



Federations

What's new in federalism worldwide

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From the Editor

This issue of *Federations* coincides with the third international conference on federalism (Brussels, March 2-5, 2005.) It is an important event for Belgium (*see article by Guy Tegenbos, page 3*). It is important for the Forum of Federations. And it is important for the many people around the world who are developing an intense interest in federalism.

The first such conference at Mont Tremblant, Quebec, Canada in 1999 established that it is possible to bring together practitioners and experts from vastly different cultures and have a frank and useful conversation about federal governance. Among the memorable moments at that event were the presentations by Nigerian Nobel laureate Wole Soyinka and then United States President Bill Clinton.

Soyinka pointed out that if the 20th century has taught us nothing else it should be that "the lure of centralized power must yield to its diffusion among peoples at tiers of responsibility which merely vary from nation to nation because of their different histories or even population sizes..."

Clinton was mindful of the fact that the United States and other world powers had recently intervened to allow the quasi or total secession of Kosovo and East Timor. His remarks emphasized that these were extreme cases and that, as a rule, some form of federalism was far superior to separation. He argued that secession is only justified where minority populations suffer oppression and denial of basic rights for which there is no other redress. And he ended by saying that federalism, an old idea, was more relevant than ever. His closing words were: "This federalism is not such a bad thing!"

The second conference, in Switzerland, pushed the notion of dialogue and shared learning further. That conference's executive director, Raoul Blindenbacher (now a Forum Vice President) and project manager Andrea Iff have an article in this issue that gives some insight into that shared learning process.

Now, as hundreds gather in Brussels, the world is more seized with the usefulness of federalism – even its necessity

– than it has been for a long time. This is partly because of the interest in federal options in such troubled places as Iraq, Sudan and Sri Lanka. (We have an article about one such case, that of Somalia, in this issue.)

But the renewed interest in federalism springs as well out of a desire in many places to create more supple and responsive governance structures. In places such as Italy, interest in federalism is spurred by a desire for greater local and regional control. In many established federations, matters such as assuring economic equality or disentangling governing responsibilities have put federalism on the political front burner.

In this newsmagazine, we try to look at the news of the world through the prism of federalism. In each issue, we provide some account and analysis of recent events that illustrate how federalism works in practice around the world.

This issue focuses on fiscal issues, government efficiency issues, power sharing and control issues, matters of social values, minority rights and more. As usual, we have stories from all parts of the globe, all reported by authors who live and work in their regions.

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Former US President Bill Clinton with Forum President Bob Rae at the Mont-Tremblant Conference in 1999.

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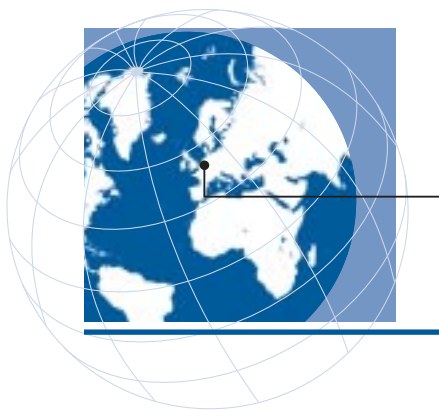
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Belgium at the centre of the conference on federalism 2005

Federalism in Belgium is a verb, not a noun.

BY GUY TEGENBOS

Why is the International Conference on Federalism 2005 so welcome in Belgium? And why are its participants being greeted so warmly? To answer those questions, we need to tell a story about surrealism and a pipe that is not a pipe, about suits that are not perfect but fit like a glove, about federalism that is a verb, about constant renovations, which will still be going on when the International Conference on Federalism* begins in Brussels on March 3, 2005, or which might – only just – have ended by that time. And about diversity and harmony, and the connection between both.

The Kingdom of Belgium is celebrating its 175th anniversary this year. In 1830, the country seceded from the Kingdom of the Netherlands, which was formed 15 years earlier. With the approval of France, Great Britain and Germany – the superpowers – Belgium became a separate state, after a period during which the country had belonged, in whole or in part, to one European superpower one time, and to another the next.

A highlight of the 175th anniversary of this relatively young state is the major exposition “Made in Belgium”***. It gives an overview of the history and achievements, from prehistoric times until now, of the regions which are now called Belgium.

The exposition is built around 12 different themes, including music, painting, folklore, architecture and fashion, sports, science, food and drink. It shows all great monuments, products and names: Belgian fries, chocolate and beers; the world-famous ‘Gilles de Binche’ (a carnival character); historic persons like Ambiorix who fought the Romans, and Godfrey of Bouillon, leader of the crusaders; historic cities such as Bruges and Brussels; comic-book characters such as Tintin; Eddy Merckx, the “greatest cyclist ever”; Justin Henin and Kim Clijsters, the two tennis players who starred in the international women’s tennis scene recently; musicians like Jacques Brel and Toots Thielemans; painters such as Peter Paul Rubens and René Magritte.

Guy Tegenbos is Senior Writer for the Belgian newspaper *De Standaard*.



At the International Conference on Federalism 2002 in Switzerland: Belgian Prime Minister Guy Verhofstadt (right), Austrian Chancellor Wolfgang Schüssel (centre) and Vojislav Kostunica of Serbia (left).

“Ceci n’est pas une pipe” (This is not a pipe) – René Magritte

But you won’t find any politicians in the exposition. Not one. And it was only recently that a thirteenth item was added to the exposition: “The Belgian Model”: our own form of federalism. This is a remarkable thing indeed. Officially, the celebration bears the title 175-25: that is, 175 years of Belgium, 25 years of federalism. The country is not only celebrating its own birthday, but also that of its status as a federation.

Belgium’s brief experience so far as a federal country contrasts with the enthusiasm with which the country presented itself as a candidate for the third International Conference on Federalism, after those in Mont-Tremblant (Canada, 1999) and St. Gallen (Switzerland, 2002). The country’s short time as a federation also contrasts with its determination to achieve major results, reflected in the title that was given to the conference: *Turning Diversity into Harmony*.

It reminds us a little of René Magritte, our famous surrealist painter. His most famous work is a detailed painting of a beautiful pipe, entitled “Ceci n’est pas une pipe” (This is not a pipe). We claim to be a federal state, but then again, we don’t. We are proud of it, and then again, we’re not.

Officially, Belgium was a state with a centralized administration for its first 150 years. Unofficially, it was only 140 years. The starting point for the federal organization of Belgium is often given as 1970 instead of the official date, 1980. Around 1970, every national political party broke in two, into a Dutch-speaking and a French-speaking party. Parties have always been dominant political actors in the political scenery of Belgium. More or less at the same time, the federal organization of Belgium was begun. In 1970, in the first constitutional revision, Belgium was divided into three communities (a French-speaking, a Dutch-speaking, and a German-speaking one) and into three Regions (the Walloon region, Flanders and Brussels). Each of these had its own territory and powers. It was only ten years later, in 1980, in the second constitutional revision, that Belgium was clearly recognized as a federal country. From then on, Article 1 proclaimed that "Belgium is a Federal State made up of communities and regions".

Whenever Belgian politicians are abroad, they speak highly about their federalism. They advocate it. But at home, they are less open about it. At home, they are always a bit dissatisfied with this federalism. They are constantly working on it. As a matter of fact, they are doing so right now, in negotiations that started earlier this year about fine-tuning the distribution of powers between the federation and the entities. The results will again be compromises, with no winner and no loser. And that situation may well lead to new adjustments within a few years.

Tailor-made. Belgium has no major ready-made clothing brands or clothing retail chains. But it does have excellent tailors, and outstanding clothing designers of international fame: Ann Demeulemeester, Dirk Bikkembergs, Walter Van Beirendonck, Olivier Strelli, Edouard Vermeulen (Natan), Gérald Wathélet. It is a bit like that with Belgian federalism. You cannot put it on display in a window without an explanatory note. On a tailor's dummy, under the spotlights, you always notice that one sleeve of the suit is longer than the other one, that one leg is somewhat wider, that the second button is not completely centred. We are not talking about federalism as described in handbooks. That is why Belgians are somewhat ashamed of it at times. It is different. And complicated.

But it fits them. What is more, it is cut out for them. It fits like a glove. It is tailor-made. And the fact that Belgium took the risk of being host for the conference means that it has cast off that unnecessary feeling of shame.

Method and verb. The introduction of federalism was not the solution for all problems in Belgium. In our country, federalism – and the constant adjustment of it – is a method to prevent and solve conflicts. For Belgium, federalism is not a permanent situation, it is a movement. "It's a permanent quest", said Belgian Prime Minister Guy Verhofstadt. That is the reason why the conference is not entitled "Diversity and harmony", but rather "*Turning* diversity into harmony". Federalism in Belgium is not a noun, it is a verb. Whenever there is a disagreement on a

Two key websites:

* **International Conference on Federalism 2005**, Brussels: www.federalism2005.be

** **Expo Made in Belgium**: www.expo-madeinbelgium.be, Dexia Kunstcenter, Bellevue building, Schildknaapstraat 50, 1000 Brussels, near the Market Square, from March 8, 2005.

matter of policy on a federal level, it is gradually transferred to the communities or the regions. It always involves strenuous negotiations, especially about the distribution of money.

Step by step. Federalism in Belgium was not established overnight. There have been four constitutional revisions: in 1970, 1980, 1988, 1993, and in between numerous special laws have adjusted the authorities of the entities and the rules of the game. There has never been a master plan to introduce federalism. It was an incremental process. Solutions were found for problems step by step, and in the end, we found out what we had was federalism.

Bipolar. Belgium attached its own meaning to federalism, because it had to deal with specific problems. A few examples: To form a federal state with only two large constituent units, without federal political parties and without federal public opinion is not easy. To build a federal structure with one very small and two large language groups, which do not have the same international impact, one of which feels more familiar with South European traditions while the other is more focused on North European and Anglo-Saxon culture, is far from simple. All the more, since those language groups almost – but not entirely – coincide with the regions, and the regions have a totally different economic development. There is also a bilingual capital, which is situated in one language area, but is dominated by the other language. This requires custom-made solutions. Many authors even find it difficult to tell whether Belgium is a federal state or a confederal one.

Fierce and quiet. It is also typical that all matters concerning the relations between communities and regions are highly discordant politically. Political discussions on these matters are always fierce. Words such as "never" and "undebatable" and expressions such as "the end of solidarity" and "the end of Belgium" are often shouted. Conflicts on these matters may paralyze political activity and may lead to governmental crises. In such times of conflict, there is no such thing as Belgian public opinion, but instead Flemish and Walloon public opinions. One hardly ever notices this on the streets, or in the shops, however. The Flemish and Walloons do not attack each other. There has never been violence between those language groups. The complex Belgian governmental structure will always divert the potential conflicts between language groups onto the political level. Let the politicians squabble about them! And squabble they do, sometimes so fiercely and technically that the public loses interest.

Prime Minister. Prime Minister Guy Verhofstadt is convinced that, however unique and “untransplantable” this model may be, other countries can still learn from Belgium: “Managing cultural diversity is one of the central challenges of our time. The protection of cultural freedom and diversity has become a global issue. Examples thereof make headlines on a daily basis: Iraq, Sudan, the Balkans, Northern Ireland, Côte d’Ivoire, Afghanistan and many more. Struggles over cultural identity can quickly become one of the greatest sources of instability within states and between them.”

“In this world we can all learn from each other. Due to its location at the crossroads of different cultures, Belgium has a long history of dialogue between communities. This dialogue resulted in a unique federal system aimed at protecting the identity of our three linguistic communities by offering them a very large degree of political, cultural and economic autonomy. There is a permanent quest for the right balance between unity and diversity. Our institutional setup provides for many checks and balances and consultation structures. Of course, this does not rule out tensions, but as a whole, the system has proved efficient.”

He then went even further:

“One ‘fit-all’ federal model does not exist. Each situation requires a tailor-made approach, adapted to the needs of a particular cultural, historical and demographic environment. Changing a state’s systems is a gradual and complex process, which implies giving and taking in a spirit of compromise and sometimes highly technical solutions. I am convinced that combining experience and creativity will eventually bring solutions. The Third International Conference on Federalism aims at contributing to this process.”

Fundamental questions

The conference will examine a range of fundamental questions, which arise when we talk about this Belgian federalism. The technicality and fierceness of political

conflicts on governmental structure often raise questions about political legitimacy. There is a growing tendency towards an asymmetry in governmental structures. There are questions about the constituent units taking part in federal decision making. There are questions about the financial solidarity between the regions. Belgium has had positive and less positive experiences, and would very much like to hear about the prevalent opinions and experiences in other countries.

Belgian politicians, academics and journalists will be very attentive to these matters on March 3. In January, a new dialogue was started on the remodelling of the senate into a “senate of the federal states” and on the division of power and responsibilities between the federation and the constituent units.

Perhaps these negotiations will be finished by March 3, perhaps they will still be going on, perhaps they will have broken down or been postponed. So it is possible that the host country will offer not only academic discussions, but even the chance to observe the process “in the field”.

The negotiations aimed at finding the solution will be conducted by politicians at the federal as well as the constituent unit level and bring into practice the “participation of the states in the federal government” and “intergovernmental agreements and cooperative organs within federations” (from theme 3 of the conference).

Since the last elections, the federal and state governments do not have the same political coalitions any more, and this political asymmetry (from theme 1 of the conference) is new and makes conflict settlement more complex. It makes new forms of conflict settlement and compromise necessary. That’s another reason why this international conference is more than welcome in Belgium. Although Belgian politicians are probably the world’s best specialists in making compromises, there is no doubt they can learn a lot about conflict settlement from all other federal states. 6

Continued from page 6

Conclusions

Political culture and attitudes matter. Whether in the conduct of foreign relations, the management of decentralization and conflict in multicultural societies, or in the financial arrangements, effectiveness in practice has depended not just on appropriate institutions and processes, but even more upon widespread respect for the values inherent in federalism. Many participants mentioned the importance of respect for regional and cultural differences, for inclusiveness, for trust, for balance, for acceptance of flexibility, for pragmatic responses to particular circumstances, and for genuinely democratic practices.

In addition, a major theme was the importance of financial arrangements, which is partly a question of economic efficiency. It also relates to equalization arrangements and the extent to which they contribute to, or undermine, the preservation of regional and linguistic identities and the promotion of “solidarity” within federations.

To read the entire paper and full results of the research, go to www.forumfed.org/federalism/pdfs/StGal-ch-Blindenbacher.pdf 6



Conference was an experience in shared learning

An analysis of the results of the last international conference reveals many common values among participants from around the world

BY **RAOUL BLINDENBACHER AND ANDREA IFF**

Editor's note: The first international conference on federalism took place at Mont-Tremblant, Canada in 1999 and the second in Saint Gallen Switzerland in 2002. The executive director of the second conference, Raoul Blindenbacher, and project manager Andrea Iff undertook a detailed survey of conference participants and an analysis of their feedback. A summary of that work follows.

The results from the International Conference on Federalism 2002 in Switzerland spoke volumes about citizens of federal countries. One finding from conference research was that every individual or group in a federal system enjoys more than one identity, and these identities almost always overlap. This can extend as far as a sense of different nationalities – one nation with several nationalities. India, Belgium, Switzerland and Canada provide living examples of these multiple national identities.

At the St. Gallen conference, participants from all over the world discussed federalism and foreign relations; federalism, decentralization and conflict management in multicultural societies; and assignment of responsibilities and fiscal federalism.

Learning began before the conference

The structure of the conference was designed to stimulate dialogue in a “knowledge spiral”, using a process in which participants expanded their individual as well as their institutional knowledge. This was accomplished in four stages, which began before the conference and ended a month afterward.

Before the conference, eminent international scholars prepared scientific background papers and presented information in a series of papers published as a conference reader sent to all participants.

At the conference, scholars, politicians at the federal and state levels, administrators and business people presented case studies on sub-themes in a series of work sessions.

Towards the end of the conference, dialogue tables brought together all participants from each of the three themes to

Raoul Blindenbacher is vice president at the Forum of Federations and the director of global programs. He was the executive director of the International Conference on Federalism 2002.

Andrea Iff works as a scientific researcher at the Institute of Political Science at the University of Berne, Switzerland. She worked as Project Manager at the International Conference on Federalism 2002.

debate the issues that had arisen and to formulate new ideas and solutions.

After the conference, reflections from the work sessions and the new insights gained at the dialogue tables were integrated into a coherent whole.

How the work was analyzed

Summary writers were present in each work session and dialogue table to record what was discussed. Their reports were published in full together with the scientific background papers and the plenary speeches of the heads of states in the conference book, *Federalism in a Changing World – Learning from each other*.

These reports recorded the work of 600 decision makers and opinion leaders from over 60 countries in the fields of politics, administration, science, and economics who participated in the conference. The reports were analyzed openly and without any given theory or model of federalism in mind.

Results show common values

The research showed that the 300 most recurring statements could be organized into four categories: *identity, responsibility, mutuality and pragmatism*. Below, readers will find one representative statement for each category.

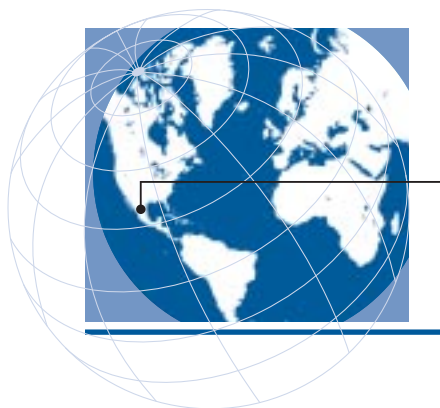
Identity. *Every individual or group in a federal system enjoys more than one identity, and these identities almost always overlap. This can extend as far as a sense of different nationalities – one nation with several nationalities.*

Responsibility. *“Whoever pays, decides”. There was consensus during the dialogue that the level of government responsible for a particular service should have the capacity to raise taxes to pay for that service.*

Mutuality. *The process of developing a constitutional compact must be inclusive in order to develop a common identity that undergirds nation building. The larger the number of people involved in consultations or negotiations leading to new laws, and the better informed they are, the more motivated they will be to implement those laws. This is also true of the involvement of subnational units in the federal decision-making process.*

Pragmatism. *During the process of decentralization, the emergence of parallel administrations and bureaucracies at central, regional, and local levels often leads to a more complex system in which there are no clear-cut allocations of responsibility. This is the price that some federal countries have to pay in order to live together.*

Continued on page 5



Education funding in Mexico City sparks constitutional debate

Mexican government to make its capital city pay for costs of primary education

BY MEDARDO TAPIA URIBE

A constitutional conflict in Mexico has erupted over school funding for Mexico City. For decades, the city had special status under Article 122 of the Mexican constitution. This special status provided the city funding for elementary schools from the government of Mexico. But a constitutional amendment now before the Senate could require Mexico City's government to pay for the costs of its schools. The city would then face a difficult choice: raise local taxes, cut school programs, or eliminate other services.

There is also a political side to the conflict. The proposed amendment is also a way of taking the Mayor of Mexico City down a peg or two before next year's presidential election. The mayor, Andrés Manuel López Obrador of the left-of-centre Democratic Revolutionary Party (PRD) was in the lead in opinion polls as a candidate for president. President Vicente Fox, elected in 2002 for the right-of-centre National Action Party (PAN), cannot run again for the elections in 2006. And another candidate, Roberto Madrazo, of the Institutional Revolutionary Party (PRI) was running second in the polls.

This proposed reform made the federal pact such a focus of discussion that the mayor and his party, which have a majority in the Mexico City legislature, threatened to break the city's fiscal agreement with the government of Mexico.

Federal power and partisan politics

What began as a movement towards a stronger federalism in Mexico was often blocked or diverted to political ends, whether by the PRI, in power for more than 70 years, or by PAN, the current governing party.

The argument for the federal government paying for education in Mexico City has been made on grounds of fairness, cultural pluralism and national ethnic and territorial diversity. The rationale for the reform of Article 122 goes as follows: the capital of the country needs to have a number of fiscal privileges in the educational field compared with the 31 states of Mexico. But the history of the past 70 years is one in which the central government



Mexico City Mayor Andrés Manuel López Obrador.

gave mere administrative authority over education to the constituent units instead of real powers.

When the bill to reform Article 122 was presented in the Chamber of Deputies these two critiques surfaced again. The Mexican government was accused of "punishing" Mexico City, ignoring the fact that constitutionally the federal government has treated Mexico City as an exception, leaving it under the direct authority of the President of the Republic. Mexico City has only had a representative assembly since 1987, and not until 1997 were the citizens of that city able to elect their mayor, who until that date was appointed by the President.

Is constitutional change necessary?

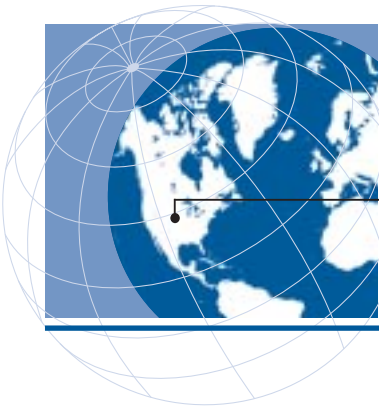
Critics have called the reform of Article 122 "unnecessary", because since 1973 the Federal Law on Education said that Mexico City must spend 15 per cent of its budget on education. This principle was reinforced in the General Law of Education of 1993, "to contribute to the financing of educational services", this time without specifying a percentage.

With the second federalization, carried out in 1992 with the Accord for the Modernization of Elementary and Teacher Training Education, all the constituent units of the country agreed to decentralized administration of these educational services. Mexico City was exempted for the same historical reasons. The constituent units were not allowed to contribute significantly to plans and programs of study, textbooks, evaluation systems, or to training and upgrading of elementary school teachers. This second federalization did not permit effective local control.

The revision to Article 122 has been approved by the Chamber of Deputies and is awaiting the decision of Senate. If the revision passes, the Mexican government will withhold the portion that it used to give to Mexico City for education to other states. That states that will get Mexico City's share will be those that now spend more than the national average – in particular, Nuevo Leon and the State of Mexico. This formula will not benefit the most needy states like Chiapas and others that have the largest indigenous populations. The fact that Mexican primary education needs to be improved – and extra money to do so – is not in question. In 2003, in the results of a world-wide evaluation called PISA, 15-year-old students in Mexico came 37th out of 40 nations studied.

This controversy has become a debate about federalism, not a debate about education. It is not proving to be a way of dealing with the educational problems of quality and fairness. (6)

Medardo Tapia Uribe, originally from Zacatepec, Morelos, has been a researcher with the Regional Centre of Multidisciplinary Research of the Universidad Autonoma de Mexico since 1989 and has been professor of undergraduate and postgraduate studies in various institutions of higher education in Mexico.



Will gay rights be a state-by-state battle in the USA?

BY JEREMY D. MAYER

Does the 2004 presidential election, in which gay marriage appeared to some commentators as key to President Bush's victory, prove that the battle over gay rights in America will fundamentally evolve at the federal level?

Not at all. Not only is it far from certain that the gay marriage issue was central to Bush's reelection, the whole discussion misses the deeper truth that the struggle between advocates for gay rights and religious-based opponents of change continues to be primarily a state-by-state battle.

While Bush's endorsement of a constitutional amendment to ban gay marriage as well as civil unions probably helped rally his base, it was symbolic politics. There is almost no chance for this amendment to pass, even though a solid majority opposes gay marriage. A distinctive feature of American federalism is that the Constitution is remarkably difficult to alter. An amendment must pass both houses of Congress by a two-thirds vote, and be approved by three-quarters of the states, a challenging process that has occurred only 27 times in more than 200 years. In 1912, when the vast majority of white Americans fervently opposed interracial marriage, and many states made it illegal, an amendment to ban it failed. An America much more divided on gay marriage is not likely to pass an amendment banning it.

What are other federal countries' laws on gay rights? See page 22.

Action at the state level

It was upheaval at the state level that caused Bush to advocate the gay marriage ban. In 2000, Vermont became the first state to legalize gay civil unions and in 2003, the Massachusetts Supreme Court inflamed the issue by ruling that gay marriage was a state constitutional right. Activist mayors in New York and California even began marrying gays in direct disobedience of state laws.

Eleven states put gay marriage bans on the ballot and they passed in most by 2-1 margins. As none of these states were about to legalize gay marriage and the federal Defense of Marriage Act (DOMA) already protected states from being forced to recognize gay marriages contracted in other states, why the rush to absolutely prevent gay marriage?

Some conservatives worried that the Supreme Court's 2003 *Lawrence v. Texas* decision that struck down anti-sodomy

laws in the few states that still had them would be the precursor to federal courts mandating gay marriage or overturning DOMA. The former fear was raised by Justice Scalia in his *Lawrence* dissent, in which he noted that Canada's courts were leading that nation down that path. In the US, given the current American court, such a course is seen as unlikely.

The worst of both worlds?

In a very real sense, the gay rights movement has gotten the worst of both worlds in the 2004 elections. While legal guarantees for gay rights nationally appear unlikely, the Republican Party has rallied its base in state and national elections by running against gays, particularly on marriage. Republican brochures in several states went out during the election, claiming that a Democratic victory would mean an immediate move to legalize gay marriage.

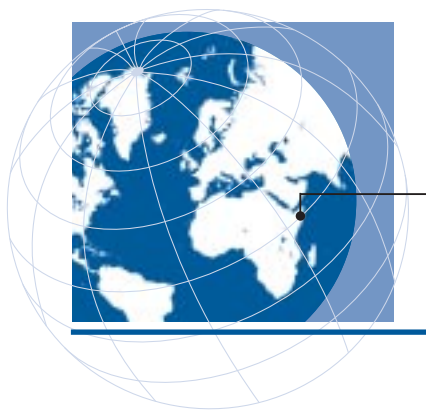
Legal rights for gay Americans did not improve after September 11, 2001. Not only were the partners of gay victims of the September 11 attacks on New York and Washington in 2001 denied survivor benefits by numerous state laws and insurance companies, the federal victims compensation fund initially decided to simply follow state policy. Yet the power of the issue was demonstrated when several states, such as New York and California, swiftly changed their compensation laws after the partners of gay terror victims crystallized the issue. If the focus of the gay rights movement had been on this persuasive injustice, election day would have produced better outcomes for the gay agenda.

Gay rights laws in the future?

Looking ahead, where does 2004 leave gay rights in American federalism? The parallel with the civil rights movement is again instructive. While ultimately most of the demands of 1954 were realized by 1994, the backlash against civil rights won many elections for the Republican Party in the interim.

The final irony of 2004 for gay Americans is that they lost ground while the acceptance of homosexuality in American culture has never been greater. Yet even President Bush has implicitly acknowledged that the tide of history is not with the anti-gay forces. In the last week of the campaign, he made a point of disagreeing with the constitutional amendment, saying that he didn't oppose civil unions. If the most religiously conservative president in modern American history doesn't oppose civil unions, the die is cast. (6)

Jeremy D. Mayer is an Assistant Professor at the School of Public Policy of George Mason University, Alexandria, VA, USA



Somalia's transitional government starts building a federal democracy

BY **BURHAAN WARSAME**

Several ministers from Somalia's newly-formed transitional federal government have recently toured the country's coastline to assess the damage caused by the tsunami, which left 50,000 people without shelter, water and food.

The tour marked the first foray into the country by the new government, formed by a transitional federal parliament made up of representatives of the country's clans meeting in Nairobi, Kenya. The government plans to start moving members of parliament and cabinet ministers to the capital, Mogadishu, by the end of January. Moving the rest of the government would continue until April. The African Union has pledged to send a peacekeeping force to protect the government in Somalia.

The process that led to the formation of the new government has been long and difficult. It took two years to agree on the make-up of the transitional parliament. In early October, the parliament elected Abdullahi Yusuf as president. Then President Yusuf presented Ali Mohamed Ghedi as his choice for Prime Minister. But when Ghedi announced a cabinet, he lost an initial no-confidence vote, proving that parliamentary democracy had indeed begun in Somalia – a government motion had been defeated.

In late December, the president presented Ghedi again – without a cabinet – and parliament approved. And in January, the parliament agreed on a formula for dividing cabinet posts among the clans and later approved Ghedi's second cabinet, made up of all the major warlords, factional leaders and some former politicians and technocrats.

New hope for a failed state

The transitional federal government of Somalia is the result of a two-year reconciliation conference in Kenya. The conference, sponsored by the Inter-Governmental Authority on Development (IGAD) – a regional body consisting of Ethiopia, Djibouti, Eritrea, Sudan, Somalia, Kenya and Uganda – brought together representatives from various Somali clans, civil society groups and political factions. The conference was the most serious and sustained effort at reconstituting a national authority for Somalia, a country that has experienced one of the longest-running instances of state collapse in modern history.

The country's unitary national system of governance collapsed in 1991 when clan-based armed factions overthrew President Mohammed Siyad Barre and turned on each other in a disastrous civil war that divided the country into clan

fiefdoms. Since the collapse, numerous attempts, including a major American-led United Nations military intervention in the early 1990s and at least 13 internationally sponsored reconciliation conferences, have all failed to restore peace and national authority.

Skeptics predicted a similar fate for the latest attempt. But after much acrimony and disagreement, the IGAD-sponsored conference has produced consensus on key points, including sharing power along clan lines and adopting a federal system for governing the country's fractious regions.

Power-sharing: the 4.5 formula

In a break with the post-colonial "nationhood" rhetoric that characterized both the first republic (1960-1969) and the second (1969-1991), the Somali participants at the Nairobi reconciliation conference have embraced the traditional clan system as a power-sharing mechanism.

The participants, whose ranks occasionally swelled to as many as 800 delegates representing competing political factions, civil society groups and traditional elders, agreed to lay the groundwork for a national authority by forming a parliament where all the Somali clans are represented. And after lengthy negotiations on who gets what and how much, they agreed on a 4.5 formula: The four major clans (Dir, Darod, Hawiye, and Digil-Mirifle) would get 61 seats each, while a bloc of minority clans would get 31 seats to form a 275-member transitional national parliament.

The process of sharing parliamentary seats according to the 4.5 formula was complicated and at several points during the process, the Nairobi talks almost collapsed. Within each clan are dozens of subsidiary clans, all of whom have an inflated image of their importance and numerical strength.

In the end, however, the Transitional Federal Parliament of Somalia was inaugurated in Nairobi, Kenya on August 29, 2004, with the understanding that the executive and judicial branches of the Transitional Federal Government of Somalia would also be shared along the same 4.5 formula. So when the parliament elected Sharif Hassan Sheikh Aden of the Digil-Mirifle clan as the Speaker on September 15, his clan understood that they were out of the running for the position of President and Prime Minister.



Somalia's President Abdullahi Yusuf and Prime Minister Mohamed Ghedi (right).

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By early October, in a campaign contested by 28 candidates, the parliament elected Abdullahi Yusuf, a member of the Darod clan and the leader of the autonomous northeastern state of Puntland, as President of the Republic. Less than a month later, President Yusuf appointed Ali Ghedi, a member of the Hawiye clan, as Prime Minister, who formed a cabinet according to the 4.5 formula.

The clan formula has its critics. The nationalists, a group that seems to have been relegated to the margins of the political process, see the adopted formula as an institutionalization of the clan system that would further weaken the cohesiveness of the homogenous Somali people (a majority of whom share a common language, culture and religion). Some women's groups have also expressed concern over what they see as an old patriarchal system that may negate female participation in the political process – only 16 members of the 275-member parliament are women. Still, most Somalis appear to have welcomed the clan-based power-sharing mechanism as a suitable transitional system.

Agreement on a federal charter

Of all the issues under discussion at the Somali reconciliation conference, none has been thornier than the adoption of a federal charter for the country. By summer of 2003, five of the six committees that were set up to deal with the core issues – from disarmament to land rights – had submitted consensus reports. But the one on the federal charter had split along factional lines.

Among other things, one camp wanted to immediately adopt a federal form of governance, while the other wanted to work towards an adoption by first forming a national constitutional commission, which would be given the responsibility of developing a federal constitution and determining the constituent units of the federation. The two camps were still in disagreement when, on September 15, 2003, a poorly-organized plenary of the delegates approved the seventh draft of the federal charter. This premature approval of a charter some considered to be still under discussion led some delegates, including several important factional leaders, to walk out and pronounce the collapse of the Nairobi talks.

Although the disagreement among the delegates was not on whether to adopt a federal system, but merely on how to adopt it, their disagreement had the effect of re-energizing those who opposed the federal option in the first place. Some nationalist intellectuals, who felt shut out of the talks, used the near-collapse of the Nairobi talks as an opportunity to once again dismiss the whole process as a charade orchestrated by the enemies of Somalia (they remain particularly suspicious of Ethiopia).

It took the intervention of President Mwai Kibaki of Kenya, the host country, and President Yoweri Museveni of Uganda, chairman of IGAD at the time, to bring the two sides back to the negotiating table. By the end of January 2004, there was a convergence of opinion on the charter, including an agreement to take a pragmatic, asymmetrical approach to federalism, one that allows for working with existing autonomous states, while working towards the formation of the remaining other units of the federation.

Making peace among the clans and regions

There is a general understanding that the possible units of the federation may be identified with the major clans, which would allow for five or six states, each made up of two or more of the 18 regions of the last regime. However, only the self-declared republic of Somaliland in the northwest and the Puntland State in the northeast have functioning administrations and local parliaments that may be viewed as ready-made constituent states. And Somaliland is not likely to become a member of the federation anytime soon. The administration in Hargaisa, the Somaliland capital, does not recognize the outcome of the Nairobi talks, though representatives from the clans there have participated in the

talks. Somaliland is engaged in a dangerous dispute with Puntland over two regions that have been the source of political and sometimes military confrontation between the two autonomous states.

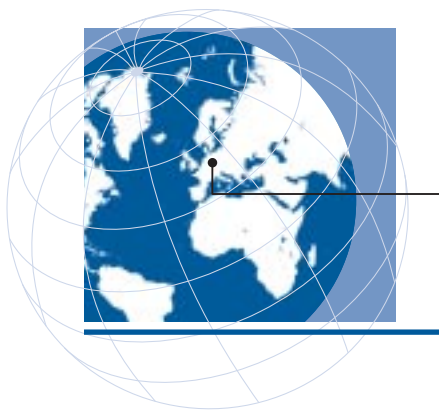
The central and southern parts of the country either have very minimal or no regional administrations. Rival clan militias contest some areas. It would be immensely difficult for the precariously constituted transitional federal government to reconcile competing clan interests, which are mostly trans-regional, with the amalgamation of regions that would form the basis of future state units of the federation.

On top of the challenges of building a federal framework from the bottom up, the government has to also deal with the more pressing operational tasks and the issues inherited from the civil war. These issues include reestablishing an effective administrative presence in the volatile capital; reclaiming control over revenue-generating assets like air and seaports; facilitating genuine reconciliation among the polarized clans and sub-clans while demobilizing and rehabilitating their still-warring militias; rebuilding the police force, judiciary and other aspects of public security; and preparing the country for free and fair national elections. All this has to be done with minimal resources and under the gaze of a skeptical international community that is more likely to adopt a wait-and-see approach than offer a helping hand. 6

In a break with the post-colonial 'nationhood' rhetoric ... the Somali participants embraced the traditional clan system as a power-sharing mechanism.

What do Somalis think?

The BBC World website ran a weblog for Somalis at home and in the diaspora with the heading "Is Somalia proof that we need governments?" Of 20 or so Somalis who responded, the overwhelming majority said yes, with only a few arguing that no government was better, and a few praising the break-away government of Somaliland in the north of the country. A BBC reporter also interviewed eight Somalis in Mogadishu and asked them what the new government's priorities should be and how they survived 14 years with no government. People mentioned security and transportation (without roadblocks) as the greatest needs. The eight survived by doing everything from selling khat (a mild drug) to manning an armed checkpoint, to carrying supplies in the market, to singing at weddings of rich Somalis. Nearly all supported the new government, but with some skepticism. The weblog is at http://news.bbc.co.uk/1/hi/talking_point/4022009.stm



Federal Reform in Germany—another failed attempt

Federal government and Länder fail to reach agreement

BY **RAINER-OLAF SCHULTZE**

After 13 months of deliberation, the joint *Bundestag and Bundesrat Committee on Modernization of the Federal System* has failed in its attempt to overhaul and modernize the highly integrated German system of intrastate federalism. The committee proposal was supposed to be delivered by December 17, but the 32 full voting members of the commission (see Box 1) have not been able to come to an agreement.

The commission's agenda was demanding, even though not comprehensive. It aimed primarily at:

- enhancing the ability of the federal and *Länder* governments to make decisions more independently of each other;
- clarifying the distribution of jurisdictions between the federal and the *Länder* governments and assigning political responsibilities more clearly; and
- increasing governmental and administrative efficiency and effectiveness.

Not included, however, were crucial features of German federalism such as the redrawing of territorial boundaries or core elements of fiscal federalism, particularly joint taxes (income tax and VAT) as well as the "Solidarpakt", which determines the size of federal and *Länder* transfers in favour of the five East German new *Länder* until 2019. The system of horizontal equalization was not touched either.

What the federal government wanted

The federal government's primary aim was to reduce the number of federal bills which must be approved by the second chamber, the Bundesrat (controlled by the state or *Länder* governments). The number and range of those bills increased continuously since the 1950s. Today they make up more than 60 per cent of all federal bills. In the case of opposing majorities in the two chambers, the Bundestag and the Bundesrat, there has to be something approaching an all-party compromise on federal reform proposals. In the wake of growing partisan conflict, the opposition parties have been using the Bundesrat as a tool for blocking the federal government's initiatives.

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1. Who was on the committee?

Members	Rights
Full Members	
* Bund/Federation: 16 members allocated according to party strength in the Bundestag	the right to debate, to table motions, and to vote
* <i>Länder</i> : The premiers of the 16 <i>Länder</i>	
Adjunct Members	
* 4 members representing the federal government	the right to debate and to table motions; no voting rights
* 6 members representing the <i>Länder</i> parliaments	
* 3 members representing the local government umbrella organizations	
Experts: 12 academic experts (8 constitutional lawyers, 2 political scientists and 2 economists)	the right to debate; no right to table motions and no voting rights
Organization & voting procedure	
2 working groups on:	
* "division of the legislative powers and the right of participation";	
* "financial relations"	
divided into 7 thematic working sub-groups	
Quorum	two-thirds majority of the full members
Chairperson: Franz Müntefering, head of the SPD-Bundestag-caucus; Edmund Stoiber, premier of Bavaria	

Partly in order to reduce the number of initiatives subject to Bundesrat veto, the federal government sought to change three articles of the constitution (which the Germans call the Basic Law). They are: the article on federal bills that specify how the *Länder* will organize and administer their tasks; bills that entail fiscal obligations for the *Länder*; and the provisions that deal with joint tasks in areas such as agricultural policy, regional development and construction of university buildings.

Of particular concern to the federal government is the matter of concurrent legislation (see Box 2). The need for reform grew out of the fact that the federal government – in line with its constitutional responsibility to guarantee equality throughout the country – went into various policy areas which had originally been assigned to the *Länder*.

The federal government also wanted to act more independently from *Länder* governments on the supranational level by abolishing the section of the Basic

Law that gives the *Länder* a role in international affairs. As it stands now, the *Länder* participate directly in negotiations on the European level whenever their exclusive jurisdictions are affected. In many other areas, the federal government is constrained by its obligation to define a common position with *Länder* governments before entering negotiations with the European Union.

In addition, the federal government was strongly committed to disentangling shared responsibilities in the area of environmental policy (especially with respect to nuclear energy) and to transferring them to the exclusive federal domain.

The *Länder* had their own ideas

Länder governments aimed at regaining authority over various policy areas, currently under concurrent legislation, in exchange for concessions with respect to the reduction of their veto power in the Bundesrat. In particular, they asked for:

- jurisdiction over their public services, covering rights, obligations and pay of civil servants (including teachers, university professors and police);
- exclusive jurisdiction over regional policies, including labour market policies, housing, economic policies, environmental policy, and social assistance;
- exclusive jurisdiction over education, with the exception of scientific research policies; and
- the abolition of federal “framework” legislation.

In addition, the East German new *Länder* argued in favour of entrenching a constitutional provision regarding the *Solidarpakt* into the Basic Law.

The Compromise

Politicians agreed on the importance of disentanglement, but their approaches differed significantly, especially with respect to the appropriate method and instruments.

For example, experts such as Fritz Scharpf, a member of the committee who has written extensively about the “joint-decision trap” in German federalism, argued strongly in favour of opting out provisions in certain areas of concurrent legislation. He also called for more *Länder* autonomy in fiscal matters by providing them with jurisdiction over tax rates and brackets in certain fields of taxation.

The politicians and their senior civil servants chose a different path. They were primarily committed to redefining jurisdictions. And they have not been favourable to the idea of *Länder* opting out of federal legislation provisions (with the exception of environmental policy). As well, several issues caused friction among rich and large, small and poor, Eastern and Western *Länder* governments. This revealed multiple cleavages within German federalism.

The two chairpersons, Edmund Stoiber and Franz Müntefering, made several serious attempts to reconcile and they came up with a compromise proposal.

Their compromise proposed that the Bundesrat would continue to participate in federal legislation through a suspensive veto on all bills and an absolute veto on tax



The Bundesrat building in Berlin.

matters and bills that impose financial obligations on the *Länder*. But the *Länder* would give up the absolute veto they now have on those federal initiatives where the *content* of the bill is federally defined, though *Länder* have the role of *administration and implementation*. The compromise did provide that *Länder* governments would have the right to opt out in such cases.

On taxation, the changes included giving the *Länder* jurisdiction over property and insurance taxes while the federal government would take over the automobile tax. Both orders of government would be obliged to adhere to the 3 per cent of GDP deficit limit that is part of the Maastricht agreement.

As for legislative powers, the proposed changes included adding the production and use of nuclear power, foreign cultural policies and environmental policy to the exclusive federal list, with the proviso that there be opting-out provisions for the *Länder* on the environment.

At the same time a number of matters would be moved from the concurrent list to exclusive *Länder* jurisdiction. These include: the public service (structure, rights, obligations and pay of civil servants and other public employees); the penal system; certain aspects of commercial law (office and shopping hours, for instance); and public housing. As well, matters related to the press, media and film would be transferred to exclusive *Länder* jurisdiction.

Why did it fail?

The compromise would have undoubtedly changed federal-*Länder* relations. The reform would have reduced the number of federal bills subject to the veto power of the Bundesrat from approximately 60 per cent down to 40 per cent. That was the main goal of the federal government.

Some minor responsibilities would have been transferred to the *Länder*. The most important areas of public policy making, however, would still have remained within the framework of intrastate federalism. Even in the area of education the federal government would have retained some powers by means of framework legislation and joint tasks. The federal government would have been able to maintain its capacity to influence the *Länder* by, for

example, launching conditional grant-programs and by setting of standards applying to all *Länder*.

On December 17, *Länder* governments finally rejected the reform proposal. Much of the opposition came from the Christian Democratic *Länder* governments, who strongly resisted the efforts of the federal government to retain some influence in matters of education. But their resistance also indicated the divisions that exist among *Länder*

2. How the German federal system is structured

(from *Federations*, Vol. 3, No. 3)

German federalism is a highly integrated and centralized system of government. It is the model of intrastate federalism and is best captured by a term coined by Fritz W. Scharpf: *Politikverflechtung* or interlocking government based on joint decision-making.

Politikverflechtung refers to a political system in which all major political decisions are made jointly by the federal and *Länder* levels of government on the basis of solutions negotiated among the participants. It means that most governmental activities have to be implemented jointly by the federal and *Länder* governments: horizontally through inter-*Länder* cooperation and vertically through federal-*Länder* cooperation and multi-level governance. This process involves levels of government from EU institutions down to the municipalities. Institutionally, interlocking government is caused by the following:

- **constitutional clauses** that give precedence to federal over state law; clauses that enable the federal government to act and intervene if the *Länder* have not yet legislated in a particular field of shared responsibilities, or if the national interest or the interests of third-party members of the federation are affected by the legislation of a *Land*, or in order to protect the legal and economic union of the federation.
- **functionally differentiated distribution of responsibilities** where legislation is predominantly a federal responsibility (except for the areas of culture, education and the judicial system, which are under the jurisdiction of the *Länder*) while the *Länder* and municipalities carry out most administrative tasks
- ***Länder* participation in federal legislation** via the *Bundesrat*. *Länder* representation in the Second Chamber is based on the so-called *Bundesrat* principle - it is neither equal nor consistent with the representation-by-population rule; representation is asymmetrical and weighted. Members are not elected, but are delegates of the *Länder* governments. They have to vote as a block and according to the decisions taken by the cabinets of their respective *Länder*.

The *Bundesrat* has a hand in all federal legislation. There are two kinds of bills: those for which the Second Chamber has a suspensive veto only (*Einspruchsgesetze* in German), and those for which it has an absolute veto (*Zustimmungsgesetze* in German). In case of opposing majorities in the two chambers, the pending legislation is referred to the mediation committee with 16 members each from the *Bundestag* and the *Bundesrat*. The latter group of "absolute veto laws" includes not only more than 60 percent of all federal laws but also all major legislation - economic and social policy, as well as tax laws and acts concerning fiscal federalism.

governments with respect to changing the rules of the game more fundamentally. In a sense the question of education was only the nail in the coffin for the compromise. It became a particularly contentious nail when, just few days before the committee's proposal was supposed to be approved, federal Minister of Education Edelgard Buhlman reasserted the necessity to fundamentally change Germany's three-tier system of primary and secondary education by adapting it to nationally-set common standards.

There were many other reasons for the failure. For example, east German *Länder* were strongly opposed to any efforts to touch the area of fiscal federalism and horizontal equalization. Since 1998 richer *Länder* in the west have been pushing reforms in this area, consistently resisted by the east.

The overarching argument of the Christian Democratic *Länder* was that, while the reforms would allow the federal government to act more independently, efforts to decentralize fell well short of their expectations. And so they prefer the status quo to unacceptable reforms. That status quo still enables them to play a powerful role in the federal arena, influencing major legislation via the *Bundesrat* without being exposed to electoral resentment for unpopular measures.

A number of observers have commented that perhaps the greatest flaw of the reforms was that they were not far-reaching enough. A more adequate reform package would seek to address Germany's increasing cultural diversity and social disparities. One way of doing that might be by entrenching the opting-out mechanisms. That would create a more asymmetric federal system - something all sides seemed to shy away from. But when the deadline arrived in December, the *Länder* governments, in particular, were reluctant to trade their veto power in the *Bundesrat* in exchange for more jurisdiction over taxation and major legislative responsibilities.

The German reform process is another case that underlines the notion that "mega-constitutional politics" tend to fail, even when there is agreement that constitutional change is necessary. In order to accomplish profound structural reforms in federations, it might be more helpful to design committees or constitutional conventions that are made up not only of politicians who are directly affected by the reform output, but also of non-partisan experts as well as ordinary citizens.

Considering the major challenges that are shaping the political agenda in Germany, it is, however, likely that both tiers of government will soon revive negotiations and somehow come up with an agreement. And German experts predict that a new reform agreement will likely be similar to the one proposed by the two chairpersons! Leading politicians from all parties along with Horst Köhler, the President of the Federal Republic, all say that it is necessary to come to an agreement soon, although it is unlikely that the committee itself will be re-established.

The window of opportunity, as both sides including the co-chairman Edmund Stoiber have stated, will close this summer. From then on political parties will be preoccupied with preparations for the next federal election campaign in the summer of 2006. ☺



Elections abolished for Russian governors

BY VLADIMIR N. LYSENKO

A new law that allows Russian President Vladimir Putin to appoint Russia's 89 governors has deepened the rift in Russian public opinion over the process of centralization in Russia. Putin signed the law on December 13, after it was approved by the State Duma. This law abolishes the direct election of governors in the regions of the Russian Federation. The Russian President will now propose his candidate to the legislative assembly of a region, and the assembly will either approve or reject the candidate. If an assembly twice rejects the candidates proposed by the President, the assembly will be dissolved, and new elections called.



Russian President Vladimir Putin.

Putin proposed the measure after the Beslan school attack in September. The president claimed the law would strengthen control of the country and help the fight against terrorists.

The opinion of the Russian political elite is split over the law. The majority of governors and presidents of the republics supports Putin's initiative. In the south Urals, the President of Bashkortostan, Murtaza Rakhimov, said, "We strongly and unconditionally support the measures undertaken by the Russian President in order to provide security of our country and its citizens and to make all levels of power better ruled" (*Nezavisimaya Gazeta*, October 8, 2004). The representative of the opposition, Aleksander Ivanchenko, ex-Chairman of the Central Electoral Commission of Russia, is opposed to the law: "Appointment of regional heads doesn't comply with the Constitution, which establishes both the democratic republican regime in Russia and federative nature of organization of the state power" (*Nezavisimaya Gazeta*, October 30, 2004).

Russia's 89 constituent units

The 1993 Constitution of the Russian Federation defines Russia as a federal state consisting of 89 constituent units, called "subjects of the federation" in Russian:

- 21 national republics
- 55 oblasts and territories
- 2 cities (Moscow and St. Petersburg)
- 10 autonomous okrugs

Vladimir N. Lysenko is Co-chairman of the Republican Party of Russia. He was a member of the Russian State Soviet and then the Russian Duma (1990-2003) and was the Duma's Deputy Chairman of the Committee on federation affairs and regional policy from 1996 to 2003.

Centralization: expanding "vertical power"

After coming to power in 2000, Vladimir Putin started his first presidential term by beginning to centralize executive power in the Russian Federation. Russians call this expanding "vertical power". In May of 2000, he divided Russia into seven federal districts headed by the authorized representatives of the President, most of whom are generals. In addition, each region of the Russian Federation got a federal inspector appointed to exercise control over the popularly-elected governors. In November, 2004, Putin introduced a bill in the State Duma to raise the minimum number of members a political party must have to win seats in the Duma. The limit, which was 10,000, has been raised to 50,000. To claim seats, a party will also have to have at least 500 members in at least 45 of the 89 regional legislatures.

Opinion split over law

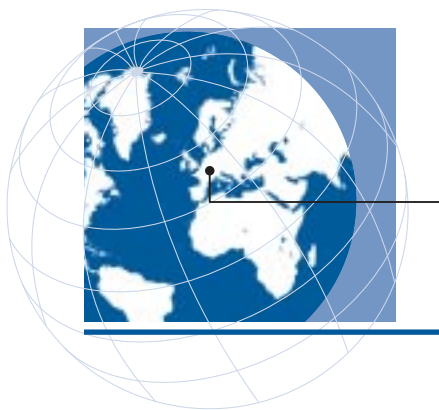
More than 70 opinions on the bill were submitted to the State Duma by legislative assemblies of the regions. Only the legislature of the Murmansk oblast objected to Putin's draft. Other regional legislatures in their opinions supported the concept. However, all regions strongly opposed dissolving regional legislative assemblies for refusing to approve a candidate proposed by the President.

Opposition to the law comes from Russian popular opinion and from beyond Russia's borders. The results of polls made by VZIAM (the oldest Russian independent public opinion research centre, headed by sociologist Yuri Levada) show that 52 per cent of Russians surveyed prefer electing governors and only 28 per cent favour appointing them. On December 10, Giovanni di Stasi, President of the Council of Europe's Congress of Local and Regional Authorities, expressed the council's fears that by making it easier to dissolve regional parliaments, the law would weaken Russia's federal structure. US President George W. Bush, many European leaders and the general public of many European countries have also criticized this law.

A legal challenge?

A group of famous Russian lawyers and human rights defenders has brought the issue to the Constitutional Court of the Russian Federation. The lawyers and rights advocates are hoping that the Constitutional Court will examine Putin's proposals and find them unconstitutional.

Yet despite both internal and external opposition, President Putin seems undaunted. He intends to introduce a similar procedure for the mayors of big cities, who would be appointed by Putin's governors. ☺



Swiss cantons and the confederation: Who does what and who pays?

BY PASCAL BULLIARD

Swiss citizens have said yes to giving funds to poorer and mountainous cantons to pay for government services, and to disentangle the tasks of the two orders of government. In a referendum on November 28, 2004, more than 64 per cent of all Swiss voters and a majority of those in 23 of the 26 cantons voted for the reform. Only the smaller cantons of Nidwald, Schwyz and Zug voted against the measure.

To improve the country's program of fiscal equalization among cantons, the Swiss federal parliament adopted a package of measures that went before Swiss citizens in a referendum. The package involved 27 amendments to the Swiss constitution which will require changes to dozens of laws. The financial equalization proposal, which was previously passed by both houses of the Swiss federal parliament, even gained the support of Zurich and Geneva, two cantons who will not benefit from the new law. The broad aim of the reform is to disentangle the tasks of the two orders of government, as well as to provide support to poorer and mountainous regions of the country. It represents a major development of Swiss federalism, showing that it is not only alive but can adapt in the face of new challenges.

The reform does four things:

- **disentangles the tasks** of the two orders of government,
- **follows the principle of subsidiarity** (a public task should be assigned to the order of government best suited to fulfil it),
- **eliminates wrong incentives** in the transfer system, and
- **reduces the differences** between the financially strong and the financially weak cantons.

The current system of financial equalization has been described as promoting centralization, creating redundancies, lengthening the decision-making process,

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1. Disentangling the tasks of confederation and the cantons

Confederation	Cantons	Confederation and Cantons
Pensions for the elderly	Subsidies for the construction and the use of homes for disabled persons	Complementary allowances (Confederation pays 62.5%)
		Scholarships for universities
Allowances for disabled persons	Special schools for disabled young persons	Urban public transportation
Financial help for national organisations helping elderly and disabled persons	Financial help for cantonal and municipal organisations helping elderly and disabled persons	Regional public transportation (Confederation pays 50%)
National roads	Scholarships up to secondary school	Discount for the payment of the mandatory health insurance (Confederation pays 25%)
National defence	Road security	Main roads
Funding of services working for agricultural popularization	Protection of cultural and historical monuments of cantonal importance	Official measurements
Promotion of livestock breeding	Subsidies for schools for social workers	Protection of cultural and historical monuments of national importance
	Sport (material for non-compulsory sports at school)	Fight against noise along cantonal and municipal roads
	Local airports	Structural improvements in agriculture
	Special arrangements for mountainous regions	Protection of nature and the environment
		Protection against floods
	Cantonal agricultural popularization	Protection of waters
		Maintenance of forests
		Hunting inspection
		Fishing inspection
		Execution of legal punishments

Source: Swiss Federal Department of Finances, 2004

and being complex and difficult to control. Currently, about 30 laws govern the financial flows of 15 billion Swiss francs between the confederation and the cantons.

In Switzerland today, there are large variations in size, GDP and population among the cantons – ranging from Zurich with 1.2 million (one-sixth of all Switzerland's inhabitants) to Appenzell Innerrhoden with only 15,000.

Fiscal equalization began in 1959

The first fiscal equalization system among the cantons was introduced in 1959, when the federal government was given the constitutional powers to do so. The fiscal equalization law was designed to provide all cantons with the means necessary to carry out their functions within the federal state and provide their citizens with a basic level of services.

The Swiss confederation provides federal grants to the cantons. The distribution of these grants is based on what the law calls the “financial capacities” of the cantons. The formula to calculate these grants takes into account the taxes raised by each canton. The formula generates an index for each canton. Those cantons with an index of at least 120 are considered to have a high financial capacity and they will get no grants or only fixed ones. The cantons with an index of 60 or below will get grants at the maximum rate. For the cantons in between, a floating scale will be applied. Fiscal capacity of the cantons is not only taken into account in the calculations of grants-in-aid but it is also used in revenue sharing and in determining cantonal contributions to social security.

Total fiscal equalization currently exceeds 7.5 billion Swiss francs per year. On a percentage scale, 100 per cent would represent complete equalization. In the current system, the amount of equalization is somewhere between 15 and 16 per cent. Less than half of the funding for this equalization comes from federal grants. Two-thirds of current equalization programs result in less than 40 per cent equalization. Causing this inefficiency is the byzantine system of decision-making and financing between the federal government and the cantons. After years of political compromise, fiscal equalization has developed into a system of unrelated measures.

Equalization doesn't cover everything

In this respect, the thrust of the new fiscal equalization confirms an important feature of Swiss federalism: there is neither a legal obligation nor a political commitment to ensure the exact equality of all government services everywhere. Fiscal equalization should provide not the same but only a basic level of public services. Solidarity, as far as it goes, is based primarily on negotiation, while consensus is difficult to achieve within a political unit larger than a municipality.

The present fiscal equalization system takes into account adverse geographical conditions (isolated cantons high in the mountains, for example). The system also compensates for the special burden related to infrastructures of national interest, such as motorways and military barracks, which are the fiscal responsibilities of the relevant cantons. In addition, social problems have become more important.

Two criteria: geography and social conditions

For all these reasons, the project on reform of financial equalization and task allocation sets out two types of cost compensation: compensation for geography and compensation for social conditions. The first one gives more to mountainous cantons. Three elements would be taken into account: the area above an altitude of 1,080 metres (weight: 33.3 %), the population living above 800 metres (weight: 33.3 %), and the structure of settlements, those with less than 200 inhabitants or with a low population density (weight: 16.7 % each). The second type of compensation is a specific one for cantons with high per capita cost for social welfare and infrastructure resulting from problems in the urban core. Two types of costs would be identified: the socio-demographic cost, such as poverty, old age, integration of immigrants, addicts, unemployment (weight: 66.6 %), and the specific cost, an additional cost due to central city problems (weight: 33.3 %).

2. Tasks of inter-cantonal collaboration

Institutions to help integrate disabled persons
Specialized medicine and specialized clinics
Cantonal universities
Professional technical schools
Urban transportation
Execution of legal punishments
Cultural organizations of supra-regional importance
Waste management
Sewage treatment

Source: Swiss Federal Department of Finances, 2004

One estimate shows financial flows as follows:

The confederation will pay 1.4 billion Swiss francs and the financially strong cantons will pay 1 billion Swiss francs for resource equalization, to provide funds for the cantons that don't have the income to pay for certain services. These 2.4 billion Swiss francs all will go to the financially weak cantons. Parallel to this system, the confederation itself will pay 600 million Swiss francs for cost compensation. Half of this amount will go to the mountainous cantons and the other half to the central city cantons. Under the new system nearly 3 billion Swiss francs would be spent, compared with the 7.5 billion spent currently. Even though less money is spent, the new system will result in greater equalization than the current system. The reason for this lies in the inefficiencies of the current system.

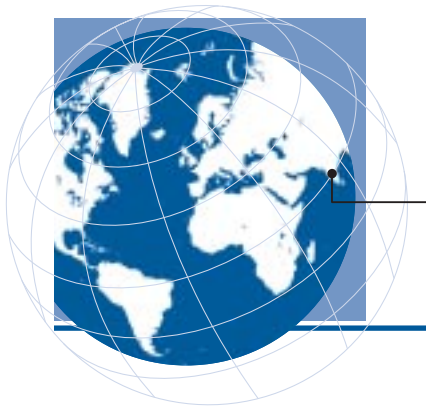
The reform is also meant to disentangle the tasks of the confederation and the cantons. But because of some resistance from the cantons, the results of the reform are less revolutionary than expected (*See Box 1*).

The project also calls for cantons to collaborate in nine fields (*See Box 2*). The consequences of this statement are difficult to foresee. What will happen if a canton does not cooperate? What would the “sanctions” be, if any? Lengthy debates about principles are expected!

The reform reduces disparities among cantons by:

- **using tax money more efficiently** (direct democracy guarantees government is directly accountable),
- **reducing disparities between cantons** in financial capacity,
- **finding solutions that meet cantonal and regional needs** more accurately,
- **moving political decisions closer to the citizens** (the subsidiarity principle),
- **fiscal equivalence**, which ensures that those who decide are those who have to bear the financial consequences: the cantons will become responsible for a larger part of public goods and services.

Now the project has been accepted. It is made up of 27 modifications of the Swiss Constitution. A lot of work remains in order to adapt the federal and cantonal laws. Moreover, a new agreement on principles and procedures has to be designed for inter-cantonal collaboration. The new system will enter into force only on January 1, 2008. Is it going to work? The success achieved by the new system will not be known for at least a year. 6



India: Bodo people's rights take a step forward

BY *HARIHAR BHATTACHARYYA*

Ethnic violence has been endemic in the North East of India since before independence, but the creation of a new territorial council for one group, the Bodos, raises hope that a political settlement between India and other militant separatists could follow.

The region has been waiting for a time of peace. Early in October 2004, separatist violence returned, killing 37 people in the state of Assam and 28 in neighbouring Nagaland. The National Democratic Front of Bodoland, a secessionist group demanding a sovereign state for the Bodo people, was believed to be involved in the attack in Assam.

The North East, an area bordered by Nepal, China, Myanmar and Bangladesh, is made up of seven federal units, most of which are tribal-dominated and contain many separatist groups. The recent outbreak of violence in Assam created problems for the formation of the Bodo Territorial Council (BTC), an interim council for self government which was formed more than a year ago.

An interim version of the council was formed in 2003 in the presence of India's Deputy Prime Minister Mr. L. K. Advani. Some 2,600 hard-core Bodo militants surrendered their arms as part of the agreement. Mr. Hagrama Basumatary, the Chairman of the Bodo Liberation Tigers (BLT), the main Bodo organization spearheading the creation of the council, took oath as its Chairman. Constitutionally guaranteed self-rule for India's aboriginal peoples is not new (see *Federations*, Vol. 3, No. 3, 2003), but the council is a case apart. So far, self-rule in India has been conceded to people who are a majority in the territory and for hill tribes. In this case, however, the Bodos make up only 11.5 per cent, or 1.1 million, of the population in the proposed council area. Bengalis, Assamese and others comprise the rest, and have seats reserved for them on the council.

Roots of Bodo discontent

The discontent of the Bodos is rooted in the history of neglect and marginalization in a state which they claim was their original home for centuries. The Bodos are a major tribal group and the most numerous plains tribesmen in Assam, constituting about 2 million out of Assam's total population of 22 million in 1991. The Bodos assert that they were the original and authentic settlers in Assam, and that in fact the Assamese are outsiders. At the time of India's independence in 1947, the Bodos constituted 49 per cent of the total population, but due to successive migration and

settlement of Bengalis, Assamese and other communities in their areas, they have been reduced to a small minority. The successive migration has resulted in the alienation of their land to the non-tribal settlers and the consequent loss of their relative strength and identity.



Bodo women threshing rice.

Resisting Assamization

When Assamese was declared the sole official language of Assam in 1960, the Bodos, having no indigenous written script for their own language, retaliated. They rejected the Assamese script that they had been using for their language in favour of Roman script. In 1976, after some persuasion by the central government, the Bodos gave up their demand for adopting Roman script in favour of the *Devnagari* script, in which Hindi, India's national language, is written.

The rejection of the Assamese script further widened the gap between the Assamese and Bodos. The move also fuelled Assamese fears that they would be reduced to a minority in their own state. For their part, the Bodos feared that their language and identity would be lost in an "Assamization".

A state-wide campaign to have illegal immigrants deported was begun in the 1970s by Asom Gana Parishad, the political party that is in power in the State of Assam today. Then in 1986, the All Bodo Students Union made new demands, including:

- a separate state north of the Brahmaputra valley,
- an autonomous district in the tribal areas on the south bank of the Brahmaputra River, and
- the inclusion of Bodo language in the 8th Schedule of the Indian Constitution, giving official status to their language.

A period of violence

In the 1980s, the Bodo Liberation Tigers, a militant organization, started engaging in violence. Before the 1983 State Assembly elections in Assam, they massacred a large number of Assamese who also retaliated. Since the 1990s, violence led by the Bodo Liberation Tigers included blowing up trains and bridges, with resulting loss of life and property. Several thousands have died in the eighteen-

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Who are the Bodos?

Some authors claim a history of settlement in Assam by the Bodo people before 3,000 C.E., but contact with the emerging Aryan culture began in the 7th Century C.E. when the influence of Hinduism began. The Bodo language, spoken by 1,221,881 people according to the 1991 Census of India, is part of the Tibeto-Burman family of languages. Their traditional economy is agricultural, amid the rise of other industries: Assam produces half of India's tea, half its rice, and a large part of India's oil. A rich tradition of song, dance and literature among the Bodos resulted in a cultural revival that began in the 1920s. With the increasing settlement of Indians from other areas, tensions grew and the revolts broke out in the 1980s, with on-again, off-again ceasefires. The name Bodo is actually a misnomer – the original name was "Boro" but Brian Hodgson, a British colonial official and ethnologist got it wrong in the 19th century, and the term "Bodo" has been used ever since.

year-old Bodo insurgency. During this entire period, the Bodos' demand for a homeland meant, in most cases, simply a political unit within the Indian federation. That demand has been one the government did not concede because the Bodos do not constitute a majority in the areas where they are concentrated today.

So far, two ethnic peace accords have been signed by the government and the Bodos in 1993 and 2003. These accords offer them a large measure of autonomy within Indian federalism.

The First Bodo Accord

The first accord was signed in 1993. It provided for a democratically elected Bodoland Autonomous Council in the northern valley of Brahmaputra River, which is 50 per cent or more tribal in population. The Council was given competence, under Assam State law, over the following: cottage industry, animal husbandry, forests, agriculture, public works, sericulture, adult, primary and higher secondary education, cultural affairs, co-operation, *panchayats* (village councils) and rural development, health and family welfare, irrigation, social welfare, trade and commerce, town and urban planning. A line item in the State Budget provided the finances. The council was specifically required to safeguard the religious and social practices of the Bodos, customary laws, procedures and control over ownership and transfer of land.

Failure of the Bodoland Autonomous Council

Following the Accord, the Bodoland Autonomous Council Act, 1993, was passed in the Assam Legislative Assembly. But as a result of severe opposition from various Bodo organizations, the elections to constitute the body never took place. The bone of contention was 515 additional villages that a section of the Bodos had demanded and the Government of Assam refused to include on the ground that the Bodos did not constitute more than two per cent in those villages.

A number of militant Bodo organizations including the Bodo Security Force (later renamed National Democratic Front of Bodoland) and the Bodo Liberation Tigers, opposed the Accord tooth and nail but established effective control over the nominated council. A period of ethnic cleansing began in 1994 and continues into the present. In 1996 nearly

100 Santhals (another non-Bodo tribe) were killed by the Bodos in the council areas, forcing nearly 100,000 Santhals to take shelter in relief camps in Lower Assam. The goal of the extremists' agenda was to reclaim the land which had been taken away from the Bodos some 40 years ago.

The Second Bodo Accord

The post-1993 Bodoland movement turned increasingly violent, and the Bodo Liberation Tigers came to occupy the driver's seat. In 2003, the second accord was signed by the Government of India, the State of Assam and the Bodo Liberation Tigers, on behalf of the Bodos, for an autonomous Bodo Territorial Council having more or less the same competence as the original one, but with more autonomy under the Sixth Schedule of the Indian Constitution.

The council was set up as a 46-member body with 40 seats elected and another 6 nominated by the Governor of Assam. A total of 30 seats were reserved for tribals, 5 for non-tribals and 5 for others. The council was set up to operate in Assam's Kokrajhor, Udalguri, Baska and Chirang districts – the last three to be created – covering 3,082 villages. Adequate safeguards were to be incorporated to ensure protection of the rights of non-tribal people, covering land and other rights in the council areas.

The future

Because the Bodos are a small minority in the council areas but will have 30 seats out of 46 in the council, the new council at first glance does not seem to be democratic. But there are rights other than pure democracy at stake: the overriding concern in the peace accords remains the protection of the endangered aboriginal community from further onslaught on their identity.

The Bodos now have their autonomous political unit for self-governance. The Bodo Territorial Council was given authorization under the 6th Schedule of the Indian Constitution by a constitutional amendment. In December 2003, the Indian parliament protected the Bodo language by placing it under the 8th Schedule of the Indian Constitution with the passage of the 100th Amendment Act. These are real achievements for the Bodos. The newly formed interim council identified its priorities as a solution to long-term underdevelopment in Bodo areas: health-care, education and infrastructure. Elections to form the council were to be scheduled within six months after March 2003, when the Bodo Liberation Tigers would transform itself into a political party to contest elections. (The Tigers did disarm, and an interim council was formed in December 2003.)

But there is opposition on both sides: from the National Democratic Front of Bodoland on the one hand, and from the 18-party non-Bodo Sanmilito Jangoshtiya Sangram Samity (the united front of various peoples). The non-Bodo group claims that their community is not allowed to own land in the council areas. The central government's recent offer of talks with the National Democratic Front of Bodoland is unlikely to produce anything better than the institutional solution of the Bodo Territorial Council. The state government approved the formation of the council in principle. The local intellectuals at large tend to see the proposed council as the best hope of resolving the Bodo problem. Given that the North East is proposed as a corridor for India's trade and commerce with South East Asia, internal peace in the region is of overriding importance. 6



Canada: a noisy squabble over offshore oil and equalization

A bit of hot rhetoric and brinkmanship ends in a deal between the federal government and two Atlantic provinces.

BY JENNIFER SMITH

Last fall Canadian Prime Minister Paul Martin and the premiers of the provinces and territories – together referred to as “first ministers” – met to consider the key points of the federal government’s proposed new equalization package. At the conclusion of the meeting the prime minister announced broad support for the package. On the very same day, however, Premier Danny Williams of Newfoundland and Labrador, the country’s easternmost and poorest province, quit the meeting and went home, accusing the prime minister of reneging on a deal to permit the province to keep 100 per cent of its offshore oil and gas revenues.



*Newfoundland Premier
Danny Williams.*

Premier Williams ordered Canadian flags to be removed from provincial buildings, and menacing words flew back and forth between the province’s capital and the federal government. Then suddenly, before Parliament resumed from its winter break at the end of January, an agreement was announced: the federal government had compromised and struck a new deal with Newfoundland and Labrador and with its fellow Atlantic province, Nova Scotia.

Clearly an equalization agreement is an emotionally-charged issue in Canada. What happened? And what have offshore oil and gas to do with equalization? (see Box “How Canadian fiscal equalization works”)

Not just about money

The negotiations on equalization that preceded the agreement were among the most interesting to date for several reasons. First, the offer that the federal government made to the provinces and the three territories contained some innovative elements. Second, there were the rents from offshore oil and gas. Third, there was the precarious minority-government status of the Martin federal government.

What the federal government offered was not simply a matter of more money than before, although there is that. For the last several years, the federal government has received more tax revenues than it has spent, and therefore it can afford to be generous. To give a sense of the amounts involved, in 2004-2005, the provinces were slated to receive some C\$9.66 billion. Under last fall’s offer, in 2004-2005 they would receive C\$10 billion, and the territories would receive C\$1.9 billion. In 2005-2006, the figures are C\$10.9

billion and C\$2 billion respectively. The new deal with Newfoundland and Labrador now guarantees that province alone C\$2 billion over eight years.

In addition, the federal offer last fall included a promised increase of 3.5 per cent per year until 2009-2010; and the establishment of an independent panel to review various elements of the equalization programme and make recommendations for improvements.

The significance of the second and third proposals is worth pausing to consider.

Arguably, the promised 3.5 per cent per year is inconsistent with the idea of equalization, which is to ensure that no province falls below a

standard fiscal capacity as measured by specified revenue sources. It is not impossible to imagine a scenario in which each province is close to the standard, in which case the equalization figures would fall. The promise of increases each year injects into equalization an element of the “no-strings attached” grant programme.

Take out the politics...

One new factor of interest was the independent panel proposed by the federal government to review the current formula used to measure fiscal capacity. It will also examine alternative approaches that might be employed to measure it; consider the public level of support for the equalization programme; and finally advise on whether the independent panel should be made permanent.

A second factor was the fact that oil and gas producer companies are doing very well, but so are the governments that receive rents from the companies. No one can predict the future of oil and gas prices.

Finally, in the general election in June 2004, the governing Liberals lost their majority-party status. Prime Minister Martin leads a minority government that is dependent upon support from elected members of the other parties in the House of Commons. Unhappy provincial governments have more leverage with this federal government than they would with a government supported by a solid majority in the House.

Unfinished business

Offshore resources have a significant effect on equalization payments. As the rents that the provinces derive from these resources increase, so does their fiscal capacity. They move closer to the five-province measure of the standard provincial tax yield. As a result, they receive less in

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equalization payments. Currently the federal government takes back about 70 cents in equalization for every dollar earned in offshore energy revenues.

From the standpoint of the two provinces in question, this was hard to take. Their argument, in a nutshell, was that the offshore oil and gas resources constitute a windfall, rather like winning a lottery. They wanted to reap one hundred per cent of the rents from the windfall, *without those rents jeopardizing their current share of the equalization payments*. They wanted a chance to vault to the “have” status.

And there is one other point. During the June election campaign, Prime Minister Martin, his poll numbers looking none too good, stopped in St. John’s (the capital city of Newfoundland and Labrador) and promised Premier Williams – or so the Premier says – that the province could keep 100 per cent of the rents from the offshore oil and gas, no strings attached, meaning no proportionate clawback of equalization payments by the federal government. Needless to say, the federal government has been bedeviled by this event ever since.

A cap and an eight-year limit

Campaign promises aside, from the standpoint of the federal government, the position of the two Atlantic provinces was at odds with the rationale of the equalization program. These provinces have been recipients of equalization for many years, indeed from the start of the programme. The fact that now the rents from the offshore resources bring them closer to the five-province average is a good thing all around even though it means getting less in equalization. The federal government had another argument, too. It owns the resources offshore under the sea bed, a legal point established in the courts many years ago. Therefore it has a role to play in relation to those resources on behalf of the people of Canada.

The federal government chose, post-election, to revise the campaign promise, at least as it was understood by Premier Williams, by attaching conditions to it. One was a proposed cap on how much revenue from the offshore resources the provinces could receive before the resumption of the clawback under the equalization principle. Another was to include equalization payments in the determination of fiscal capacity (the ability to raise revenues from taxes and other sources), the crucial consideration in calculating equalization. Yet another was a proposed eight-year limit on the agreement, after which it would be reviewed, presumably by the federal government.

Neither province was happy with conditions like these, and negotiations continued through the final days of December, in the course of which the federal government sweetened its offer in two key ways: first, by removing the cap and permitting the provinces to keep 100 per cent of the energy revenues; and second, by renewing automatically the arrangement for another eight years should the two provinces still be eligible for equalization payments.

At the end of January, the three governments announced a deal that guarantees Nova Scotia at least C\$830 million over an eight-year period, and Newfoundland and Labrador a minimum of C\$2.6 billion over the same period.

How Canadian fiscal equalization works

The term “equalization” refers to an intergovernmental transfer program – no strings attached – that is designed to enable the provinces and the territories to provide comparable services in areas like health care, welfare and education at comparable rates of taxation.

Under the Canadian constitution, the provinces are responsible for these services, and have taxing powers to deliver them. However, the economies of the provinces range from rich to poor and in-between. Without equalization there would be enormous variation in the quality of these programs.

Established in 1957, the equalization mechanism measures the gap in the fiscal capacity of the provinces by comparing the revenue sources available to them. A “standard” tax yield is established, and provinces that fall below it receive transfers from the federal government that bring them up to the standard yield. Provinces above the standard receive nothing.

It is worth stressing that the system measures fiscal capacity, not differences in the costs of services or need, as do equalization schemes in other countries such as Australia and South Africa. Further, the federal government makes equalization payments to the recipient provinces out of the federal treasury, in other words, out of taxes paid to it by Canadians across the country, including those who happen to live in the recipient provinces.

In 1982, in an important development in the history of Canadian federalism, a statement on equalization was added to the constitution.

Under the deal, the two provinces will keep 100 per cent of the royalties from the oil and gas resources (no cap), *and* continue to collect equalization payments until they reach the five-province fiscal capacity standard. If they do not reach the fiscal-capacity standard by 2012, then the agreement is extended for another eight years. Should they reach the standard during that period and therefore no longer qualify for equalization payments, then they will get transitional payments for two years.

Certainly the deal is richer than the federal government anticipated. Nonetheless, arguably the outcome is a win-win situation. For its part, the federal government has maintained the principle of equalization subject to the two-year compromise of transitional payments. Moreover, the agreement is subject to a time limit, after which the division of the royalties between the two governments will be renegotiated. Finally, there is nothing in the agreement to disturb the fact that the federal government owns the resources.

It is a classic centre-region conflict in a federal system. And it has been resolved by tough negotiations among the principal players. ⑥



Briefs & Updates

African Union summit meets in Abuja, Nigeria

The fourth summit of the 53-member African Union met from January 30 to 31 in Abjua, Nigeria. Hosting the conference was Nigerian President Olusegun Obasanjo, who is the current chair of the African Union. Heads of state including South African President Thabo Mbeki and Egypt's President Hosni Mubarak joined UN Secretary-General Kofi Annan for discussions. Topping the list of items discussed were African conflicts in the Ivory Coast, Democratic Republic of the Congo and Sudan's Darfur region, as well as the impact of diseases such as AIDS, malaria and polio. Plans to expand African representation on the UN Security Council and changes to that body were also discussed.

European Union parliament approves constitution

With flags hanging from their desks in Strasbourg, members of the European parliament approved their constitution on January 12 by a vote of 500 to 137, with 40 members abstaining. The document must now be ratified by all 25 members, something that is not expected before the end of 2006. Austrian Social Democratic Party leader Martin Schulz praised the values of the new constitution as enshrining "universal, indivisible values, valid for all Europeans". Correspondent Inigo Mendez de Vigo saw it heralding "a new era on this continent". Parliamentarians admonished each other to convince their constituents to support the constitution.

But for all the support shown in Parliament, there is also a "No" campaign being organized to defeat the constitution.

Spain's Basques demand right to secede

The parliament of Spain's Basque autonomous region has voted to change their status to one of "free association" with Spain. In a 39 to 35 vote on December 30, 2004, the parliament approved the measure after three members of the *Socialista Abertzaleak* party (considered close to the rebel separatist group ETA) changed their minds and voted in favour of the measure. The party had previously said that the proposal did not go far enough. The plan has been dubbed the "Ibarretxe Plan" after Basque leader Juan Jose Ibarretxe. But even though the Basque parliament has approved the plan, it has not been approved by Spain's parliament, which seems unlikely. The Socialist Party of

Prime Minister Jose Luis Rodriguez Zapatero opposes the measure, as does the opposition Popular Party.

On February 1, the Plan was debated by Spain's parliament, where it was rejected by 313 votes to 29. The next day Ibarretxe announced that general elections in the Basque region would take place on April 17, a month earlier than planned, to show anticipated Basque support for the Plan. If the Basque Nationalist Party wins an absolute majority in the elections, Ibarretxe said he would launch a referendum on the Plan.

Besides changing their ties with Madrid, the measure would also establish a Basque system of courts and Basque representation in international bodies, including the European Union. As an autonomous community of Spain, the Basque region already controls its own finances, police, health care, schools, and other public services.

Denzil Douglas wins re-election in St. Kitts

On October 25, 2004, the St. Kitts and Nevis Labour Party again formed the government in St. Kitts and Nevis with just over 50 per cent of the popular vote and 12 of the 17 seats in the legislature. Dr. Denzil Douglas, leader of the St. Kitts and Nevis Labour Party, was named Prime Minister. One opposition party, the Concerned Citizens Movement, won 3 seats with 8 per cent of the vote, and the People's Action Movement won one seat with 32 per cent of ballots cast. The Nevis Reformation Party won the remaining seat with 7 per cent of the vote. The voter turnout was 59 per cent. There is still a possibility of a referendum on secession on the island of Nevis.



*St. Kitts Prime Minister
Dr. Denzil Douglas.*

Sri Lankan government investigates aid gone missing

The Sri Lankan government has started an investigation into reports that aid for the tsunami-stricken east coast of the country has gone astray. While government records showed that sufficient food had been shipped to the town

of Batticaloa on the east coast, there was a demonstration in the nearby town of Tricomalee on January 31 by hundreds who said the government had given no food aid and no help with rebuilding. People elsewhere complained that in January four trucks with rice, lentils and sugar bound for ethnic Tamil settlements in the north of Sri Lanka were forced to turn away by Sinhalese citizens and to give the food to Sinhalese areas instead. The reports came amid assertions by others earlier in January that aid and relief given in the areas of Sri Lanka held by the Liberation Tigers of Tamil Eelam (LTTE) was going to help that organization's soldiers. After initial cooperation between people from the LTTE and staff of the government of Sri Lanka in disaster relief in the east and the north just after the tsunami, later attempts at joint relief and rehabilitation work have been bogged down. A total of 3,000 people were killed by the tsunami along the coast of Batticaloa alone. The disaster also made 62,000 people homeless in that region.

Dispute over French water firm in Buenos Aires

Should residents of the province of Buenos Aires pay a 60-per-cent hike to pay for water supply improvements? Because the firm providing the water is a French-controlled company, the question took Argentine President Nestor Kirchner to Paris to meet French President Jacques Chirac in January. The Argentine government rejected the 60-per-cent hike and instead asked the water firm Auguas Argentinas, controlled by the French firm Suez, to invest US \$136 million in the improvements. Argentine Planning Minister Julio De Vido, who was also in Paris for the talks, said there could be Argentine government help with the improvements, but not for "free".

World Social Forum 2005 closes in Porto Alegre, Brazil

On January 31, the fifth World Social Forum ended in the Brazilian city of Porto Alegre, in the south of the country. The event drew 155,000 participants from 135 countries. There were 6,880 lecturers and 2,500 activities. The Forum started as an expression of world diversity. In a break with past practices, a group of 16 "personalities" put together the agenda and asked the 120,000 or more participants to approve it, rather than working as a large, open space without a structure determined in advance. It was also the first time that the World Social Forum brought together civil society groups to meet the World Bank and the International Monetary Fund. "It is important to be here to listen, understand the criticism and bring it back," said Simonetta Nardin of the External Relations Department of the IMF.

New Austrian constitution delayed?

Austria's constitutional convention has produced its first draft. In December 2004, the draft of a revised constitution was put forward by convention member Franz Fiedler. It contained a reference to the "right to housing" and contained the wording "Marriage and family enjoy the legal, economic, and social protection of the state." The draft did not include a reference to God. The Austrian socialists called the draft constitution "unacceptable". The socialist party wanted a reduction of the voting age to

16, among other changes. The possibility of a referendum on a new draft constitution in autumn 2005 now seems unlikely. (6)

Gays, lesbians and the law in federal countries

Belgium: Legalized gay marriage in February 2003, the second country in the world to do so.

Brazil: No laws against homosexuality, and a number of states and cities have laws forbidding discrimination against gays and lesbians. In December 2005, Brazil amended its immigration policy to recognize relationships between binational same-sex couples.

Canada: Laws against homosexual practice were repealed in 1969. Then-Prime Minister Pierre Trudeau said, "There is no place for the state in the bedrooms of the nation." Gay marriage is legal in 7 of 10 provinces, and a vote on a bill extending marriage to same-sex couples was given first reading in the federal Parliament in February 2005.

India: Section 377 of the Indian Penal Code still outlaws homosexual practice.

Germany: Laws against homosexuality were repealed in 1968 in East Germany and in 1969 in West Germany. In 2001, the Bundestag passed a "Life Partnership Law" to allow civil unions of same-sex couples. The law was strengthened in October 2004 to allow adoptions of children of the other partner and to pay support for each other.

Nigeria: Chapter 42, section 214 of the Nigerian Criminal Code makes homosexuality punishable by 14 years in prison. Under Sharia law, legal in some northern states, the penalty can be death by stoning.

Pakistan: Section 377 of the Pakistan Criminal Code makes homosexual activity illegal. It is punishable from two years to life in prison, and corporal punishment of 100 lashes. Under Islamic law (made legally binding in Pakistan in 1990), the punishment can be death by stoning.

South Africa: The 1996 constitution protects gays and lesbians from discrimination in the South African Bill of Rights. In 1998 the Supreme Court struck down South Africa's sodomy law.

Spain: The socialist government introduced a law in December 2004 to legalize gay marriage. Parliament planned to debate the bill in February.

Switzerland: No laws against homosexuality, and the Constitution implicitly bans discrimination based on sexual orientation. The canton of Zurich voted in a referendum in 2002 to allow civil unions for homosexual couples. In December 2003, the federal legislature gave first reading to a bill on civil unions for homosexuals, and a referendum process on the proposed law has been launched by its opponents.

United States of America: In 2003, the U.S. Supreme Court ruled that sodomy laws, which 14 of the 50 states still had on their books, were unconstitutional. Massachusetts legalized gay marriage in 2004, and a law offering civil unions for same-sex partners was approved in Vermont in 2000.



Letters to the editor

The disintegration of Yugoslavia

January 5, 2005

To the Editor:

Re: Federations Vol. 4 No. 1, *Why Yugoslavia failed*

I read with interest and approve of Dejan Guzina's article about the disintegration of Yugoslavia in the March 2004 edition of *Federations* ("Why Yugoslavia failed"). What the author says is entirely true, but for readers there still may be some omissions, which urges me to add some amendments. The causes of the disintegration of Yugoslavia can be basically divided into two parts, i.e. historical reasons and recent events. Guzina's article concentrates on the latter (especially on Yugoslav policy after the 1970s and its consequences), which are important and true, but they cannot provide a fully satisfactory explanation. ...

In fact, the Slovenes and the Croats wanted to live in their own sovereign republics, but they wanted to preserve Yugoslavia as a frame for economic and political cooperation. The Serbs, on the other hand, wanted to maintain the unity of Yugoslavia as a state, or they were ready to accept the sovereignty of the republics and the confederalization of the country only if the borders were modified, referring to the necessity to maintain the unity of the Serbian nation in a single state. These are well illustrated by the constitutional debates of 1990 and 1991, where, as Guzina points out, three alternatives were outlined: a federation, supported by the Serbians and Montenegro; a confederation, which was described in Slovenian and Croatian proposals; and a compromise of an asymmetrical (con)federation. The latter was promoted by the Bosnians and Macedonians as well as the Carrington Plan, the first international draft peace treaty. The reason for the failure of the agreement was not that a compromise was inherently impossible (since all parties were interested in maintaining some kind of a Yugoslav community), but the absence of any political will on the part of the decision-making protagonists of Yugoslavia, mainly the Serbian leaders. Serbia judged the balance of power to be favourable, and, as a result, instead of trying to reach a mutually acceptable compromise, it brought the conflict onto the arena of power politics with its unilateral dictates.

As the disintegration of Yugoslavia was not inevitable, neither was the fact that it had to happen as a result of a war and lead to a bloody break-up claiming 250,000 lives. It is true that as a result of the territorial mix of the Southern Slav nations, the principles of self-determination of the nations and of the states (republics) were contradictory. But this fact alone would not have led to war: whatever serious a source of conflict this discrepancy was, it was the Serbian nationalists' judgment of the situation and Milosevic's Machiavellism that made it really dangerous. The Serbian nationalists, who had superior strength, saw a good chance to achieve their maximum goals, even with a quick military victory, therefore they were ready to start a "preventive" war. This was in harmony with the Serbian President's personal interests: Milosevic consciously deepened the conflicts so that he could legitimize his power with the "defense of the nation's interests". ...

As far as Milosevic's Small-Yugoslavia was concerned (the Federal Republic of Yugoslavia proclaimed in 1992), this was, in fact, not the heir of historical Yugoslavism, but it was based on Great Serbian *raison d'état*. Its aim was to unite the different branches of Serbs in a single state. ... Following the military defeats, the introduction of UN governance in Kosovo, and the reviving of Montenegro's aspirations for independence (in spite of Milosevic's fall in the meantime) sealed the fate of this state as well.

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Editor's note: The full version of this letter can be found on www.forumfed.org. Click "search Federalism library" and choose "Yugoslavia" from the list.

Swiss voting system

August 31, 2004

To the Editor:

Re: Federations Vol. 4 No. 2, *Will the state-run electoral process work this time?*

We are a company based in Basel, Switzerland, and we have created a report which consists of the best of the accurate and reliable Swiss voting procedures condensed into a compact and thorough report. It contains samples, guidelines, tables, and cost calculations. In easy-to-read text and figures, the report explains all the processes of an election including paper ballot design, vote tabulation, cost calculations and proper transmission of election results. The *Swiss Voting System Report* is enriched with facts, figures, examples and facilities for implementation. It also contains information on how to make the US election procedures up to 20 times cheaper.

We also created a standard for fair, reliable, easy, comprehensible, and most democratic elections. If a polling station complies with our standards, the polling station is allowed to use the *Swiss Voting System Freedom of Voting®* symbol. Wherever this symbol is present, voters can be assured that their votes will be accurately counted, processed, and reflected in the final election results. The voters will know: "This time, my vote counts." These standards can be downloaded from our website.

We are not attempting to change the American voting system but more trying to support, suggest and give a lot of ideas not only to help America but also to comfort the voters by knowing that their vote will be counted. We are trying to help democracy worldwide by providing these reports.

Sincerely,

Beat Fehr
Chief Executive Officer, Swiss Voting System
Basel, Switzerland

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