Managing Conflicts of Diversity

Work Session 3: How Important is Language Policy as a Tool of Conflict Resolution?

Work Session 15: Is Federalism an Option for Managing Conflict?

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The main purpose of this paper is to provide an analysis of the discussion of the two work sessions on the subtheme "Managing Conflict and Diversity". In that capacity this piece seeks to highlight issues of policy importance which were not discussed in great detail during the work session and merit consideration at future International Conferences on Federalism. Throughout the New Delhi Conference, federalism was alternatively characterized as an "idea" or as a "mechanism", a "device" and a "set of tools" to solve particular problems and to facilitate harmonious relations between majority and minority communities in a shared state. However, these characterizations are inadequate. Characterizing federalism as merely a philosophical or political idea is too limited and confined since its practice is expressed and embedded in complex governance processes and institutions. Characterizing

federalism as an essentially technical approach to managing diversity overestimates the potential of legal and political engineering in areas of public life that are deeply rooted in history, human beliefs and even geography. Napoleon, after all, noted that nature had predestined Switzerland to have a federal form with a vibrant political culture. Social realities influence institution building and peoples' thinking.

Federalism was, in the working sessions, often conceived of as a means of "coping with" diversity and problems related to the minorities. In extreme cases where the state's integrity was in danger, federalism was also conceived as a means of "preventing" the secession of peoples and groups with distinct identities. In contrast, at the beginning of the Conference, federalism had been embraced more optimistically as a source of enrichment for life, as a means— according to or following the Indian economist Amartya Sen—of sharing or enlarging individual and social identities or as—the Swiss writer Denis de Rougemont would have put it—*un état d'esprit*.

This message of true and lived pluralism has perhaps found its purest expression in the international and supranational regimes of governance emerging in Europe. Within the process of European integration, set off in the much contested multicultural bordering areas of Alsace-Lorraine, new institutions of European order emerged from centuries of conflict between powers and peoples. Once these institutions began to function, they helped to mitigate longstanding problems related to the minorities. They helped to foster linguistic, religious and cultural pluralism by favouring new multilingual and more tolerant thinking and by facilitating dialogue within common fora. In South Tyrol, for example, conflicts and prejudices seem to have given way gradually to open, living forms of bilingualism due to a softening of relations between Austria and Italy in the context of an "approchement européen". European institutions, which are an outstanding modern version of federalism, reflect true federal principles in their functioning. Various fora within the European Union, the Council of Europe and the OSCE demonstrate every now and then how enriching and inspiring multilingual and multicultural decision-making processes can be.

Are (federal) group rights an attribute of federal constitutional

systems, or do they constitute an emerging feature of international law? Might autonomy rights be derived from the right of self-determination of peoples, human rights or other sources? Indeed, the concept of collective rights should not be overrated. Switzerland provides an example. The country's language regime is based on the constitutional right of individuals to use the language of their choice, whereas cultural groups are protected by the territorial principle. Within the scheme of federalism, the task of striking an appropriate balance between personal liberty and protection of traditional identities lies mainly with the cantons. Group rights as such are not part of the Swiss arrangement. This arrangement may be no different in other federal systems. Group rights in international law are only gradually emerging within regimes for indigenous peoples and other minorities.

Democracy is an essential element of federalism, as polities composing federal systems are, directly or indirectly, based on regular or periodic expression of the popular will. This point was rightly stressed on various occasions at the Conference. History demonstrates, however, that "democracy" can also take radical forms and foster a disrespectful domination or a tyranny of the majority, a sense of exclusion and even hate against minorities. Federalism is built on diversity, but if ethno-nationalism is its basis, it can degenerate into marginalization, discrimination, separation, exclusion and in its final tragic manifestation, genocide. Immanuel Kant, the German philosopher, was right in stating that, "democracy generally is, as a barrier to arbitrary regimes and other forms of abuse of power, a strong safeguard of peace". Indeed, federalism might in light of the modern experiences of states and international regimes be added to democracy as a cornerstone of lasting peace between groups, peoples and nations. These principles in the degenerated forms of absolute (majoritarian) democracy and ethnically based federalism can, however, fuel division and conflict.

Experiences of racial and other forms of discrimination as well as of ethnic cleansing demonstrate that human rights and citizenship and, in case of armed conflict, humanitarian law are the ultimate measure of good federalism. However, human rights, in these two work sessions at least, were hardly mentioned. It seems that

the most familiar and repeated usage of the term "ethnic", in the discussion, is not a term of Swiss political and legal vocabulary; instead, the figure of the responsible citizen (be he/she German-, French-, Italian- or Romansh-speaking; and an adherent of Catholicism, Protestantism or another religion) is an established principle of Swiss federalism.

Besides political culture, federalism is based on the common will of the people as well as on leadership and trust in the capacity of organs of governance. Respect for negotiations and equitable forms of compromise-building and the "rule of law" are integral to the federal scheme. When a federation emerges out of war, honest warriors will be the most credible and effective promoters of peace; exemplary among them are President Lincoln and Francis Lieber in context of the US Civil War (1861-5) and General Dufour in Switzerland during the "Sonderbundskrieg" and the country's transition from a Confederation to a Federal State (1847-8).

Specifically with regards to language, the case of Switzerland is again quite interesting. The Swiss Constitution recognizes four national languages and three official languages. (Romansh was accepted as the fourth national language in a constitutional vote by 92 per cent of the voters in 1938 in response to the Italian "Duce" Mussolini's claim that Romansh was an Italian dialect and that the territory in which Romansh-speakers lived rightfully belonged to his country.) The Swiss language regime might be explained with the help of two axes. On the "individual/community" axis, the basic principle is the liberty of each individual to use the language of his/her choice; this "linguistic freedom" is, however, in official relations of people limited by the territorial principle, which protects the integrity of a traditional "Sprachraum". On the "the distribution of competences" axis, responsibility for balancing personal freedom with protection of traditional linguistic groups is conferred principally upon the cantons.

Above all, in Europe, matters of language or linguistic policy cannot be adequately dealt without referring to international law. Among the regimes emerging in Europe, two conventions of the Council of Europe are particularly important, namely, the Framework Convention on National Minorities and the Charter for

Minority Rights. Beyond these, specific geographical and historical areas have an importance either because of their bilingualism and the pivotal role that conflict in that area played in European integration (e.g. Alsace-Lorraine) or because these areas represent success stories of European and international legal institutions (e.g. South Tyrol). Bi- and multilingualism should be considered as an asset (leading to shared identities per se) and plans and projects favouring them should be fostered (e.g. bilingual cities like Brussels or Biel/Bienne in Switzerland and multilingual institutions of higher learning). Is not cultural diversity (and equality) a special characteristic of Europe?

With regards to conflict management one would like to add to the issues discussed at the Conference, the worst case scenario of armed conflict (international and civil war). Three dimensions might be considered in this context. Like democracy, federalism may be, but is not necessarily, a safeguard against going to war (a means of ensuring peace according to Kant). Once violence has erupted, power within de- or non-centralized polities is typically centralized. It is then the responsibility of the authorities to guarantee human rights (a core of which is non-derogable in states of emergency) in armed conflicts and abide by international humanitarian law. Ceasefire and peace negotiations among the conflicting parties are the more challenging tasks and to see to it that the enemy soldiers are treated honourably. Once violence has ended, a positive peace must be established; this peace will be the more durable only when the differences of the relevant parties are properly attended to.

To sum up, one notes that the basic elements of the federal idea are political and cultural loyalties instead of ethnic divisions, and the basic attribute of a functioning federal system is a common political will of citizens and groups of citizens to live together in harmony. Mechanisms of negotiation, conciliation and compromise have to be created. In Switzerland, one such mechanism is the popular referendum. The risk of interest groups launching referenda encourages parties to find compromises in Parliament.

From the formulae developed for the International Conferences on Federalism so far, the St. Gallen formula should be retained.

Participants' memory of—as Forum of Federations President George Anderson put it—"the parade of people and the avalanche of information at the Conference may soon fade". So the closing recommendation by the summary writer is therefore twofold: new subjects might be chosen for thorough treatment at the Conference in Ethiopia, e.g. Africa and federalism, federalism within supra-national and international governance, federalism and the tension of public and private power, effects of globalization on federalism, migration and federalism, economy and federalism, civil society and political parties and federalism, model areas or regions. Efforts might also be undertaken to apply the knowledge developed so far in the future conferences. We might, as Forum Chairman Arnold Koller proposed in his opening speech in New Delhi, draw up a set of principles upon which we could build in future. In this endeavour basic questions of values underlining federal systems should always be kept in mind as Bob Rae stressed in a final statement.