments abroad that are outside the competence of national government officials.

1. In some cases, constituent governments also provide direct foreign financial assistance to governments, NGOs, or compatriots abroad.
- I. Nine, constituent governments are often patrons of democracy, that is, providers of ideas, training, technical assistance, and the like to democratizing countries.
    1. Given that economic development and democratization require competent local and regional institutions of government, the constituent governments of more developed democracies can be valuable resources and helpers.
  - J. Ten, constituent governments play useful roles in promoting goodwill abroad and improving cultural understanding between peoples. Such activities are often best carried out on small-scale, person-to-person bases. Usually, constituent governments are also less freighted with the ideological baggage and political antagonisms that separate national governments.
- VII. These activities can, of course, create intergovernmental and interjurisdictional conflict within a federation. An important consideration, however, is that conflict often attributed to constituent diplomacy is not necessarily caused by constituent diplomacy. Instead, the conflictual international activity is a manifestation of conflict already present in the federation domestically.
- A. To take the extreme case, conflict caused by the constituent diplomacy of a secessionist region is not caused by that diplomacy per se; instead, that diplomacy is a manifestation of the conflict caused by the region's secessionist desires. Conflict over the region's constituent diplomacy, therefore, cannot be resolved without resolving the underlying secession conflict.
  - B. Absent secession or other political motives, however, constituent governments ordinarily have strong incentives to resolve conflict.
  - C. Furthermore, constituent diplomacy does not so much alter the nature of intergovernmental relations as it widens the scope of intergovernmental relations by adding new issues to the intergovernmental agenda as the line between domestic policy and foreign policy becomes thinner and thinner.
    1. Hence, it increases possibilities for conflict while also increasing opportunities for cooperation.
  - D. For the most part, therefore, if the federal system is basically cooperative and consultative, then habits and patterns that prevail in domestic policymaking can be applied to foreign-policy making, with, perhaps, two significant attitude adjustments.

1. First, where national foreign-policy officials have not been accustomed to consulting and cooperating with their constituent governments, then they need to change their attitudes and behavior. Admittedly, this is not always easy to accomplish.
  2. Second, constituent government officials need to recognize that they are not fully independent foreign-policy makers, nor are they national foreign-policy makers; instead, they are policymakers for their region or locality and ought, therefore, to stay focused on the real needs and interests of their region or locality.
  3. As a result, there should be mutual respect for the different and legitimate roles and needs of national officials and of constituent government officials.
  4. Additionally, intergovernmental mechanisms and institutions that have been constructed to manage domestic policy issues may not be present for issues involving international relations. Hence, mechanisms and institutions for intergovernmental cooperation and consultation need to be built.
  5. When a federal system is basically conflictual, then conflicts arising from constituent diplomacy are not likely to be resolved without resolving the underlying causes of such conflict. Antagonistic constituent diplomacy simply aggravates existing conflict.
  6. Likewise, conflict might be rooted in the party system and election outcomes. When one party controls the national government and a different party controls one or more constituent governments, then there is likely to be conflict over constituent diplomacy and many other matters. In many cases, such conflict cannot be resolved administratively or judicially, it must be resolved politically, if at all.
  7. The same principle applies to cases where the national government is controlled by one ethnic, linguistic, or religious group while one or more constituent governments are controlled by a different group.
  8. This is a core issue because most federations are multinational, multi-linguistic, multi-religious, and so on. As such, constituent diplomacy can become another weapon, and sometimes a potent weapon, in domestic battles that long predate the era of globalization.
- E. There is, therefore, no magic formula for resolving conflict, and what works in one federation may not work in another federation.
- F. At best, perhaps, we can set forth a set of questions to consider in these matters:



1. Does the constitution allow constituent governments to carry out their legitimate constituent diplomacy roles in today's world, such as the ten roles I listed earlier?
  2. Through direct representation as well as lobbying, do the federal legislative and executive institutions adequately represent and respond to the international concerns of constituent governments?
  3. Do federal ministries, departments, and bureaus have mechanisms and/or institutions for consultation and information-sharing with constituent governments, as well as technical assistance and early warnings to constituent governments?
  4. Are there exchanges of administrative personnel between federal and constituent agencies to promote reciprocal learning and mutual understanding?
  5. Do the federation's embassies and consulates have personnel that respond to the needs of constituent governments, and do constituent governments have opportunities to place personnel in embassies and consulates where necessary and appropriate?
  6. Are the concerns of constituent governments adequately represented in treaty and trade-agreement negotiations and in ongoing relations with relevant international organizations?
  7. Does the federal constitutional or supreme court interpret the constitution and legislation in ways that recognize the interdependence of foreign and domestic policymaking and the legitimate international interests of constituent governments?
  8. Does the nation's fiscal federalism provide adequate fiscal capacity for legitimate constituent diplomacy?
- G. In turn, however, is constituent diplomacy focused on the real needs of citizens rather than on desires of regional and local officials to inflate their egos by parading on the world stage, to increase their frequent-flyer miles, or to imitate other constituent governments? In truth, more than a little constituent diplomacy is unproductive or counter-productive.
1. Are constituent-diplomacy activities subjected to cost-benefit analysis and carefully evaluated for their productivity and citizen benefits?
  2. Are constituent-diplomacy activities accountable to taxpayers?
  3. Are constituent-diplomacy activities conducted within a coherent policy framework intended to have domestic benefits?

4. Where possible, such as export promotion and tourist attraction, is there beneficial and cost-saving cooperation between relevant constituent governments?
5. Are constituent-government activities conducted with an emphasis on intergovernmental cooperation first and intergovernmental conflict as only a last resort?

H. We can surely add more questions to this list.

VIII. In short, though, constituent diplomacy has become an integral part of post-modern democratic federalism.

- A. There will naturally be stresses and strains in adjusting to this new reality.
- B. The ability to reduce such stress and strain, however, lies much more in the practices and traditions of each federal polity than in a general solution applicable to all federations.
- C. Federations can learn from each other, but lessons learned must be adapted to the conditions of one's own federal system.