

## **Scientific Background: Theme Paper**

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# **Federalism, Decentralisation and Conflict Management in Multicultural Societies**

## **1. Introduction**

Almost 95% of people in the world today live in multicultural states, fragmented into different cultural communities. 40% of these people live in federal states. The others are in unitary states with greater or lesser degrees of decentralisation. Multiculturalism has become a challenge for most states in our world with divided and fragmented societies. Particularly after the fall of the Berlin Wall they have to cope with problems and conflicts that were formerly overshadowed by the potential for conflict between capitalism and communism, which split mankind into two worlds. In a “glocalised” international order, the question that now confronts many states is how best to bring together and to hold together multicultural societies.

Until recently, questions of public power focused on good governance. In constituting a state, the principal questions were how people should be governed and how governments should be organised. Now, additional and much more controversial issues need to be determined. Who should govern whom? What majority or majorities should rule over what minorities? Who should control the political power of the state, and with regard to whom?

Underlying these issues is another, more fundamental and difficult still: who should decide the procedure by which it is settled who should govern whom?

Federalism is an approach to government that divides public powers not only horizontally, but also vertically. Federalism is traditionally considered to be a useful way of limiting governmental power. Thus it has been viewed as one particular solution to the organisation of power in order to secure good governance. However, at the same time, it has also been criticised as detracting from efficiency and equality.

We understand federalism as a constitutionally established balance between self-rule and shared-rule. Viewed in this light, federalism offers an additional answer to the burning question of what can be done to bring or to hold multicultural societies together. Not only does it provide a solution to the traditional questions of governance, but it also assists with the problem of who should govern whom. Thus federalism is one of the main options to be taken into account in determining systems of government for multicultural societies.

## **2. Why is multiculturalism a problem?**

### **2.1. Culture and equality**

Most modern concepts of the state are based on the idea of a secular state based on a social contract of the people. Political power draws its legitimacy from the sovereignty of the people. Popular sovereignty is rooted in the liberal concept of universal homo sapiens, distinguished from other species by a capacity to reason.

Different political theories view man variously as:

- Egocentric (Hobbes);
- Bearers of inalienable rights (Locke);
- Rational citizens (Rousseau's "Citoyen");
- Exploiters or exploited (Marx);
- Homo politicus: made for the political community (Aristotle, Thomas Aquinas);
- Homo oeconomicus: driven by economic concerns (Adam Smith, Rawls).

All of them, however, rest on the assumption that human beings are essentially equal. This also is the assumption on which the secularised democratic state now is based.

Acceptance of the equality of all people on the basis of a common humanity is in tension with acceptance of the diversity of individuals or communities by reference to culture, tradition or language. Given the equality of individuals, there is an obvious threshold question about the basis upon which certain people come together in a political community, excluding others. In a multicultural context, the question becomes even more difficult. On what basis is it legitimate for the will of a majority to override that of a minority, even when the minority is convinced that its essential cultural interests are threatened? On the basis of what criteria does a political unit include particular communities within the state, and fail or decline to include others? By way of example, why did the international community celebrate the unification of East

and West Germany after the fall of the Berlin Wall but forbid the unification of Germany and Austria after the First World War?

## **2.2. Diversity and the nation concept**

Today the peoples of the world are organised in “states”. The people from whom each state draws its legitimacy are often referred to as a “nation”.

Citizens, as rational beings, are deemed to have come together in a social contract. At least three different approaches can be detected to the way in which nationhood is conceived and the values on which the state is consequently based. All of them are hostile to multiculturalism and diversity.

- Nation made by the constitution. In some cases the nation is made by the state. Such a nation excludes diversity by reducing humans to the rational “citoyen”. The state is held together by universal political values, for example, the republican values proclaimed by the constitutions of France or Turkey. All individuals can join it, notwithstanding their cultural background. However as soon as any group seeks to introduce cultural values into the political debate, the very basis of the political unity of the nation is threatened. The underlying rationale of such states requires them to deny the political relevance of culture.
- State made by the nation. In a second category, the state is made by a nation that claims pre-state unity based on culture, history or religion. A state made by pre-constitutional cultural unity must exclude diversity, because it endangers the very roots of the mono-cultural people’s sovereignty. If people are held together by culture, multiculturalism

becomes a real threat of the unity of the nation. Germany is an example, as can be seen in the preamble to the German constitution: “The German People have adopted, by virtue of their constituent power, this Constitution”.

- Immigration countries. Finally, some states comprise peoples who have come together and are held together for social and economic reasons. Typically, these are the countries in the so-called “new world”, formed by successive waves of immigration. They are constituted by reference to the peoples within their territory: “We the people of the United States”, for example. Such states must ignore different cultures (including, problematically, the culture of their indigenous people) as political values. Economy has priority over culture. Culture is expected to integrate into the melting pot of society, driven by concern for common welfare.

From this analysis, it can be seen that states are either held together by one homogenous culture that excludes other cultures, or by acceptance of one homogenous set of political or economic values that exclude culture as a political consideration. In either case, diversity becomes a threat to the nation concept.

These days, almost all constitutions proclaim universal values. Underlying them, however, are varying conceptions of nationhood, all of which exclude multicultural diversity. Either they ignore it, deny it, or eliminate it.

Constitutions have become instruments proclaiming political values for all individuals equally. A nation, on the other hand, separates its community from

other nations by reference to its specific nation concept. Constitution makers have to confirm, provide and proclaim within the constitution, values that are good for all and in that sense universal. What is good for all excludes diversity. Values that are good for all are also good for us.

Those who establish a constitution for a pre-political cultural nation do not have to ask what can hold society together, because it is held together by nature. Thus they also proclaim universal values within their constitutions, knowing that the nation is not in fact held together by these values but by the uniting factor of nature.

### **2.3. Taking cultural diversity seriously**

It has been seen that none of the principal state and nation concepts take cultural diversity seriously. Culture is either denied or ignored, or is so central to the nation that all other cultures are excluded. The multicultural nature of the state is not a significant factor in constituting the political order. To a degree, of course, the different nation concepts contradict each other. The important point for present purposes, however, is that none of them readily accommodates different cultures within their concept of political unity.

If a nation is held together by political values, it can incorporate other cultures as long as no political recognition is claimed for them. The multicultural nature of the state is ignored as a structural factor that might serve to unite or decentralise the political society. For this reason a political nation denies culture as a nation-building factor. The nation can exist only on the basis of the equality of individuals. This implies that individuals are conceived as rational human beings who ignore their cultural roots. Nations that deny

culture thus assume rational citizens who may not pursue their cultural identity as part of the political identity of the state. On this basis, a secularised school forbids young Muslim girls to wear veils. All rational citizens are equal with regard to each other. Their cultural identity is of no political value.

If the unity of a polity is focused on the territory, as in immigration countries (“we the people of the United States”), culture or history are considered irrelevant as nation-building factors. Here too, culture may be considered a threat to the state, but in this case it is likely to be ignored. The basis on which immigration nations are typically established assumes the need to separate political unity from cultural unities, including the culture of any indigenous peoples. Immigrants belonging to different cultures can identify with the political state because it has given them a new spiritual, cultural and economic freedom. However, should they seek political recognition for their culture (e.g. recognition of their language in schools), their claim is likely to be rejected as leading to political fragmentation.

An immigration state can accommodate the different cultures of its immigrant citizens on the basis of private pluralism, but not as political instruments that fragment the unity of the state. This solution is possible only if cultural communities can accept the rationale for the political legitimacy of the state, and if they can be accommodated within the melting pot. Cultures that consider themselves excluded, and in particular those that previously inhabited the territory, may not find the ideology of the melting pot acceptable, and to that extent may threaten the legitimacy of the state.

If individuals are held together by their common history, culture or religion, the cultural community will have priority within the territory, as in Germany, Albania and Serbia. In this case, the fragmentation that results from the cultural diversity of traditional minorities or from immigration becomes a major issue threatening the natural unity of the nation. Because the state has been made by the pre-constitutional cultural unity of the nation, other cultures must be excluded as nation-building factors. Cultural nations are held together not by reflection and choice, but by nature. State unity derives from the natural cultural identity of the nation. The state consequently cannot accommodate other cultures. At best, it can tolerate non-integrated minorities as guests, but not as equal citizens. The status of a fully recognised citizen can be attained only by integration. Those who want to become citizens must also change their cultural identity.

States with nations held together by “nature” usually proclaim universal political values within their constitutions. As a political document, the constitution itself may contribute to identity by promoting a sense of constitutional patriotism. However, whenever it comes to questions of cultural identity, represented in these cases through full citizenship, the problem presented by other cultures once again comes to the fore (e.g. Art. 116 German Constitution).

If a cultural minority demands political recognition and identity, the state must reject the claim. Because it is unable to accommodate a fragmented political identity, it will ultimately come into conflict with its minorities. Either the minorities must be integrated within the majority culture, destroying their original cultural roots, or they must be denied the opportunity to enhance their

cultural identity through political means. A fragmented political identity is rejected as a solution, because of its threat to the unity, homogeneity, and the very roots of the state's existence.

Thus every nation held together by universal values, hosting several cultures, may sooner or later run into significant conflict on account of its multicultural society. Multicultural states will often be unable to accommodate cultural diversities through universal political values.

### **3. The causes of conflict within multicultural states**

Today's world is threatened by innumerable conflicts between ethnic communities or states and minorities. Some conflicts are open and violent. Some are hidden and may erupt at a later date. Any attempt to find and promote tools to prevent, manage and resolve such conflicts, must first identify what has caused them.

The causes of ethnic conflict, however, are typically hotly disputed. Depending on the circumstances, the real stimulus may be:

- Economic injustice;
- Historic revenge for lost self-determination, past discrimination, or other past wrongs;
- Intervention by neighbouring states with links to the ethnic minority, sometimes through shared fundamental religious beliefs;
- Unscrupulous manipulation by warlords seeking power or money;

- Illegitimacy of the state or the nation in the eyes of an ethnic minority, because it excludes recognition of the minority culture;
- Fear and mistrust caused by historically continuing conflict between the state and an ethnic minority, generating terrorism.

Whatever the immediate cause, there is generally ready agreement that ethnicity somehow is inducing the conflict.

One of the major reasons for the phenomenal advances of medical science in the twentieth century is that at the end of the nineteenth century, researchers began to focus on the causes and not simply the symptoms of illnesses. Similarly, effective tools for conflict management or resolution require an understanding of the causes of ethnic conflict as well as the capacity to mitigate its symptoms. In the absence of consensus on cause, the symptoms will be obvious, but no satisfactory lasting solution is likely to be found.

#### **4. Globalisation and ethnic conflict**

It is sometimes suggested that, given the rise of the global market, nation-state sovereignty will fade away. The private market will erode the need for political and social policies. In these circumstances, controversies over who should govern the state and in what manner would lose much of their purpose. The political power of the state would have withered away and governments would have lost much of their capacity for political manoeuvre. Admittedly, ethnic claims might in these circumstances find a new “enemy” in the global market. Nevertheless, there would be no need for a national government if the state turned private.

In reality, however, the needs and claims of human beings today are more complex, and present some contradictory features. Consumers favour a global market for their needs and expenses, and citizens claim the universality of human rights. At the same time however, people seek local security and have emotional needs that create local ties with their religious, language, historic, or cultural community. While there is a global market for many products and finances, the greater part of economic production and distribution of goods and services, including the labour market, remains regional. Despite growing migration, social security, public health systems and many other public goods are the domains of the national state.

These contradictions suggest two opposing tendencies, between globalisation and universalism on the one hand, and localisation on the other. The more global the world, the greater the pressure to accommodate local needs and claims. It is not possible to analyse solutions to political and social problems by reference to globalisation or localisation in isolation from each other.

This perception has particular significance for multicultural states. It suggests that the need for local identity and local security must be met not only through the privatisation of local needs, but also by political structures which can accommodate the demands of human beings rooted within their local communities, and seeking conditions for their families that can only be met locally. Therefore, as the global market expands, demands for local justice can be expected to increase accordingly. Local conflict will not fade away. On the contrary, it may become more open, more violent, and more explosive. While cost-benefit driven homo oeconomicus seeks advantage in the global market, homo politicus will require local compensation for the injustice for

which globalism is responsible. There is no reason to expect that the challenges of multiculturalism will diminish in the future.

## **5. How can multicultural states meet the challenges that they face?**

In the previous section we argued that as globalisation increases, localisation is likely to increase accordingly. The fragmentation of multicultural states thus will continue. If they do not develop the capacity to meet these new challenges, they will be unable to meet increasing demands for localisation, and will be confronted with major conflicts. In this section we suggest that to overcome these conflicts, states must achieve legitimacy in the eyes of the vast bulk of the individuals and communities living within their territory. States that wish to hold multicultural societies together must ask not only “what is good for all?” but also “what is good for us?” “Us” must be understood to mean all citizens and all peoples living within the territory of the state.

It is no longer sufficient to seek only good governance. In multicultural states, we must also decide who should govern whom. This requires a decision about what majorities should, in what instances, govern what minorities, and who should make these choices. The answers must be acceptable to all people and all communities in the manner that we have described. Only in this way will a multicultural state achieve the legitimacy that it needs.

In the past, states have used a variety of different tools, instruments and procedures to meet the challenges of multicultural societies. In order to evaluate the usefulness of these tools, it is necessary to explore the causes and not merely the symptoms of potential multiethnic conflict. In other words,

it is necessary to decide what really is needed to hold or to bring the multicultural society together.

### **5.1. Policy of tolerance**

One option is for states to adopt tolerance as a major policy to hold or bring communities together. Someone who is tolerated will never feel fully accepted as an equal partner in a political community. On the other hand, tolerance at least entitles everyone to mutual respect as a human being with human dignity. Tolerance allows everyone to live within the community as a respected individual, free from discrimination on the grounds of race, religion or language.

In the context of a legal system, tolerance implies the guarantee of human rights as individual rights. Protection of the human rights of individuals prevents the authorities of the state from discriminating against individuals who belong to minorities, on grounds of their language, religion or race. Those who are only tolerated, however, cannot constitute the “We”. For members of minorities, such a state is “their” state, not “our” state. “They” have no legitimacy to define the policy of the “We”. Diversity must be respected, but it is not a political value. Minorities are protected because that is required by the universal values enshrined in the constitution. Diversity is neither a policy nor a goal of a state that does not want to go beyond tolerance.

Tolerance of minorities is a minimum requirement in every state that respects human dignity and the universal principles of human rights. Some states may go beyond tolerance by extending it not only to individuals but also to their communities, through a policy of affirmative action, falling short of collective

rights. Affirmative action is directed to individuals who have unequal opportunities because they belong to a minority against which there is or has been discrimination. Affirmative action has the potential to discriminate against those who constitute the majority. Typically, this dilemma is resolved by taking into account the de facto discrimination against minorities, and the de facto privileges of majorities.

## **5.2. Policy of reconciliation**

The preamble to the Constitution of South Africa states that one purpose of its adoption “as the supreme law of the Republic” is to: “Heal the divisions of the past and establish a society based on democratic values...” This points to a second option. Protection of individual rights, in whatever form, may not be adequate to bring and hold multicultural communities together. Reconciliation also is needed to assist with conflict management, contribute to better understanding, and foster cooperation between communities. In recognition of the importance of this tool, Section 235 of the South African constitution seeks a balance between the self-determination of the entire South African people “and any community sharing a common cultural and language heritage”.

The history of the constitution-making process in South Africa demonstrates the importance of paying attention to the means of reconciling communities who fear and mistrust each other at this critical stage. The South Africans adopted a two-stage constitution-making process. First, they negotiated an interim constitution in a way that accepted the concept of power sharing between communities equal in rights, but unequal in size and history. At the second stage, the constitution was adopted on the basis of the democratic majority principle. Even at this stage, however, it had to comply with the

constitutional principles settled in the interim constitution. In the case of South Africa, time was available to transform enemies into adversaries. It was used to advantage to find procedural support for reconciliation.

### **5.3. Equalising minorities and majorities**

Democracy is based on the majority principle. However, the majority should not abuse its democratic power by tyrannising its minorities. If a state wants to hold its whole society together, the majority must recognise the right of the minorities to be treated equally both as individuals and as communities. A recent draft of a new constitution for Serbia recognises this, by acknowledging in its preamble the need to be: “Conscious of the state tradition of the Serbian people and determined to *establish the equality of all the peoples* [author italics] living in Serbia”.

A state that implements this fundamental principle must translate the concept of equality into effective collective rights. Thus Article 232 of the Brazilian constitution recognises that Indians have standing to sue and to defend their rights not only as individuals but also as a collectivity. How does the Serbian draft constitution, to which reference has already been made, implement its promise of the equality of its people? The answer, according to Draft Chapter III, is that: “Persons belonging to a national minority shall have special rights, which they exercise individually or in community with others.” If peoples of fragmented societies are to achieve equality, the instrument of collective rights is available for the purpose.

Taken to extremes, however, collective rights may limit and even violate individual rights. To what extent is this justified in the interests of collective

rights? In Switzerland the federal tribunal has held that an individual language right can be limited by the collective right of a threatened language community for the sake of peace among the different communities. This provides yet another perspective. States that wish to hold multicultural societies together may need to recognise peace among communities as a goal of the state, in addition to individual liberty. Nevertheless, there are limits. Protection of minorities cannot be allowed to derogate from the essential content of human rights guarantees, which according to the covenants can never be limited, even in cases of emergency.

#### **5.4. Enhancing diversity: the federalism option**

A multicultural state can promote diversity as a mechanism for holding its society together. Thus Article 2 of the new Swiss constitution requires the confederation to “promote the... inner cohesion, and the cultural diversity of the country.” What tools are available to enhance such a policy? It calls for the different communities to have powers and autonomy as well as rights and freedoms. These tools must be provided and secured through a constitutional framework.

Decentralisation gives communities limited autonomy and thus self-government. But central power continues to be exercised in accordance with the majority principle, and the decision as to what minority should have how much governmental power continues to depend on the majority. Only a balance between self-rule and shared rule can give communities the opportunity to promote their cultures within their territories. Only on this basis is it possible to provide the necessary base for the balanced development of

all communities, together with the majority of the citizens and the people. Such a result can be constitutionally achieved only through a federal design.

Any of the different tools, procedures and institutions that are available to assist states to deal with cultural fragmentation require an important change in state policies. If states want to meet the challenge of bringing or holding multicultural societies together, they must take cultural diversity seriously. They can neither ignore nor deny culture as part of their political order. Nor can a state based on the natural unity of a people continue to exclude other cultures. To take cultural diversity seriously means that constitution makers must seek values that are good for all their communities and citizens as well as values to which all human beings are entitled.

Federalism offers a constitutional mechanism that not only tolerates but can also promote diversity. Not only does it limit state power, but it also enables diverse communities to participate in government. A federal state need not exclude culture, but can use the value of cultural diversity to enable the whole society to participate in the endeavour of the state to seek justice, promote peace and protect liberty. Thus understood, federalism is a tool for a multicultural state to derive maximum benefit from diversity. It is the constitutional implementation of the principle of unity in diversity. The diversity of a state becomes an advantage that merits protection and enhancement. While necessarily committed to universal values, such a state has an additional focus on its own specific values. It is equipped to answer its citizens' question: what is good for us and for our communities?

## 6. What are the issues?

Our earlier analysis of the underlying challenge to multicultural states and options available to deal with ethnic conflict raises a range of important questions. As yet, there are no clear answers to any of them. All merit further examination, by practitioners and scholars, and from the perspective of different multicultural states. The goals should be to advance understanding of the means by which ethnic conflict may be diminished in the interests of all peoples, and to enable the advantages of cultural diversity to be fully realised.

Four of the principal issues are as follows:

- How should systems of government be designed, and constitutions made for multicultural communities, so as to ensure the legitimacy of the state, promote reconciliation, and build a lasting polity?
- Can federalism and decentralisation bring and hold multicultural societies together, and if so, why? To what extent do federalism or decentralisation provide specific tools for use by states fragmented by multicultural societies?
- By the standards of the twentieth and twenty-first centuries, a democratic society is the sine qua non of a legitimate state. To what extent does a society fragmented into different cultural communities have a civil society capable of legitimising and controlling state power? Do we also need different political, legal and conceptual tools for this purpose in order to encourage a “united and composed diversity”?

- Since the fall of the Berlin Wall, internal conflicts in multicultural states have caused increasing concern to the international community. In some cases it has intervened with military force. In a few it has gone so far as to install a quasi-protectorate using international forces. With regard to these new developments, the following questions are pertinent. On the basis of what concepts or principles does the international community intervene in multicultural conflicts? Are there any concepts and principles that justify international rule of multicultural societies and international intervention to bring and hold together separated societies?

## **7. The four subthemes**

Each of these four issues coincides with the perspective of one of the main players in most multicultural conflicts: the state itself, its decentralised or autonomous units, civil society, and the international community.

### **7.1. Constitution Making and Nation Building**

In the simplest terms, the challenge of state making and nation building in multicultural societies can be defined as finding a political compromise between two forces that results in an institutional equilibrium. A political compromise has to be found between a cultural majority having enough power to define a majority regime on the one hand, and cultural minorities seeking recognition in the constitutional framework and participation in political decision making on the other. The institutional equilibrium is always a compromise between a majority regime and institutional forms of minority protection and power sharing.

As has been mentioned before, federalism is not the only means of achieving institutional compromise. In democratic regimes, recognition and participation of cultural minorities can be achieved through:

- Emphasis on the political rather than the cultural base of the nation;
- Separation of state and religious or other socio-cultural powers;
- Emphasis on human rights as protection of minorities;
- Emphasis on separation of powers, formal and informal;
- Executive power sharing;
- Multiparty system and proportional rule in elections of the parliament;
- Decentralisation or federalism, including bi-cameralism, as a means of vertical power sharing.

Most of these elements are in contrast to the widespread model of Anglo-Saxon “Westminster democracy”. They suggest the different model of “Consensus or Power Sharing Democracy”, which in the terms of the political scientist Arend Lijphart is more suitable for coping with multicultural conflicts. Federalism and decentralisation offer some of the most important elements insofar as they guarantee the vertical elements of power sharing.

In state making and nation building, it may be difficult to end up with institutional arrangements of power sharing. This is particularly true for the process of federalisation. As federalism involves participation of the member states in the decision making of the central government, it goes far beyond decentralisation. If “centralising” and “decentralising” forces coincide with

cultural divides, federalisation is confronted with major challenges. Some of them can be described as follows:

- In both young and old democracies, federalisation means a fundamental change of a constitutional system with considerable risks. There must be sufficient confidence on both sides. How can such a process be stimulated as a social process in a more bottom-up way?
- In young democracies, federalisation is often considered as an obstacle to the consolidation of nation building. Is this perception correct? Is there empirical evidence that, in the past, federal nations have had more difficulties in their nation-building process than unitary states?
- While “centralising” forces fear that minorities will have too much power, “decentralising” forces argue that minorities are protected only in member states where they constitute a political majority. Obviously, federalism has a chance only if both parties see more advantages than disadvantages. What are the conditions for a successful federalist compromise?
- In geographically segmented societies, federalism offers national minorities the chance to become majorities in some member states. From an optimistic perspective, this is an advantage for both sides, the cultural minorities as well as the majority, because it stimulates changes of political roles and the learning processes of the political elites. Is this true?

- In highly polarised societies, parties may agree to design the geographic boundaries of the member states along the geographical boundaries of ethnicities. Critics say that this is a policy of ethnic separation that increases inter-cultural conflict potentials instead of reducing them. What does experience suggest?
- Federalisation means giving “veto points” to member states and their political majority. Central governments can introduce veto points through a simple majority. Subsequently, however, they are likely to be difficult to take back. Federalisation, in this sense, is an irreversible process. Is this only a theoretical or also a practical problem?
- Under subsistent political tensions, federalist systems are in a precarious equilibrium between unitarianism and secession. How should, and how can, secession be avoided or accepted and handled?

## **7.2. Decentralisation and Good Governance**

When states decide to hold their multicultural society together by decentralisation and by delegating governmental power to local authorities, what can and should be done as well as decentralisation to guarantee good governance within the autonomous units? What are the conditions and pitfalls associated with the success of decentralised governance, especially in multicultural societies?

The creation of local governments helps to manage conflicts in at least two situations. First, ethnic, religious or linguistic minorities are often not concentrated in a particular region of a country but their members live in many of its parts. Second, where the central state is very weak, the introduction of

federalism might lead to secessionism or even to the dissolution of the country, because some sub-national units are strong enough to challenge the central government effectively. Here, the introduction or strengthening of local governments allows accommodation of diversity without jeopardising stability and endangering national unity. Finally, decentralisation has a preventive function. If it is true that today's conflicts have much to do with political power and access to economic goods, and that ethnicity, language and religion are used as instruments to mobilise people in such conflicts, then decentralised forms of government help to dilute potential conflicts by giving some political power and some control over economic resources to all parts of the population, including minorities.

Decentralisation undeniably leads to vertical power sharing. But what are the consequences for horizontal power sharing on the local or regional level? If decentralisation leads to more socio-cultural segmentation, local democracy is under a structural challenge to assure political pluralism. But how does local democracy deal with political elites?

What conditions and instruments are necessary for and conducive to transparent and accountable governance at the local level? How can the optimal use of the often-scarce resources available to local governments be guaranteed? Is it easier or more difficult to combat corruption at the local level?

The legitimacy of the state at the local level can only be strengthened if authorities are able to respond to the legitimate needs of the population. Decentralised government has some well-known advantages in this respect,

but regularly meets technical and political difficulties, which are not easy to overcome.

Decentralisation must face not only the issue of social inequality in general, but also the problem of inequalities between poor and rich regions. Moreover, the tension between human rights and local traditions can be considerable, and conditions to guarantee human rights and social equality difficult.

If decentralisation is used as a tool to manage conflicts, another requirement should be mentioned. Where forms of decentralised governance are only granted to specific minorities, but not those belonging to the majority population, there is the danger that these minorities will feel excluded from mainstream politics, and thus marginalized. There is an equal danger that such asymmetric forms of decentralisation will help to introduce or reinforce ethnicity as the main factor in legitimising political action.

### **7.3. Communities – Civil Society and Conflict Management**

This issue concerns the role of civil society in multicultural states, and the interaction between the concept of civil society and the various tools for managing multicultural conflict.

The very principles of the rule of law and the guarantees of inalienable rights are oriented towards the individual and not towards groups. The indispensable partner of the modern state is a civil society based on individuals. This raises a series of questions in its application to multicultural states:

- Do the boundaries of federal units have to be identical with the different ethnicities? Is ethnic federalism a legitimate goal at all?

- Does the very concept of civil society allow a fragmentation of the society into different parts? What might be the criteria for this division?
- Can one envisage a federal state composed of different federal units, each of them having its own civil society (e.g. the European Union)?

Collective rights are further potential tools for reducing multicultural tension.

On the other hand, they may be considered to contradict individual rights:

- Are collective rights appropriate tools to overcome the tension between group loyalty and individual citizenship?
- How can a state, and in particular a federal state, meet the challenge of the tension between inalienable individual rights and the collective rights of groups?
- What does a right to “autonomy” mean in the context of an ethnically divided state?
- Who is the “holder” of this right?
- What kinds of autonomy and/or shared powers should be granted within a federal state to federal units or to groups?
- Can the right of self-determination restrict individual rights within their respective communities (e.g. the collective rights of native communities in immigration countries)?
- Can federalism give autonomy to groups without territorial boundaries (personal federalism)?

Both religious and language rights are linked to the very core of ethnicity. Both can be interpreted as community or as individual rights. If the principal focus of the constitution is on liberty, in the sense of individual liberty, it is likely to deny collective rights:

- Can the language rights or religious rights of individuals be translated into group rights for the sake of peace among different conflicting communities?
- To what extent can the particular collective rules of religious or language communities restrict individual rights and still be universally acceptable for the sake of the internal peace of multicultural societies?

Language contributes to the identity of every individual. Language determines each person's way of thinking and communicating. It influences education and opens the door to one's own cultural roots. State authorities communicate with citizens in the official language. Court proceedings are held in official languages. Public schools provide for education in the state language. In a federal country, enriched by multicultural societies the following questions may require consideration:

- How should a federation deal with the reality of the different languages of its communities?
- Should federal units be allowed to "defend" their language territory and to what extent?
- Can individuals identify with a state that does not use or even recognise their own mother tongue?

Every state has a link of some kind to religion, if only through its history.

Clearly, however, at the beginning of the twenty-first century, religions differ in their attitudes to states and politics. Some religions ignore the state. Some integrate with it. Some depend on the state. Some merge with politics. Some religions are inclusive and have universal claims, encouraging proselytising. Some are based on the idea of a “chosen people” and are thus exclusive.

- How can federal states best accommodate different religions with different attitudes towards states?
- To what extent should states allow religious communities or constituted federal units to give effect to collective religious rights to limit individual religious rights?
- What instruments should be available to federal states in order to implement the basic standards of freedom of religion in all states?

#### **7.4. International and Regional Action with regard to Conflicts in Multicultural Societies**

The international community often and increasingly influences the course of dealing with inter-state ethnic conflict and its outcome. In some cases the states concerned are federal. Bosnia and Herzegovina, at that stage part of the Federal Republic of Yugoslavia, is an example. In such cases, one effect of international influence may be to cause secession of a part of the federation, and the creation of a new state. In turn, this creates a need for a new constitutional order. Even where a state in which there is ethnic conflict that attracts international attention was not originally federal in form, federalism may be an appropriate response to effect resolution of the conflict.

Traditionally, the international community is composed of states, and each accepts the integrity of the others. Accordingly, it has long been accepted that the principal goal of the international community is to provide a framework for cooperation, and to maintain peace between states, not to resolve disputes within them.

On the other hand, the international legal system is changing. The phenomenon was captured by Boutros Boutros-Ghali in *An Agenda for Peace*: “The time of absolute sovereignty ... has passed; its theory was never matched by reality”. Human rights are a concern of international law, as evidenced by the International Bill of Rights and a host of other international instruments. Experience shows that states that are parties to human rights instruments often fail to meet their obligations, at a cost to their peoples. Ethnic conflict within a state may be associated with failure of the state, or can threaten or be perceived to threaten, international peace. Minorities increasingly invoke intervention by the international community on these grounds. A new phase in international intervention began with the use of Chapter 7 of the United Nations Charter to establish peacekeeping in the former Yugoslavia and Rwanda. The new focus on the threat from states that harbour terrorists may provide further grounds on which attempts may be made to justify international intervention in the future.

The shortfall in the legitimacy of the international community to intervene in ethnic conflicts within states has practical consequences as well, that are relevant for present purposes. These concern both the effectiveness of international intervention and accountability for it.

The relatively underdeveloped structure of the international community and of international law gives rise to problems of accountability from the outset of intervention in inter-state ethnic conflict. There are inadequate standards to guide the decision to intervene. In practice, intervention has been uneven, influenced to a greater or lesser degree by the national interest of leading states in the international community. By definition, there is no constitution for the international community to provide the restraints on power that are supposed to apply within states.

Drawing on these pressures and difficulties, some of the key questions that arise in this work session therefore include the following:

- What are the implications of changing concepts of state sovereignty for constitutionalism and the legitimacy of states?
- When is international intervention justified to resolve ethnic conflict within a state? Is it possible to develop guidelines for this?
- What are the countervailing considerations to be taken into account in determining international intervention for this purpose?
- In what sense has international intervention succeeded in some cases of intra-state ethnic conflict?
- How can the problems of the legitimacy and adequacy of a constitutional order forged through international intervention be overcome?
- What should be done to ensure accountability for the integrity and outcomes of international intervention?

The circumstances of international intervention create one set of issues. The manner of intervention by the international community presents others. The international community intervenes in the ethnic conflict within states in a variety of different ways. The most high profile are forms of direct intervention through enforcement or peacekeeping. Direct intervention by international forces creates the greatest difficulty from the standpoint of legitimacy and accountability.

Some of the key questions that arise in relation to this form of intervention therefore are as follows:

- What is the dividing line between enforcement and peacekeeping?
- What is involved in each?
- Is it possible to develop guidelines for the constitution of international teams/forces that intervene directly in the case of intra-state conflict?
- In what circumstances are regional organisations likely to be more effective than international forces or coalitions?
- What mechanisms might be used to ensure that intervention is effective in the long as well as the short term?

Not all intervention takes this form, however. The international community also intervenes in other less high profile ways. Examples include the international monitoring of elections, the imposition of sanctions of various kinds, international mediation of multiethnic discussions, provision of advice on possible constitutional solutions. Many of these forms of intervention raise

questions of legitimacy as well, but to a lesser degree than does full-scale international engagement.

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