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**RAPPORTEUR'S REPORT ON THE
CITIZENSHIP AND SOCIAL DIVERSITY THEME**

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INTRODUCTION

The theme "Citizenship and Social Diversity" was the subject of one plenary session and eight roundtables led by a distinguished group of politicians and academics from all parts of the world. Several important topics were discussed and a wide range of views exchanged. Although as expected no consensus emerged throughout the discussions, there was general agreement on a number of key points. First, as a general rule, federalism is better suited than unitary forms of political organization to accommodate social diversity. Second, although there are certain points of convergence, particular federalist solutions to social diversity problems are deeply embedded in history, culture and tradition and thus not easily adaptable from one country to another. And, third, the emergence of supra-national forms of political organization, such as the European Union, present new opportunities and new challenges for power sharing among relevant groups in socially diverse polities.

As Professor Will Kymlicka, a member of the organizing committee of the "Citizenship and Social Diversity" theme (the other members being, Thomas Fleiner, Josè del Val Blanco, Ronald Watts and Ricky Richard) indicated in the course of the plenary session, the discussion was to be organized as follows: 1) in terms of the tools available to deal with social diversity; and, 2) in terms of the different kinds of diversity likely to be encountered in various polities. The tools in question were to be divided into two broad categories: models of power sharing; and models of constitutional rights protection. The different kinds of diversity, on the other hand, were to include: national, linguistic, religious and regional diversity, as well as diversity relating to indigenous peoples and that resulting from immigration.

THE PLENARY SESSION

This session chaired by Professor Kymlilcka was designed to frame the principal issues for analysis and discussion of the uses of federalism to cope with social diversity. In the broadest terms, the challenge is to find viable means to promote

both unity and diversity and to accommodate both identity and difference. In any pluralistic or multicultural unit of political organization, presumably the best way to avoid fragmentation of the whole into parts or absorption of the parts into the whole to the point of virtual political eradication, is through institutionalization of power sharing. Power sharing thus mediates between unity and diversity, and different models of power sharing are likely to affect the nature and scope of unity and diversity, and the relationship between them. The power sharing models encompassed by federalism are bounded, on the one hand, by those subsumed under the concept of confederation, and, on the other, by those that fit within the rubric of decentralization. In general, confederations provide for weaker unity of the whole but greater autonomy of the parts than federalism; decentralization, in contrast, makes for greater unity of the whole but weaker autonomy of the parts than federalism.

If the various models of power sharing provide an array of tools to cope with the tensions between unity and diversity, the diverse models of citizenship and of constitutional rights protection associated with the latter likewise furnish useful tools in the quest to reconcile identity and difference. Who qualifies as a citizen, and how, goes a long way in framing the identity of a polity. What constitutional rights extend to the citizenry, on the other hand, delimits the range of differences likely to remain consistent with the maintenance of equal citizenship.

Each of the three speakers who addressed the plenary session -- B. P. Jeevan Reddy, Chairman of the Law Commission of India, Alex I. Ekwueme, former Vice President of Nigeria, and Ghislain Picard, Regional Head of the Assembly of First Nations of Quebec and Labrador in Canada -- provided a general assessment of the strengths and weaknesses of federalism from his own unique perspective.

Mr. Reddy stressed that all federations are the product of the particular socio-historical context in which they are embedded. Furthermore, he praised the nature and flexibility of India's federalism which has played a pivotal role in fostering a working democracy in a country confronted with numerous daunting challenges due to its ethnic, religious and linguistic diversity as well as the sheer size of its population. The most important features of India's federalism are its flexibility and the great strength of its central government. The latter has proven to be a key to India's largely successful track record in managing the tensions amongst its diverse populations. Moreover, because states have no constitutional right to any permanence, the central government has been able to alter the configuration of the states in order to better accommodate various differences, and particularly language differences, among several distinct territorially-based groups.

Mr. Reddy pointed out that federalism cannot exist without a constitution, and drew attention to India's strong bill of rights and its commitment to secularism and to the protection of religious liberty. The fundamental rights guaranteed by the constitution ultimately depend on the Supreme Court for their protection, and

insure an important measure of uniformity of rights throughout the entire nation. On the other hand, the redrawing of state boundaries by Parliament to better account for linguistic differences coupled with the states' responsibility for education have provided a workable framework for the protection of diversity. In sum, according to Mr. Reddy, federalism alone can accommodate social diversity, and with the Supreme Court playing the role of ultimate arbiter, India has managed to preserve a balance between unity and diversity.

The second speaker, Mr. Ekwueme, assessed federalism from the standpoint of his native Nigeria's long and yet unfulfilled quest to achieve "unity in diversity" through federalism for its more than four hundred different ethnic groups. Nigeria's efforts successfully to accommodate its diversity through federalism began before its independence from Great Britain in 1963, and continues to this day. Unfortunately, this quest has been all but frustrated by most of the post-colonial period, as the country has experienced two long periods of centralized military rule, from 1966 to 1979 and from 1983 to 1999. As his country yet again emerges from military rule, Mr. Ekwueme stressed above all that federalism cannot really function without democracy, and that he remained optimistic that a democratic Nigeria could successfully meet its daunting challenges and institute a working federalism.

Maintaining unity while accommodating diversity in Nigeria is fraught with great difficulties for a number of reasons. First, the country is religiously diverse and has a significant Moslem population. One of the challenges this poses concerns political integration of diverse religious communities. For example, Northern Nigeria, which is predominantly Moslem, has courts that rely on the Sharia, the religious law emanating from the Koran. The decisions of these courts, however, have been subjected to review by Nigeria's Supreme Court. Second, the country has had a traumatic experience with the attempted secession of Eastern Nigeria as the Republic of Biafra and with the ensuing civil war. And, third, finding the optimal equilibrium between the various regions, and between the latter and federal power in order to harmonize unity and diversity has proven elusive. For example, during military rule the number of federated entities was greatly increased, but that thwarted local autonomy rather than enhancing it. This was due, in part, to the military's actual centralization of power, but also, in part, by the dissipation of power of the principal ethnic groups as a consequence of the dilution of their influence pursuant to their fragmentation into an increasing number of federated units. In short, where federalism is needed to enhance ethnic self-determination and to promote harmony among various ethnic groups, breaking up ethnic groups into smaller units may be as detrimental to their political aspirations as further combining them with other ethnic groups into larger subnational units.

The last speaker, Mr. Picard, focused on Canadian federalism from the standpoint of that country's indigenous population, the First Nations. In Mr. Picard's view, Canadian federalism has been a failure as it has systematically ignored or

countered the interests and aspirations of the First Nations. Notwithstanding this conclusion, from the vantage point of the First Nations located in Quebec at least, current Canadian federalism is better than an independent Quebec. Mr. Picard pointed out that a large majority of those belonging to the First Nations had voted against independence for Quebec in that Province's latest referendum on the subject. And the reason for that, was that the First Nations were convinced that an independent Quebec would be even less open to their culture than is the current Canadian Federation.

The main thrust of Mr. Picard's critical assessment of Canadian federalism was that the latter was essentially bicultural rather than multicultural. As Mr. Picard stressed, there are three different cultures Canada: the Anglophone, the Francophone and the Native Canadian. In spite of their differences, Anglophones and Francophones share a western culture which they have imposed throughout the country in profound disregard of the fundamental values inherent in native Canadian culture. Moreover, western values have often been imposed through coercion. For example, federal troops and tanks were sent when members of the First Nations tried to protect land they hold as sacred from appropriation for purposes of transformation into a golf course. According to Mr. Picard, the First Nations' list of legitimate grievances is long, and the responsiveness of provincial and federal authorities is rather dismal. As he sees it, Canadian federalism could eventually succeed, but only if it became genuinely committed to accommodating all three of the country's principal cultures.

THE ROUNDTABLES

There were eight roundtables on the subject of "Citizenship and Social Diversity". Two of these focused on the tools available to accommodate social diversity, while the remaining six probed the different kinds of diversity likely to be encountered in various polities.

A) Federalist "Tools" Designed to Accommodate Social Diversity

1) Models of Power Sharing

This roundtable led by Jos Chabert from Belgium, the Vice-President of the Committee of Regions of the European Union, and Ramazan Abdulatipov, a federal Minister and Special Advisor for Nationalities Affairs in Russia, focused on the relation between federal divisions of power and democracy. Much of the discussion centered on the European Union and on Russia, but a number of interventions during the discussion was by speakers from many different countries, some federal in structure and others not.

Mr. Chabert's discussion was centered on the European Union. He stressed that federalism is not a univocal concept, and that even among members of the

European Union there are significantly different conceptions of it. The Germans, for example, view federalism as an institutional arrangement that is very specific about power sharing between the central authority and that of the federated entities. The British, in contrast, regard European federalism as a means towards centralization of powers in Brussels.

Mr. Chabert stressed that, by and large, politicians were interested in results rather than in definitions, and thus had a pragmatic approach to the subject which most often lead to agreement. He went on to state that although federalism is by no means perfect, the federalization of Europe into the fifteen-nation European Union must be considered a great success if for no other reason that it has spelled no more war for a region that had launched two World Wars in the first half of the twentieth century.

In terms of the specific organization of power sharing in the context of the European Union, it is similar to that of other federations in some respects, and different in others. Like many other federations, the Union has exclusive powers as well as concurrent powers which it shares with its various member states. The exclusive powers, established in the European treaties include: the customs union; the internal market; the common agricultural policy; the common approach to anti-competitive practices; and the economic and monetary union. Within the realm of its exclusive powers, moreover, the European Union acts through its own institutions, the Parliament, the Council, the Commission and the Court of Justice.

In the realm of concurrent powers -- which include: environmental policy, scientific research, transportation, social policy, and also, to a significant degree, culture, education, public health and increasingly judicial matters -- the European Union cooperates with member states and even in some cases with subnational regions. In the area of concurrent powers, the Union's role is circumscribed by the principle of subsidiarity. According to this principle, the Union can only intervene legitimately when the members states or regions cannot do so, or when they cannot do so efficiently.

The internal structure of the fifteen states which are currently members of the Union further complicates the federal scheme put into operation by the latter. Of the fifteen, only three states -- Germany, Austria and Belgium -- have a federal structure. The remaining states have varying degrees of regionalization or decentralization. For example, Spain with its "comunidades autonomas", can be considered semi-federalized, while France and Italy seem to be moving toward greater decentralization through their "regions". Finally, the United Kingdom with its recent devolution of powers to Scotland, Wales and Northern Ireland seems in the midst of implementing yet another model of power sharing.

Within the framework established by the European Union, power sharing occurs at two, and perhaps even three levels. First, there is power sharing between the

Union and the member states; second, between the latter and various regions within them. And, third, increasingly between the Union and subnational units. Indeed, as a discussant from Scotland pointed out, the mere fact that subnational units like Scotland can participate in certain of the Union meetings held in Brussels may give them a voice in Union affairs even if officially the latter ultimately depend on member-state rather than regional input.

In conclusion, Mr. Chabert emphasized that the nation-state as it emerged at the end of the nineteenth century was pretty much obsolete in the context of the European Union. Moreover, the shift of powers from the nation-state to supra-national institutions was by no means confined to the Union, but rather has become a generalized trend since the end of the Second World War. Thus, for example, a significant part of the national-state traditional military power has been transferred by several European states, among others, to international organizations such as NATO. In general, the double movement of transfer of powers to supra-national institutions, on the one hand, and to infra-national regions, on the other hand, should be understood as promoting greater peaceful cooperation and economic integration in an age of globalization as well as enhancing local democracy over matters that remain close to the hearts of citizens, such as education and culture. In short, Mr. Chabert suggested that the European Union should be viewed as an ongoing pragmatic experiment designed to wed greater economic efficiency with enhanced democratic control.

These conclusions were not unanimously shared, and they generated an animated discussion. A discussant from Switzerland, for example, stated that, in his view, the Union's move to the common currency, the Euro, was a means toward further centralization and inordinate accumulation of power in Brussels. Consistent with this view, the Union has been primarily focused on maximizing economic objectives at the cost of producing an ever wider democratic deficit.

Others disputed this last characterization, and several speakers from other regions -- and particularly from economically more disadvantaged federally-organized polities -- pointed out that whatever shortcomings European Union federalism may have, they pale compared to those experienced in less fortunate parts of the world. By comparison at least, European Union federalism has to be categorized therefore as highly successful on both the economic and the democratic front.

Mr. Abdulatipov's remarks centered on Russia and generated a discussion on how federalism can hold disparate sub-national units together when some of them aim for secession, and focused particular attention to the problem of Chechnya. Mr. Abdulatipov began by emphasizing that federalism is the most democratic of political systems, and that it cannot even exist in the context of totalitarianism and dictatorship. What is most important for federalism is to have an agreement on the division of powers so as to produce parity between the central government and local communities. Federalism must either be established through

agreements or defined and delimited in the constitution. In Russia, the agreement on the division of powers became part of the Constitution.

The Russian Constitution recognizes three levels of power: that of the federal government, that of the states, and that of regional and local authorities. Some of the powers allocated by the Russian Constitution are exclusive while others are concurrent. A principal problem following from the current constitutional scheme is that there is an overload of jointly held powers in the system. Also, the Russian Constitution does not sufficiently delineate where different responsibilities lie. These problems must be resolved by adopting a united approach based in law.

There is also the problem of finding a proper balance between centralization and decentralization. The bitter divisions over separatism may weaken the central government to the point of paving the way towards a new dictatorship. In the end, Mr. Abdulatipov stressed that one should not idealize federalism or overestimate its potential, but that it provides a workable if difficult means toward conflict resolution.

Much of the discussion following Mr. Abdulatipov's presentation focused on the problems relating to Chechnya. Many criticized the Russian handling of Chechnya's move toward secession. One discussant suggested that Russia could learn from Canada in terms of conducting a referendum on separation, and on handling the matter consistent with some of the principles recently elaborated by the Canadian Supreme Court.

Several of the Russian participants responded to these criticisms. While they were by no means uniform in their remarks, the most important points made can be summarized as follows. Russia is an interesting work in progress. It encompasses twenty two different republics and solves differences between the latter and the central government by agreement. Such agreements, moreover, are elaborated in ways that are consistent with the relevant treaties linking the various republics to the central government. Russia is, fundamentally, a treaty-based constitutional federation and, when necessary to resolve conflicts without creating new ones, treaties are given priority over the constitution.

One of the problems with Russian federalism is that it is not yet sufficiently developed. Russia has advanced laws concerning multiculturalism and indigenous autonomy which seem well-suited to help avoid conflict. Unfortunately, however, there is a lack of know-how when it comes to implementing these laws.

The Russian Federation is a dynamic, evolving work in progress. It ought to be conceived as a big family steeped in a common tradition. If it is to become a working family, the center will not simply dictate solutions to the federated republics. So long as common traditions remain strong enough, differences must be accepted and accommodated without threatening unity. On Chechnya, however, Russian views were divided. Some saw it as posing a threat to the unity

of the federation extending well beyond its territory; others, while unsympathetic to Chechnya's drive toward secession, insisted that a peaceful political solution was imperative.

Finally, given the complexities and difficulties confronting Russian federalism, one Canadian participant suggested that an institution such as the Canadian Supreme Court which has representation from all of Canada might play a constructive legitimate role as final arbitrator operating within the bounds circumscribed by the rule of law.

2) Models of Federal Citizenship Rights

Contemporary citizenship rights are both crucial and rapidly evolving and as a consequence raise many more questions then they answer. Federal citizenship, moreover, affords greater flexibility, but also introduces additional complexities. In the most general terms, modern citizenship gravitates between two principal axes which may be characterized respectively as the axis of identity and that of distribution. In terms of identity, citizenship binds together all those who belong to the same community -- be it a national, ethnic, religious, linguistic or otherwise distinctly demarcated collectivity possessing some palpable sense of cohesion. In terms of distribution, on the other hand, citizenship becomes the source of entitlement to certain benefits as well as the basis for the imposition of certain duties (owed to fellow citizens or to the entity of which one is a citizen).

This roundtable was led by Jean-Claude Thébault of the European Union, who is Director of the Forward Studies Unit of the European Commission, and Ed Broadbent from Canada, a political scientist at Queen's University. As models of citizenship -- let alone federal citizenship -- are in rapid evolution, and as conceptions abound concerning what citizenship in the contemporary world ought to be, this roundtable was most helpful in affording a helpful roadmap to the varied landscape in which citizenship is currently embedded. Accordingly, I will focus on the issues that emerge as the most important in connection with federalization, globalization and the recent intensification of bonds of subnational collective identification.

Citizenship is both a means of inclusion and of exclusion which can operate both at the level of identity and at that of distribution. At first blush, federal citizenship seems to be more about inclusion than exclusion -- as evinced, for example, by the Fourteenth Amendment to the U.S. Constitution which provides that every citizen of the United States is also entitled to citizenship in the state in which he or she resides. Upon closer consideration, however, federal citizenship can also be turned into an instrument of exclusion. For example, differentiation between national and subnational citizenship can eventually pave the way for the common citizenry of the relevant subnational entity to inch closer to secession.

The one unmistakable advantage which federal citizenship possesses over its

unitary counterpart is that it allows for integration of various levels of citizenship in ways better suited to mitigate tensions between inclusion and exclusion. Conceivably, integration at the federal level focused primarily on matters of distribution may reduce tensions arising from the existence of diverse identity-based nuclei of citizenship prevalent at the level of the federated entities. Moreover, as globalization accelerates, the layering of levels of citizenship could potentially expand to encompass the whole spectrum between the truly global level to the most local.

The foremost current challenge confronting federal models of citizenship is that of harmonizing traditional national citizenship with increasingly diverse forms of subnational and supranational citizenship. One of the problems raised in the context of such harmonization is that of reconciling individual and collective models of citizenship. This problem has surfaced among other places in Canada where traditional national citizenship has been pitted against culturally and linguistically based collective conceptions of citizenship with strong demands for autonomy and self-government at the subnational level -- be it the level of the province or that of Canada's First Nations. Moreover, these clashes between individually-centered and collectively-centered citizenship are compounded by the claims of proponents of different concepts of citizenship that do not fit easily within either of the two above-mentioned molds. This is the case with feminist conceptions of citizenship. Such feminist conceptions tend to promote a fully equal citizenship status for men and women, which may involve affirmative action for women to eliminate the consequences of past deprivations which barred women's access to equal citizenship. Moreover, to the extent that a feminist conception of citizenship clashes with a collective conception espoused by a subnational group seeking greater autonomy and self-government, feminists may well become pitted against ethnic or cultural minorities in the search of an optional model of federal citizenship. This precisely is what happened in the context of Canada's Meech Lake agreement, where feminists opposed changes to a more asymmetrical model of federalism for fear it would frustrate their pursuit of equal citizenship throughout Canada.

The concept of European Union citizenship as distinct from citizenship in one of the member states of the Union affords, on the other hand, an instructive glimpse into the difficulties raised by the implantation of supra-national citizenship. From the standpoint of distribution, European Union citizenship is undoubtedly a reality which is in many respects -- e.g. right to travel, to work -- similar to national citizenship. From the standpoint of identity, however, European Union citizenship is much more problematic. This is due, in part, to the member states -- fear that enhanced supra-national citizenship will intensify the push for regional (subnational) citizenship. For example, developing a European identity may devalue national French identity vis a vis regional identities such as that of Bretons or Basques.

Another problem at the crossroads of distribution and identity is that current

European citizenship tends to be rather passive as it is predicated on rights almost to the total exclusion of duties. Passive citizenship thwarts political involvement at the supranational level, and as a consequence the European Union suffers an even greater deficit in participatory democracy than it does in representative democracy.

B) The Six Different Kinds of Diversity

1) National Groups

This roundtable was led by Brigitte Grouwels, of Belgium, who is a member of the Flemish Parliament and a member of the Council of the Brussels Capital Region and by Charles Taylor of Canada, who is Professor of Philosophy at McGill University. The roundtable focused primarily on Belgium and Canada although several participants from other countries intervened during the discussion.

Diverse national groups within a federation tend to present problems and challenges not encountered in federations comprised of a single national group. More specifically, problems may typically vary within each of the following three different kinds of federation: uninational federations, such as the United States, Germany, Brazil or Australia; binational federations such as Belgium and Canada; and multinational federations, such as Switzerland or Russia. While the number of relevant variables -- even from the single standpoint of national group related issues -- can greatly fluctuate from one federation to the next, binational and multinational federations generally confront identity and self-determination issues that usually play virtually no role in uninational federations. Furthermore -- while this is less clear -- certain issues, such as the asymmetrical allocation of powers to diverse national groups, may well have a significantly greater impact on binational federations than on multinational ones.

As the roundtable focused mainly on Belgium and Canada, it brought issues confronting binational federations to the forefront. Curiously, although both Belgium and Canada stand out as paradigmatic exemplars of binational federalism, strictly speaking neither of them is binational. Indeed, in Belgium besides the two major national groups, that is the Flemish and the Walloons, there is a tiny Germanophone Community. In Canada, in addition to Anglophones and Francophones, there are indigenous peoples, the First Nations. From a practical standpoint, since the Germanophone population represents less than one percent of the country's total population, and since its impact on the national political scene is minimal, it is fair to consider Belgium as essentially binational. In contrast, though often not sufficiently taken into account, Canada's First Nations do play a significant role in the country's political life. Accordingly, though Canada largely functions as a binational federation, it actually stands at the crossroads between binational and multinational federalism.

Belgium has evolved from a highly centralized state to a federal (or even perhaps

confederal) one as a consequence of the increasing split between its Flemish and Francophone communities. Belgian federalism is still a work in progress as further devolutions of power are under consideration. It is uncertain whether Belgium itself will survive or whether its two dominant communities will eventually become completely independent from each other, with Brussels -- in its capacity as the capital of the European Union rather than as the capital of Belgium -- as the only link between them.

Belgium is not only politically divided into two dominant communities, but also into three distinct regions: the Flemish region, the Walloon region and the Brussels region. The Flemish represent 60% of the population within Belgium as a whole, while the Walloon represent almost 40%. Within the Brussels region, however, the Walloons are in the majority. In any event, neither Belgium as a whole nor the Brussels region treat the two national groups as either a majority or a majority group. Instead, the Belgian federal system is predicated on the principle of institutionalized equality among the two linguistic communities irrespective of their relative size.

Belgian federalism is very complex, in part due to the overlap between the powers of the communities and those of the regions. Also as the linguistic split is all pervasive, there is duplication of all institutions including political parties. For example, like other Western European countries, Belgium encompasses Christians Democrats within the spectrum of its political parties. Unlike elsewhere, however, the Christian Democrats in Belgium are split into two distinct parties: a Flemish Christian Democrat party and a French one. In the last analysis, this duplication, when combined with the complex allocation of powers between regions and communities, places great burdens on the functioning of representative democracy. As the common ground vanishes, political dialogue becomes more difficult to the point that it is quite conceivable that it will become largely confined to the model of inter-state negotiations made possible through mediation by the European Union.

Canada, which finds itself at the crossroads between binational and multinational federalism, on the other hand, provides a good setting for determining whether asymmetrical federalism might be particularly well suited to balance unity and diversity in a multinational setting. As Charles Taylor emphasized, there are four distinct diversities which need to be accommodated within Canadian federalism: 1) the diversity of the aboriginals; 2) that between French and English; 3) the diversity of Quebec and its desire to remain distinct from the rest of Canada; and 4) Canada's multiculturalism nurtured by its status as a country of immigration that attracts a wide array of people coming from many different cultures.

According to Taylor, 1) and 3) above would be better served through asymmetrical federalism, whereas 2) and 4) call for symmetrical federalism. Asymmetry, however, presents a difficult problem in as much as it depends on inequality of rights which flies in the face of liberalism. Moreover, the needs for

diversity of the different national groups in Canada do not all point to the same solution as the relationships between these groups within existing federal institutions is quite complex. For example, both aboriginal nationalism and Quebec nationalism would seem likely to benefit from the institution of asymmetrical federalism. Nevertheless, Canada's aboriginals opposed the Meech Lake agreement which would have instituted asymmetrical federalism to the benefit of Quebec, because they feared they would fare worse in the context of a more powerful and more autonomous Quebec.

There was much discussion on how best to deal with Canada's binationalism. Opinions ranged from the view that Quebec separatism was warranted -- because although Canada encompassed two national groups, only the English speaking one had effective control over the state's institutional apparatus -- to the view that any special status for Quebec would be contrary to the fundamental principles of social justice. One commentator stressed that the problem in Canada was not a clash between two national groups but rather between two incompatible conceptions of nationhood. For the English speaking, Canada is a nation based on rights whereas for the Québécois, nationhood is inextricably tied to a people.

The debate concerning Belgium and Canada drew a critical comment from a discussant from Cyprus. From this discussant's viewpoint, it was discouraging to see two of the most successful countries in the world contemplating dissolution when their problems could be minimized through cooperation. In contrast, Cyprus is a binational society in which the greater military power of a minority frustrates democracy and rights for all.

2) Indigenous Peoples

This roundtable was led by Joseph Gosnell of Canada, who is President of the Nisga'a Tribal Council, and Jose del Val Blanco of Mexico, who is the President of the Inter-American Indian Institute.

In most cases, the problems with indigenous peoples is that they have been dispossessed by colonizers and pretty much left out of the political process in the colonial and post-colonial polity through exclusion from citizenship. The combination of dispossession and minority status in an alien culture, moreover, have placed indigenous people at an extreme disadvantage both from the standpoint of their identity requirements and those of their distribution needs. Consistent with this, the key question is what can federalism contribute to ameliorate the conditions of indigenous peoples? And, assuming a federalist structure, what level of government seems best suited to lead to improvements? The local? The national? The supranational?

In certain particular circumstances, the boundaries of a federated unit can be drawn so as to correspond with the territory of a given indigenous people. This is

the case of Nunavut in Canada, and of certain peoples in India. More often, however, indigenous people find themselves as a minority within a federated unit or across several of them. In the latter cases, achieving a meaningful degree of self-determination may be more difficult, though distinct territorial identity may be promoted through means which remain beside or outside existing federal structures, such as the reservation.

Unlike binational or multinational federations such as Belgium, Canada or Switzerland in which all relevant (non-indigenous) communities share a commitment to Western-style fundamental rights, indigenous peoples often embrace cultural practices that conflict with implementation of the core fundamental rights widely protected in constitutional democracies. Thus, for example, whatever differences may exist between Quebec and Anglophone provinces in Canada or between the Flemish and Walloon Communities in Belgium, they all share a commitment to many of the same values such as equality between the sexes. In contrast, as vividly exemplified by litigation involving the Pueblo Nation in the United States, certain strong patriarchal ancestral traditions of indigenous people are in direct conflict with equality for women.

The respective remarks of Messrs. Gosnell and del Val made it clear that there are as many differences among different indigenous people as there are between the latter and Western national groups. Even if we focus only on the Western hemisphere, there are great differences between indigenous people subject to English colonization and those subject to Spanish or Portuguese colonization. The former entered into treaties or accords with the colonizers and retained possession of certain lands. The latter, however, were not parties to any treaties nor did they retain any lands. Also, the former inhabit fairly decentralized federations where the implementation of self-determination rights is quite plausible. The latter, in contrast, are often dispersed through highly centralized federations or non-federal regimes, thus making meaningful self-determination virtually impossible.

Mr. Gosnell spoke of the Nisga'a treaty, which he characterized as the first modern-day treaty giving aboriginals significant self-determination rights within a federal framework. The treaty, which establishes self-government within Canadian law and a protected relationship with federal and provincial authorities under the Constitution, rectifies historical wrongs and grants the Nisga'a extensive autonomy over their internal affairs.

Although the expansion of aboriginal rights has fostered opposition and resistance within Canada, it is, according to Mr. Gosnell, the only way towards a working federalism truly capable of encompassing genuine diversity.

Mr. de Val, for his part, presented a much more bleak picture relating to 85% of the aboriginals of North America who live outside of Canada and the United

States as well as to those who live in Central and South America. The main problem confronted by these aboriginals is extreme poverty. They are also, by and large, deprived of any land. Under such circumstances, it is difficult to see how federalism could improve their lot. Ideally, federalism could be helpful by fostering solidarity, instituting subsidiarity and encouraging greater autonomy. In practice, however, Latin American federalism makes no room for minorities, and federal governments in that region lack flexibility. In addition, in many Latin American countries such as Guatemala, Bolivia, Equador and Peru indigenous peoples represent more than 50% of the country's total population.

3) Linguistic Diversity

This roundtable was led by Hans Peter Furrer, the Director of Political Affairs of the Council of Europe and L.M. Singhvi, Senior Advocate of the Supreme Court of India.

Linguistic diversity poses important challenges to the unity and manageability of the multilingual nation-state. Moreover, as language is a source of identity as well as a means of communication it can impact prominently on issues of identity as well as on issues of distribution. Federalism seems well-suited to accommodate the needs of multilingual polities as federated units can be carved out in ways that maximize the autonomy of each linguistic community.

Upon closer analysis, the relation between federalism and multilingualism is a complex one which ultimately depends on a series of variables. Language is a source of unity, but also of division. Where linguistic groups are territorially concentrated in distinct geographical regions, federalism and a territorially based linguistic policy can optimize both identity-based and distribution-based objectives. On the other hand, when linguistic groups are interspersed in a series of majority/minority configurations, federalism -- or at least territorially based linguistic federalism - - may exacerbate tensions among different linguistic groups rather than defuse them. For example, if the majority language becomes the official language for all public dealings and prevails as the language used by business, a member of the minority language community who is not fluent in the majority language may experience identity-based frustration in as much as he or she may feel as a stranger in his or her own region. Furthermore, such a person would also be at a disadvantage in the competition for employment as preference would be routinely given to native speakers of the majority language.

In the era of globalization, the problem of language is exacerbated as those who lack sufficient proficiency in the languages used for global communications are denied access to knowledge. This further isolates certain indigenous linguistic groups and increases threats to their identity while greatly limiting their access to the increased distributional benefits generated by globalization.

These considerations underscore the importance of the politics of language and of making the right choices regarding the language of politics. Overall, federalism is better suited to accommodate linguistic diversity, and certain federal constitutions and territorial arrangements, such as those of India have successfully managed and accommodated linguistic diversity by striking a fair and pragmatic balance between facilitating common means of communication and maximizing the linguistic autonomy of the various indigenous languages through adjustment of boundaries between federated units.

Language provides an important element of nation-building. Moreover, in cases where it becomes the predominant determinant of national identity -- particularly in cases where members of diverse linguistic communities do not speak (or refuse to speak as a matter of national pride) any language other than their own -- language can pose a threat the very survival of multinational federations as made plain by the example of Belgium and Canada. On the other hand, in cases in which language-based nationalism is combined with a high proficiency in, and tolerance of, other important languages within the polity -- as is the case in Catalonia where Catalan is the language of the region, but where Spanish is generally tolerated and spoken by native Catalan speakers -- federal (or federal-type) arrangements are likely to be optimal.

As a general rule, the greater the linguistic diversity within a federation, the least likely it becomes that language issues will pose a threat to that federation's survival. In this sense, the great linguistic diversity of the European Union is definitely advantageous and appears to be a guarantee against serious conflicts relating to language.

Federalism is in all likelihood better suited to deal with linguistic diversity than any of its competitors, but it cannot achieve it alone. To adequately manage linguistic diversity, it is necessary to combine federalism with social justice. And depending on the circumstances, this may depend on adjusting federalism -- either through redrawing the boundaries of federated units or through shifting from a linguistic policy based on territorial federalism to one dependent on personal federalism -- or on supplementing federalism with certain social policies designed to equalize conditions for diverse linguistic groups, such as affirmative action.

4) Religious Diversity

The roundtable was led by Moshe Ma'oz of Israel, who is Professor of Islamic and Middle Eastern Studies at Hebrew University in Jerusalem, and Asghar Ali Engineer of India, who is the chairman of the Center for Study of Society and Secularism.

It is not clear that federalism is particularly well-suited to deal with religious diversity in a similar way that it is with respect to national or linguistic diversity.

To be sure, if very diverse religious groups are each highly territorially concentrated, then federalism may provide the best means to maximize autonomy for each religious group while minimizing the opportunities for conflict between them. Beyond that, however, there is little indication that federalism is better suited than any other system to deal with strife stemming from religious diversity.

The difficulty of assessing the relationship between religious diversity and federalism is compounded by the fact that religious cleavages are sometimes but not always linked to national or linguistic cleavages. In some countries, like Canada, religious divisions coincide with national divisions as the French are by and large Catholic and the English Protestant. In other countries, such as Switzerland, however, religion and nationality do not coincide as some French and German are Catholics and others Protestant. In yet other federal countries, like Belgium, there are national divisions but not religious ones, while the converse is the case in federal countries like Germany where there are religious, but not national divisions. Finally, there are non-federal countries with religious divisions but not national divisions, such as the Netherlands.

The key to understanding the relationship between religious diversity and federalism in not the mere existence of religious divisions, but their intensity, or their intensity in relation to the respective intensities of other divisions, such as national or linguistic ones. In Canada, for example, the intensity of national and linguistic divisions completely overshadows that related to religious divisions. In Switzerland, on the other hand, religious divisions have been historically more intense than linguistic ones, but today the reverse seems to be increasingly the case. Actually, in the Swiss case, the fact that neither religious nor linguistic identity is overwhelmingly dominant fosters greater diversity and strengthens federalism as cantonal control, being a function of both local language and local religion, looms as more attractive than political organization as an exclusive function of either religion or language.

Except in Northern Ireland and the former Yugoslavia, both federal and non-federal countries in Europe and North America have found ways of accommodating religious diversity without major difficulties. In other areas such as the Middle East, religious differences loom as much more divisive, as demonstrated by the case of Lebanon or by the Israeli-Palestinian conflict. The principal question raised by the existence of highly divisive religious conflicts throughout the world is whether religion itself is the culprit or whether it is merely exploited by political leaders to increase their power. Opinion was divided among speakers in the roundtable, with some placing most of the blame on politicians, while others attributing at least some of the responsibility to religion itself.

Whether religious diversity can be accommodated within a federal framework also depends to some extent on the nature of the religion involved. For example,

fundamentalist religion and proselytizing religion are harder to integrate than others. Also, in case of the countries of Western Europe, while religious differences between Catholics and Protestants by and large no longer pose difficult political problems, vast new immigration by Moslems has produced difficult challenges -- not only, or even primarily, because of religious differences, but also because of stark cultural and economic differences which set these new immigrants apart from the rest of the population in their new country.

5) Immigration and Migration

This roundtable was led by Urs Ziswiler of Switzerland, who is his country's ambassador in Canada, and Guy Laforest of Canada, who is Professor of Political Science at Laval University.

Unlike indigenous peoples or nationals, immigrants as such do not have a vested interest in federal power sharing. From the standpoint of immigrants, in the context of a federal system, the main question is whether their needs will be better met by concentration of power over immigrant affairs in the federal government or in that of federated entities, or else by some other appointment of power among the two. From the standpoint of the respective interests of the federal entity or of its federated subunits, on the other hand, the question is how jurisdiction over immigration and responsibility related to immigrants is likely to advance or thwart their agendas. Finally, the broader question both from the perspective of immigrants and from that of governments in countries of immigration is whether a federal system is preferable to other systems for purposes of handling immigration and its social, economic and political consequences.

There are no simple or straightforward answers to these questions as much depends on a series of important variables, such a whether the country receiving immigrants has a positive or negative view towards immigration; whether it is divided along religious or linguistic lines leading to balances that might be impacted by immigration; whether immigration has or does not have a disproportionate impact on certain particular regions within a country, etc.

Within a federal framework, immigration can be left exclusively to the federal government, made dependent on cooperation between the federal government and that of federated units or left primarily within the province of the latter. In the United States, immigration is within the control of the federal government which lead to certain conflicts between states and the federal government. Moreover, as some states are much more affected by immigration than others, the conflicts in question tend to pit particular states against the federal government. For example, the state of Texas, which by virtue of its border with Mexico is the place of entry for large numbers of illegal immigrants, decided to deprive children of illegal immigrants (who themselves were illegal immigrants though brought into the state without regard for their consent by their parents)

of the right to a free public education. Basing its decision on the federal government's exclusive power over immigration, the United States Supreme Court declared Texas' action unconstitutional and ordered that illegal immigrant children within the borders of Texas be granted the same rights to education as other children residing within the state. Thus, Texas had to extend benefits to illegal immigrants without having any power or say on their fate once within its borders.

In Canada, in contrast, since the 1960s immigration has been handled through cooperation between the federal government and the provinces. The provinces are generally responsible for immigration, except when it involves refugees or family reunifications, in which cases immigration is left up to the federal government. The provinces, moreover, not only have discretion in handling demand for immigration, but also assume the financial burdens associated with settling new immigrants. Because of this, Quebec requires that new immigrants do not move out of Quebec for a certain period of time. This latter requirement, however, impinges on the fundamental right to freedom of movement thus pitting provincial control of immigration against uniform protection of fundamental rights throughout Canada.

In Switzerland, immigration is also handled through cooperation between the federal government and the cantons. For example, in the context of the recent conflict in Kosovo, Switzerland has implemented a recently-enacted law granting asylum to refugees having fled their country because of violence. Under that law, Switzerland has admitted 250,000 refuges from Kosovo, with the federal authorities directing such refuges to different cantons pursuant to agreements worked out with the latter.

6) Regional Diversity

This roundtable was led by Osvaldo Alvarez Guerrero of Argentina who is President of the Arturo Illia Foundation for Democracy and Peace and former Governor of the province of Rio Negro, and Popo Molefe of South Africa who is Premier of the Northwest province.

In many federations, regional diversity has important political implications without formally corresponding to the division of the country's territory into particular federated subunits. Regional diversity differs from national, ethnic, religious or linguistic diversity, but remains a vague concept which is given significantly divergent interpretations in different parts of the world. Regional identities are in many cases important, however, and when they are insufficiently taken into account they can lead to alienation and conflict. This is the case, for example, in the South of the United States as well as in Western Canada and Western Australia. The question this poses is whether federalism or another approach such as regional decentralization is better suited to cope with the issues raised by regional diversity.

Regions are created in different ways and in many cases are quite artificial. They can be the result of colonization, or of social engineering for specific purposes, such as the creation of regions in South Africa to buttress white supremacy during that country's apartheid experience. Different regions also sometimes acquire political importance because of glaring economic inequalities which generate conflicts concerning redistribution of economic resources from the most prosperous regions to the least economically favored ones.

The challenge is to tap regional differences for positive purposes such as enhancing representative government and solidifying power sharing. The danger, on the other hand, is that official recognition and institutionalization of regional identities might facilitate a disgruntled region's move toward secession. In the end, depending on the circumstances, federalism may boost regional identity and integrate various regions within the political mainstream through promotion of alliances among federated subunits, and through economic and redistributive policies designed to minimize material disparities among various regions without exacerbating tensions between them.

CONCLUSION

Whereas the relationship between federalism and promotion of social diversity is complex and may at times seem murky, and whereas whether and how much federalism advances social diversity depends to a very significant extent on particular cultural, historical and political circumstances, it seems fair to conclude that overall, federalism is best suited and most adaptable for purpose of balancing unity and diversity in an increasingly dense and interdependent world. As the need for, and the reality of, supranational governance increase, federalism looms as both inevitable and indispensable. Indeed, the more political organization becomes necessary at the supra-national level, the more it is important to maintain some control over one's destiny as a member of the national and subnational entities with which one has strong identity bonds. As we enter the new millennium, it may be that globalization will lead to a strengthening of the supranational and the regional at the expense of the nation-state as already seems the case in some of the member states of the European Union. Even if that trend continues, however, some kind of federalism would still seem best suited to accommodate the need to reconcile unity and diversity in new ways.

It may seem that one disadvantage of federalism, in terms of reconciling unity and diversity, is that it makes it easier for a dissatisfied federated unit or region to secede. In as much as the latter -- as opposed to a province in a unitary state -- already has an established government with significant powers and already enjoys a significant amount of autonomy over internal matters, it would seem more institutionally prepared to lead a separate political life. Even if this were true, however, it would not justify abandoning the distinct advantages of

federalism. And, in any case, unitary states have not been able to avoid internal strife or violent regional conflicts driven by the will to obtain greater autonomy.

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