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**RUSSIAN FEDERALISM: PROBLEMS AND PROSPECTS AT THE THRESHOLD
OF THE 21ST CENTURY**

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1. General

The Forum of Federations, held in October 1999, is of immense importance for the development of the theory and practice of federalism. It is the first forum, created -- with the assistance of the Government of Canada -- to associate within its framework the representatives of all the federal states of contemporary world. An opportunity is created for permanent type exchanges of information and experience by federal systems. The marvellous speeches delivered at the forum by Prime Minister Chrétien of Canada and President Clinton of the USA are in themselves a significant political action in support of the federal forms of government. A representative delegation of the Russian Federation took part in the work of this conference on federalism. It is to be regretted that the organisers had not provided for a report to be delivered by the RF delegation. I believe that specialists will find it useful to learn about the distinctive features of Russian federalism, to get an insight into its problems and prospects of its evolution and development. The advantages of federalism lie primarily in its ability to adapt to the specific conditions and requirements inherent in the development of individual countries that are geared to their territorial-geographic, ethnocultural and other characteristics. The inception of a federation in Russia was possible due, to a great extent, to the Federation Treaty on the distribution of powers signed in March of 1992. The 1993 RF Constitution had secured the federal structure of the Russian State.

2. Distinctions of the Evolution of Federalism in Russia

From the moment of its constitutional implementation, Russian federalism has proceeded from practical approaches to the political, social, and economic problems, rather than formal interpretation of the acts of law, which attests to its evolutionary character.

Consolidating the de facto relationships shaped between territorial entities, federalism has invariably been a consequence of agreement and compromise. Therefore we may presume as correct the assertion that federal relationships are evident only when a balance of this kind has been achieved on a voluntary basis. All the more so, since, with regard to government jurisdiction, it is not so easy to determine the measure of dependence and the limits beyond which the sovereignty of a federation's units (subjects) disappears completely, giving place to total supremacy and dictate.

At the same time, Russian federalism has its own distinctions shaped by the specific nature of the historical and political traditions. This is not to say that Russia is a "patchworky" formation to be torn apart or simply eliminated at the pleasure of some "ethnopolitical" regional power leagues or individual politicians. Due to the crisis currently riding the Russian economy and politics, there are no sufficiently stable horizontal ties of either economic or political character between the constituent units of the Russian Federation. The prevailing characteristic of contemporary political process is chaotic fragmentation of society, whereby every individual federation unit has close ties with the federal centre, but not as a part of a broader complex of a single unified federation of subjects.

3. Constitutional Nature of the Russian Federation

Russia is a constitutional federation. The Constitution invests the constituent units of the Russian Federation with equal powers with regard to the federal centre, which units, therefore, become sovereign entities by virtue of the magnitude of powers assigned to them. The Constitution makes no reference to such concepts as the national-state or administrative-territorial form of government, while the differences between the republics and other units of the Russian Federation, as distinct from the provisions of the Federation Treaty, are stipulated in form but not in essence. However, it cannot be ignored that the Constitution does provide for the ethnic-political principle of government system, among others.

Along with the equality assigned with regard to the federal government, the legal status of the federation units is determined by certain differences inherent in their nature.

The Constitution establishes six constituent units (subjects) of the Russian Federation: republic, krai (territory), oblast (region), federal cities, autonomous oblast (region), and autonomous okrug (area). The existence of six territorial entities predetermined the differences in their status, which are, though, of a fairly formal character.

The differences in status are stipulated in the following constitutional provisions:

- a) the status of the RF subject is established by the Constitution of the Russian Federation and also, with regard to the republics, by their Constitutions, and with regard to all the other subjects, by their Charters (Constitutions);
- b) an autonomous area may be a constituent part of a territory or region;
- c) a federal law on an autonomous oblast (region) or autonomous okrug (area) may be adopted upon the respective initiative of legislative or executive bodies;
- d) as distinct from the other Russian Federation units, the republics are empowered to adopt their own languages as official, apart from the official language of the Russian Federation, as well as their own citizenship and national emblems (and this sums up the differences between them, for all of the Russian Federation units enjoy equal rights in respect of the federal order of government).

Hence, we might say that all the constitutionally stipulated differences refer only to the republics and some of the autonomous okrugs, those that are incorporated within other constituent units, of the krai or oblast status. Given certain conditions, the latter can extend their jurisdiction to autonomous areas. All the other units of the Russian Federation have the same legislative status with regard to each other and the federal government.

4. Interaction of the Federal and Constituent Governments

The interaction of the government of the Russian Federation and the governments of its constituent units should be built on:

- 1) Adherence to the Constitution of the Russian Federation;
- 2) Establishment and expansion of relations between the federation and its units;
- 3) Mutual observance by the federal centre and units of their rights and responsibilities, as well as of each other's interests;
- 4) Constitutional allocation of the scope and powers of government between the federal and constituent governments of the Russian Federation;
- 5) Mutual delegation of some of their powers by the executive authorities of the Russian Federation and the executive authorities of the subjects of the Russian Federation;
- 6) A single executive power system in the Russian Federation acting within the limits as stipulated in the Constitution of the Russian Federation.

Unconditional observance of the Constitution of the Russian Federation is an essential condition for the building of a constitutional state, whereby the authorities of the constituent units of the Russian Federation obey the federal constitution and federal law, rather than the federal bodies of power. At the same time, the federal bodies of power should not invade the field of jurisdiction of the Russian Federation units. Observance of the Russian Federation Constitution is a constitutional duty of government authorities, local administrations, officials, and citizens of the Russian Federation.

The practice of execution of constitutional norms and federal legislation has demonstrated that, so far, there has not been established an effective mechanism of protection of the common constitutional space. The existing legislative acts and regulations at the federal level are not sufficient to ensure the implementation of the norms of Russian Federation Constitution in the area of federative and national relations. The entire complex of these problems could be resolved with the adoption of the federal law "On Provision of State Integrity of the Russian Federation", which is currently under the approval by the subjects of the Russian Federation and the federal executive administration.

It should be added that the single common constitutional space does not entail absolute unification of the law-making process over the entire territory of the country. Two legislative orders have formed within the common jurisdictional area of the Russian Federation. Within the powers assigned to them, the units of the Russian Federation exercise their own legislative regulation, which is geared to their historical, ethnic, cultural, natural and other features. For the first time ever, executive powers have been vested in the territories, regions, and areas.

In Russia, as in other countries, one of the basic provisions for improving federalism is the principle of decentralisation and democratisation of power, that is, the assignation of considerable powers to the federation units to ensure that decisions are taken at the level closest to the public who are affected by them and that the public can have more influence on the adoption of these decisions. This is the keystone of the country's stability and economic upswing.

5. Distribution of the Powers and Functions

The conference heard Dr. Ronald Watts' report "Models of Federal Power-Sharing". In our opinion, it requires an addition of a section on the Russian experience of power-sharing. The improvement of federal relations in the Russian Federation dictates the search for rational ways of realising the constitutional provisions relating to allocation of the scope of jurisdictional authority and powers. We shall say that "scope of authority" refers to the federation as a whole and the units of federation, and "powers" to the powers exercised by government bodies of the federal centre and government bodies of the constituent units of the Russian Federation.

The areas of exclusive and shared authority of the two government orders (the federal centre and the constituent units) require the adoption of federal acts, which, while dealing in detail with a wide range of matters, would allow the federation units to exercise their right with regard to their own legislative regulation reflecting the local distinctions.

The inadequacy of the field of federal jurisdiction has encouraged the federation units to fill in the gaps with their own legislative acts. The ensuing contradictions had to be resolved through executive agreements on the distribution of powers between the government bodies of the Russian Federation and the government bodies of the units of federation. Many authors in Russia are opposed to this process. However, it was conditioned by the absence of relevant laws dealing with the matters of federalism and by the need to remove the contradictions arising in the sphere of federal relationships.

It would be wrong to assume a simplified approach and regard the conclusion of these type of treaties as nothing more than the transformation of the federal relationships into a conventional agreement-making process because:

- a) these agreements are not co-significant with either the Constitution or the federal laws;
- b) the legal actions specified in these treaties and agreements can be applied only before and until the adoption of the relevant federal laws.

The experience of the treaty process, involving 40 units of the Russian Federation, has demonstrated that the agreements on distribution of the powers and functions allows the achievement of the primary objectives figuring in the area of federal interrelations, those that are aimed at:

• preservation at the various stages of State-building of the State unity of the Russian Federation and its constituent units by way of prevention and elimination of intergovernmental contradictions (Tatarstan, Bashkortostan, complex units of the Russian Federation);

- renunciation of the supremacy of political accents in the dialogue of the federal centre and the constituent units of the Russian Federation, the transfer of this dialogue into the framework of a flexible and constructive resolution of social and economic matters;
- establishment of federal control and conditions allowing the Russian Federation constituent units to exercise legislative regulation of the matters pertaining to the implementation of their authority with regard to all the areas of authority shared with the Russian Federation, including those that are as yet not covered by the federal legislation (This right of the constituent units of the Russian Federation

has been asserted by the decisions of the Constitutional Court of the Russian Federation);

- execution by the constituent units of the Russian Federation of their right to delegate their exclusive authorities, thus establishing an area of authority shared with the Russian Federation, which right is exercised if the lack of financial or other resources prevents them from sovereign implementation of these authorities (Federal legislation cannot regulate the matters within the constitutionally stipulated areas of exclusive competence of the units of the Russian Federation);

- expansion of the federal field of jurisdiction through legislative entrenchment of those mechanisms determining the interrelations between the federal government and the government of the Russian federation units that have evolved and proved effective in the course of the agreement-making process;

&Mac183; implementation of a system of governmental measures designed to preserve the common single field of jurisdiction and achieve the streamlining of federal and regional legislation within the framework of the President of the Russian Federation's directive: "to condition the signing of treaties by the holding of a review designed to establish the conformity of the statutory acts of any Russian Federation unit to the Constitution of the Russian Federation".

The present-day conditions for negotiating agreements require a more effective solution with regard to two fundamental problems, which can be dealt with as follows.

1. By adoption of an act of law establishing uniform requirements to the agreement-making process and the procedure for bringing under the federal law those provisions that are at present beyond the confines of jurisdiction. (Parliament has already adopted the federal law "On the general principles and the procedure for the distribution of powers and functions between the government bodies of the Russian Federation and the government bodies of the units of the Russian Federation".)

2. By enhancing the units' confidence in the agreement process. (A certain reduction in confidence evident today is explained by the significant inadequacy of the powers assigned by these agreements to some of the Russian Federation units -- e.g. Tatarstan, Bashkortostan, Sakha-Yakutia -- as compared to others; by the sharp increase in the number of participants in the agreement-making process occurring during election campaigns; and by the attitude to view the adopted agreements as legal acts facilitating the transformation of the present constitutional federation into a treaty type federation.)

The adoption of agreements has been a positive factor, contributing to the preservation of, rather than undermining, the Russian Federation.

6. Unified System of Executive Power

The single system of government adopted in the Russian Federation means that the government structure of the Russian Federation units must be established in conformity with the constitutional system and general structure of the representative and executive bodies of federal power. The constitutional units of the Russian Federation have their own system of executive power, which is still incorporated in the unified system of executive power of the Russian Federation within the bounds of the concurrent or shared fields of authority of the federal and constituent governments. The organs of executive power work to ensure the provision and implementation of the federal laws of the Russian Federation, including through the adoption of statutory acts of law. This system guarantees the unity of executive power in the entire Russian Federation.

At the federal level, a federal law is required that would deal with the general principles underlying the structure of representative and executive bodies of government power in the Russian Federation. Such a law must regulate the matters relating to the provision of a unified system of government power and to the interaction of the federal and constituent government bodies, the matters relating to the structure of the government system of the Russian Federation.

7. Federalism and the Common Economic Space

We should not let the effort toward consolidation of the common economic space and against economic separatism to derogate from the rights of the constituent units or lead to the restoration of the unitary state.

The character of fiscal relationships in Russia is currently determined by the federal law "On the budgetary structure and budgeting process in the Russian Federation" (The RF "Fiscal Code" will come in force beginning January 1, 2001). The law stipulates the uniformity of the fiscal system based on the interaction of the budgets adopted at all levels, and their independence, determined by the existence of own sources of revenue and the right to designate the areas of their spending. This is far from enough for providing budgetary independence, for even a minimal level of revenue can be ensured only given a sufficient taxation potential.

It should also be noted that Russian regions are not always guaranteed a timely and full compensation for the reduction in revenue or increase of expenditure resulting from the decisions adopted by the government bodies of a higher order.

The different initial conditions and economic policies waged by the regional authorities further increase the difference between the levels of socio-economic

development of the various units of federation. On its part, the federal government supports the problem (economically depressive) regions through the system of federal transfers and the Federal Fund of Regional Development. However, the system of transfers needs correction, since the size of transfers was fixed without taking account of the inter-budgetary adjustment effected by the deductions from the regulating taxes (paid into the federal and regional budgets). It is a well-known fact that the annual federal allocations invariably comprise a considerable portion of the regional revenue budgets with their own incomes remaining at a low level.

Hence, given a sufficient potential of the regulating taxes, it is possible to eliminate the concurrent flow of funds, and thus allow many of the regions to avoid the factitious dependence on federal subsidies.

8. Conclusion

The instruments for implementing the constitutional provisions relating to the principles of the federal system in Russia must find a reflection in respective federal laws. Their expedient passage through the two chambers of the Federal Assembly (Parliament) -- State Duma and the Council of Federation -- will to a large extent depend on the degree of cooperation and coordination between the actions of the Russian Federation Government and Parliament. A joint Working Group was set up with this purpose in view, to deal with the preparation of legislative acts in the areas of federative and national relations. Its first and serious product is a Plan of Joint Actions toward creating a legislative foundation for the basic federative and national relationships, including 14 bills of primary priority, which has found the approval of all the parties concerned.

The Forum of Federations, with the Russian Federation's active participation in its work, can also play a part in the identification of instruments for implementing the constitutional provisions of the federal system in Russia. We have already assimilated the experience of the Russian-Canadian project on the problems of federalism. It is necessary that Russia -- chambers of the Russian Parliament, the federal and constituent governments, all the federal executive bodies, the Constitutional Court, and research centres -- should be broadly represented and take an active part in the work of the Forum of Federations.

The Forum should identify the "sensitive areas" in the development of federations and facilitate the exchange of experience accumulated by federal and constituent governments.

In the current situation, it is extremely important for Russia to work out common approaches to the implementation of objectives posed by State-building, as well as to agree to and adopt a long-term programme for the development of federalism in Russia. With regard to this work, too, we have placed certain hopes

on the experience of the Forum of Federations. The federal pattern of government ensures: adaptation to the social and cultural multiformity of societies, account of the needs of local communities, and enhanced responsibility before individual citizens. Federalism constitutes the most democratic form of government formation. Hence its significance for present-day and future Russia, all her peoples, territories, and citizens.

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