

Federations

What's new in federalism worldwide

Vol. 5, No. 2 / March/April 2006

Sharia law strains Nigerian federalism



Sharia court in Sokoto, Nigeria, 2002

Canada C\$5.00
Switzerland CHF5.00
UK £4.00
India Rs76.50
Mexico Mex\$20.00
Euro area €5.00
USA and elsewhere US\$4.50

Plus:

- Canada's new government faces stiff provincial demands
- Bosnia to strengthen federal powers
- Germany close to federal system reform



A publication of the Forum of Federations
www.forumfed.org

The Forum of Federations is an independent organization that was initiated in Canada and is supported by many countries and governments.

The Forum is concerned with the contribution federalism makes and can make to the maintenance and construction of democratic societies and governments. It pursues this goal by

- **building international networks fostering the exchange of experience on federal governance,**
- **enhancing mutual learning and understanding among practitioners of federalism and**
- **disseminating knowledge and technical advice of interest to existing federations and of benefit to countries seeking to introduce federal elements into their governance structures and constitutions.**

The Forum of Federations

The name implies a meeting place for federal countries, where they can share and exchange ideas on matters of common interest. And the Forum does play that role. But it plays that role as an international non-governmental organization, which gives it the flexibility to work all over the world in a great variety of ways.

The Forum works with partners on the worldwide Global Dialogue project, a multi-year enterprise that is producing a series of unparalleled resources on comparative federalism, covering themes such as constitutional origins, division of powers and fiscal federalism. The Global Dialogue brings together scholars, researchers and seasoned practitioners. It has a worldwide range of activities, building from country workshops to global conferences.

The Forum also works intensively in a select group of countries, in collaboration with local partner organizations. Currently, these countries are India, Nigeria, Mexico and Brazil. The Forum has a vast international network of experts and practitioners. In these country programs and others, the Forum brings this international expertise to bear on the challenges each country confronts.

In countries where federalism could be part of a solution to conflicts between ethnic, religious and tribal groups, the Forum also offers its expertise and services. It has significant resources for programs in Sudan and Iraq. It also has been active in Sri Lanka and the Philippines.

The Forum also works with young practitioners and young academics in federal countries and elsewhere to help them create a worldwide network to exchange information and ideas on federal systems, and, in co-operation with other agencies and governments, to offer to youth opportunities for advancement in learning about federal practices and federal countries.

And the Forum produces a number of high-quality publications and multimedia products, all directed at busy practitioners and others, to make expertise and knowledge accessible and useful to a broad public worldwide.

Canada provided the impetus to get an organization such as the Forum off the ground. The Forum's inaugural world conference was held in Canada, at Mont Tremblant, Quebec, in 1999. That first conference led to the founding of the Forum as an ongoing institution, based in Ottawa. It also led to the International Conference of 2002, held in St. Gallen, Switzerland with participants from even more countries. The International Conference on Federalism 2005 took place in Brussels, Belgium, and the next conference will be hosted by India in New Delhi in 2007.

After the 2005 Conference, the Forum became even more international. Eight governments have now signed agreements with the Forum and they sit on the Forum's Strategic Council, supporting Forum activities and providing expertise. The governments of countries that have signed to support the Forum are Austria, Australia, Canada, India, Nigeria, Switzerland, Mexico and Ethiopia.

Forum of Federations

700-325 Dalhousie, Ottawa, Ontario K1N 7G2 Canada

Tel.: (613) 244-3360 Fax: (613) 244-3372

Email: forum@forumfed.org

www.forumfed.org

Forum of Federations' Board of Directors: Arnold Koller, Chair (Switzerland); Rui de Britto Álvares Affonso (Brazil); David Cameron (Canada); The Right Honourable A. Kim Campbell (Canada); Alex Ekwueme (Nigeria); Clarence Thomas (Manny) Jules (Canada); Teresa de Madero (Mexico); S. Lakshminarayanan (India); Wolf Linder (Switzerland); Wolf Okressek (Austria); Gil Rémillard (Canada); Ronald Watts (Canada); Roger Wilkins (Australia); Michael Zorbas (Australia).



Federations

What's new in federalism worldwide

Vol. 5, No. 2 / March/April 2006



Cover story: Can Sharia law work in a multi-religious federation?
A Sharia court in Sokoto, Nigeria hears an appeal of a death sentence upon Safiyah Hussaini, a Muslim mother convicted of adultery, in March 2002. She was acquitted by the court, which found there was insufficient evidence for conviction.
Photo: Reuters/ George Esiri

In this issue

Nigeria faces conflict: Can Sharia law work in a multi-religious federation?	3
By Betty Abah	
"Grand Coalition" makes change possible: Germany on the brink of federal reform	5
By Hartmut Kühne	
Chancellor Schüssel's challenge: How to revive the spirit of the EU in Austria . . .	7
By Melanie A. Sully	
The Sri Lankan peace process: Hopes are dwindling that calm will be restored . . .	8
By Rohan Edrisinha	
Public consortiums in Brazil: New law stimulates federal cooperation	9
By Gilberto Marcos Antonio Rodrigues	
Bosnia and Herzegovina: Revised constitution loses by two votes	11
By Vjekoslav Domljan	
India talks with Naga rebels: The challenge of peace in Nagaland	13
By Rupak Chattopadhyay	
Spain's struggle with a new statute: How much power for Catalonia?	15
By John Barrass	
Federalism in Sudan: The Comprehensive Peace Agreement and beyond	17
By Shawn Houlihan	
Canada's new Conservative government faces restive provinces	19
By Jeffrey Simpson	
US public health coverage for poor and elderly: Washington cuts and states increase health insurance	21
By John Milgrim	
Practitioner's Page: The importance of horizontal and vertical collaboration within the Swiss federal State from the perspective of the Cantons	23
By Canisius Braun	
Analysis: Aceh's non-federation with Indonesia	25
By Damien Kingsbury	
From shantytowns to modern dwellings: South Africa's cities face housing shortage	27
By Donwald Pressly	
Iraqi delegation learns Canadian and Swiss federalism first hand	29
Briefs & Updates	31
Reader Survey	32

From the Editor

This edition of *Federations* contains a wide range of compelling articles meant to engage and inform you about a variety of vital issues in 13 nations that are either outright federations or that have federal attributes. This expanded edition contains offerings on more than half of the 25 countries of the globe that are federal in nature.

We have three articles about African nations. There is an analysis of Sudan and why federalism is not making rapid inroads in that troubled nation. The piece was penned by Shawn Houlihan, the Forum's program director for Africa. Our story on municipal elections in South Africa examines the financing and role of cities in the post-apartheid era. It was done by Donwald Pressly, a writer for the *Mail and Guardian* in Cape Town.

Our cover story about Sharia law in Nigeria was written by a Lagos-based journalist who writes for *Tell*, the country's leading weekly news magazine. The journalist, Betty Abah, is now in Denver writing for the *Rocky Mountain News* on a six-month fellowship with the Alfred Friendly press fellowships. (For you movie enthusiasts, American actor George Clooney recently played the role of CBS producer (Alfred) Fred Friendly in the film *Good Night and Good Luck*, about television news in the U.S. in the 1950s.)

In Asia, we have three offerings: one about a long-simmering conflict in the Indian state of Nagaland, by Rupak Chattopadhyay, the Forum's program manager for Asia and the Pacific; the second is an update on the situation in Sri Lanka, where prospects for peace seem to have been dashed again, by Rohan Edrisinha of the Colombo-based Centre for Policy Alternatives. In our third Asian piece, Damien Kingsbury, a political studies professor at Australia's Deakin University, looks at whether an impending pact between Indonesia and Aceh means federalism by another name.

As for Europe we have articles on Austria, Germany, and Switzerland, mature democracies that are fine-tuning the effectiveness of their federal structures. Those stories come from Melanie Sully, a professor at the Diplomatic Institute in Vienna; Hartmut Kühne, the political correspondent for the



A group of prominent Iraqis visit the Forum. Story on page 29.

Rheinischer Merkur in Berlin, and Canisius Braun of the Conference of Cantonal Governments in Berne. Also from Europe is a piece on Bosnia, 10 years after the Dayton Accord, by a former Bosnian ambassador, Vjekoslav Domljan. Finally from Spain, journalist John Barrass of Radio Free Barcelona delves into how much more power the increasingly autonomous community of Catalonia is likely to claim from Spain.

From the Americas, John Milgrim of the Ottawa News Service, based in Albany, New York, takes us on a tour of the patchwork quilt health care plan that Americans seem condemned to huddle under, and Jeffrey Simpson, a longtime political columnist with the *Toronto Globe and Mail*, serves up a penetrating analysis of the new Conservative government voted into power in Canada. From Brazil, Gilberto Rodrigues, a professor with the Catholic University of Sao Paulo, describes the workings of a new law dealing with Public Consortiums that enables the sharing of public service delivery among various tiers of government. This innovation has been trumpeted as an important instrument for improved intergovernmental relations within Brazil.

On Iraq, the undersigned accompanied and wrote about a group of prominent Iraqis on the Canadian leg of their intensive study tour of Canada and Switzerland, where they came to learn about the intricacies of federalism in two stable and long-standing federal states.

You will note that this issue contains 32 pages instead of the usual 24. We have increased the number of pages per issue by eight, but will cut back to three issues per year from four. You the reader will receive a few more articles over the next year and the Forum will save on mailing and distribution costs.

We are also asking you about the magazine, what you like and what you would like to see improved. We ask you to take a few short minutes to answer the survey questions at the back of the magazine and to complete the survey by going to www.forumfed.org, by mail or fax your reply to us at 613-244-3372. If you also receive the survey by e-mail, simply reply by using the web link provided in the questionnaire. 6

Rod Macdonell

www.forumfed.org

A publication of the Forum of Federations

700-325 Dalhousie, Ottawa, Ontario K1N 7G2 Canada

Tel.: (613) 244-3360, Fax: (613) 244-3372 • forum@forumfed.org

Editorial: Senior Editor: Rod Macdonell; Associate Editors: Carl Stieren, Rose-Anne McSweeney; Editorial/Administrative Assistant: Rita Champagne

Photos: Front cover: Sharia court in Nigeria (Reuters/George Esiri); Page 3 Obasanjo (CP/Abaca Press); Page 5 Muentefering and Merkel (CP/Markus Schreiber); Page 6 Stoiber and Merkel (CP/Michael Sohn); Page 7 Schuessel (Government of Austria); Page 8 Pereis and Balasingham (Reuters/Sukree Sukplang); Page 9 Lula and Rouseff (CP/Eraldo Peres); Page 11 Youth Constitution (CP/Amel Emric); Page 13 Nagaland legislators (Rajya Sabha, Government of India); Page 15 Saura, Zapatero, Herrera (CP/Bernat Armangue); Page 19 Charest, Harper (CP/Jacques Boissinot); Page 21 Hillary Clinton (CP/Haraz N. Ghanbari); Page 22 Bush (CP/Susan Walsh); Page 23 Braun (Konferenz der Kantonsregierungen, Switzerland); Page 25 Yudhoyono (Government of Indonesia); Page 28 Mbeki (CP/Obed Zilwa); Page 29 Salim, Hamidi, Alsaadoon (Forum/Carl Stieren); Page 31 Djukanovic (Democratic Party of Socialists in Montenegro)

Federations is published three times per year by the Forum of Federations. Subscription rates are C\$20 per year in Canada, US\$20 per year anywhere else in the world. Contributions of articles are welcome. Contact the Editors at the above coordinates. The Forum of Federations cannot guarantee the return of unsolicited manuscripts.

Other editions: French — *Fédérations — Le fédéralisme de par le monde, quoi de neuf.* Russian — *Федерации - Что нового в мире федерализма.* Spanish — *Federaciones: Lo nuevo del federalismo en el mundo*



Nigeria faces conflict

Can Sharia law work in a multi-religious federation?

BY BETTY ABAH

If elected local authorities in a federal country introduce and try to enforce Sharia law, what should the central government do?

That is the thorny question that Nigeria has struggled with for the past six years. It's a complex question, because Sharia criminal codes adopted by 12 of the 36 Nigerian states have penalties that can only be applied to Muslims. This has not prevented some states from banning the drinking of alcohol by everyone, with the Sharia penalties only imposed on Muslim citizens guilty of the offence.

In February, the Government of Nigeria issued a terse directive banning the Hisbah Group in Kano, a Muslim-dominated state in the northern part of the country. The group, founded more than one year ago, functions as a Sharia law police and is responsible for implementing the Islamic Sharia law in Kano State. The reason for the ban, according to Frank Nweke, Nigeria's information minister, was that the "establishment of Hisbah contravenes Sect. 214, subsection 1 of the Nigerian Constitution, 1999." That section prohibits the establishment of state police. Nweke claimed Kano governor Ibrahim Shekarau was "seeking the funding of foreign (Islamic) countries for the training of 10,000 jihadists in the area of intelligence and practice of jihad."

Shekarau denied this allegation and sued the federal government to challenge the ban. The case is still pending. In the meantime, Hisbah remains banned in Kano state. This is the single legal confrontation between a northern, predominantly Muslim state, and the Nigerian federal government over the contentious issue of the Islamic legal code. The ban is the only measure taken by the Federal Government since the issue of states adopting Sharia law first flared up in January 2000 in the northern state of Zamfara.

Sharia poses complex problems for Nigeria, a multi-cultural federation of 140 million people and the most populous country in sub-Saharan Africa. Nigeria has a history of violent confrontation between Christians and Muslims, each of which account for nearly half the population.

The first modern-day introduction of the Sharia criminal code in a Nigerian state took place on Oct. 27, 1999, when Ahmed Sani, the governor of Zamfara, adopted the law in

an elaborate ceremony that attracted personalities from various Islamic countries including Libya's Moammar Gadhafi. The governor justified the imposition of Sharia saying it would bring about higher moral conduct in Zamfara. "There will be no stealing or corruption and people's mental and spiritual well-being is going to be encouraged."

Sharia law is based on the Koran and the Hadith (a narration about Mohammed's life and what he approved). There are nearly 50 countries with a majority of Muslims — including five federal countries: Malaysia, Indonesia, Pakistan, United Arab Emirates and Comoros. In addition, there are two countries with a majority Muslim population that are in transition to federalism: Sudan and Iraq. But full Sharia law is only enforced in a few. The most controversial parts of Sharia law are the punishments attached to the so-called Hadd offences, which include unlawful sexual intercourse (outside marriage), drinking alcohol, theft and highway robbery. The Hadd offences can carry such penalties as flogging, cutting off a hand, or stoning to death.

In Kano state, to avoid so-called immorality, a law was passed to prohibit opposite sexes from travelling in the same vehicle, but enforcement has been much resisted by the populace. The operators of commercial motorcycles, the most popular means of transportation in Nigeria, are banned from carrying female passengers in Kano. And couples checking into hotels must swear on the Koran as well as providing evidence that they are married.

Sharia and the Nigerian federation

The Nigerian Constitution is unequivocal on the matter of state religion. Sect. 10 states: "The government of the Federation or of a state shall not adopt any religion as state religion."

Sect. 38 (subsection 1) adds; "every person shall be entitled to freedom of thought, conscience and religion including freedom to change his religion and belief..."

But advocates of Sharia claim that the justification for Sharia law is found in Sect.32(12) of the Constitution, which states that: "Subject as otherwise provided by this constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty



*Nigeria's President
Olesegun Obasanjo*

Betty Abah is a Nigerian journalist and feature writer with Tell Magazine, the country's highest circulation weekly. Ms Abah recently began a six-month fellowship in the U.S. with the Alfred Friendly Press Fellowships where she is focusing on health issues.

therefore is prescribed in a written law, and ... an act of the National Assembly or a law of a state..."

The Muslim states point to the words "*law of a state*" and say that terminology provides the legal underpinning for Sharia law. It is legal, they claim, because it is subordinate legislation, duly enacted by a sub-national state government, acting within its designated powers. In introducing the Islamic law, the governors have claimed that Sharia laws had always been part of the Muslim faith in Northern Nigeria. Northern Nigeria became predominantly Islamic in 1804 as a result of the influence of Othman Dan Fodio, a Fulani jihadist from the Islamic state of Sokoto. Southern Nigeria, where British influence began after 1814, developed into a region that is largely Christian. Modern Nigeria had its origins in 1914, when northern and southern Nigeria were joined by the British.

Sharia called a threat to unity of federation

But many claim that Sharia is a threat to the unity and integrity of the Nigerian federation. At the height of the Sharia controversy in 2000, then justice minister, Kanu Agabi, stated: "Any court which imposes discriminatory punishment is deliberately flouting the constitution ... the stability, unity and integrity of the nation are threatened by such action."

Although the spread of Sharia in Nigeria is linked to an increased devoutness of the followers of Islam, it was claimed that it was spurred along by some eminent politicians, businessmen, ex-military officers as well as two former heads of state. These last two had been sidelined by the regime of President Olusegun Obasanjo, who was first elected to office in 1999. Besides carrying out a massive retirement of military personnel when he took office, Obasanjo embarked on an anti-corruption campaign, thereby stepping on powerful toes.

Obasanjo was unusually sanguine in his reaction to the Sharia controversy.

"There is no big deal about the adoption of the Sharia by the Zamfara State Government as the legal system is not new to Nigerians especially those in the North. People have their way of doing things but I do not think it will last." What was clear to many is that Obasanjo had received strong electoral support from the Muslim North, and needed to proceed tactfully to maintain the loyalty of those Northern-based voters. There was the 2003 re-election bid ahead. So from 1999 when the controversy erupted, until the 2003 general elections, the president remained a most accommodating figure.

The application of the Sharia criminal code in Nigeria has sparked headlines because of the severity of the sanctions against transgressors:

- In 2000, a peasant man had his left hand amputated for cow theft in Zamfara State.
- In 2000, a firewood seller in Zamfara also lost his wrist for stealing two bicycles.

- In September 2001, a teenage single mother, Bariya, was given a sentence of 180 lashes, having been found guilty of fornication by a Sharia court.
- In October 2001, a 30-year-old pregnant woman was sentenced to death by stoning for alleged adultery. The man responsible, her cousin whom she claimed had raped her, was set free for lack of evidence. In the end the woman appealed and was acquitted on the ground that the alleged act of adultery had taken place before Sharia law was implemented in the state.
- In March, 2002, a woman in Katsina in northern Nigeria was sentenced to death for adultery. The sentence was delayed for two years until she had finished breast-feeding her infant. She too was eventually acquitted on appeal.
- In May, 2002, a man, Sarimu Mohammed, 50, was sentenced to be stoned to death by a court in Jigawa for raping a nine-year-old girl. On appeal to a higher Sharia court, his conviction was overturned on the grounds of insanity in 2003.
- In Bauchi State in 2002, Adama Unusua, 19, was sentenced to 100 lashes by a Bauchi court for engaging in sexual intercourse with her fiancé. She was pregnant at the time of the trial.

Violence also accompanied the Sharia controversy in Nigeria. For instance, Kaduna State, the hotbed of political and religious agitation in the North, became a theatre of conflict in 2000. Christians, who have a large population in the state, protested moves by the state House of Assembly to introduce the Sharia Criminal Code in the state in February of that year. That protest met stiff resistance from Muslim faithful. The result was a three-day bloodbath from February 21 to 23.

Shortly after, it was the turn of Bauchi State, where Muslim and Christian faithful again clashed following another attempt by the state government to introduce Sharia.

President Obasanjo calls meeting of Council of State

Spurred into action, President Obasanjo hurriedly called for a meeting of the Council of State, a government national forum consisting of the Federal executive arm, the governors, former presidents and heads of states as well as security chiefs. It was agreed that the Sharia implementation be suspended and that all the states should return to the status quo, namely the penal code that had been part of the constitution. But that proved to be a temporary measure. It was shortly thereafter that the rest of the 12 states went on to declare that Sharia was the law of the land.

As predicted, the Sharia heat appears to have diffused with time in most of the North, except the last upheaval in Kano. But the underlying differences can be traced back to the different histories of northern and southern Nigeria and that fateful year, 1914, when northern and southern Nigeria were joined by the British. Some conflicts take generations to resolve. 6



"Grand Coalition" makes change possible

Germany on the brink of federal reform

BY HARTMUT KÜHNE

Update: On March 10, the Premiers of most of the 16 German *Länder* were ready to reform their country's federal system. Speaking in the *Bundesrat*, Germany's upper house, Berlin Mayor Klaus Wowereit of the Social Democratic Party spoke in favour of the reform, warning against "refighting old battles." The Premiers of all the *Länder* ruled by the two coalition partners — Christian Democrats and Social Democrats — were in favour of the reform. While the reform is deemed likely to meet the necessary two-thirds majority of the *Bundesrat*, the chances are lower of it passing the *Bundestag*. If all members of the governing coalition in the *Bundestag* voted in favour, it would pass. On a free vote, the chances are considered much smaller. The reform proposal would give the *Länder* greater powers in exchange for their giving up their right to block federal legislation.

"It's best not to watch how laws and sausages are made," said Chancellor Otto von Bismarck. The founder of the German Empire knew whereof he spoke. For the "Iron Chancellor" not only understood both politics and economics, but also owned an estate in Pomerania where he presumably turned out sausages in quantity.

Today — just like their great-grandparents — Germans shy away from the sausage factory of politics. They really dislike politicians. Many politicians are even making speeches about a crisis in the German political system. Germans are expressing an "annoyance with politics." They don't understand their political system any more, and have no faith in it to solve everyday problems.

There are many reasons for this ennui. The economy is lagging, the country is in debt, and unemployment is growing. In short, the politicians are unable to solve the problems facing their constituents. But in Germany — unlike the rest of the West — there is a feeling that these problems may have something to do with the German federal system.

Federal legislation often blocked

One quote says it all. The *Sachverständigenrat zur Begutachtung der Gesamtwirtschaftlichen Entwicklung*, a group of economics professors, wrote: "the practical structure of federalism creates a great or perhaps the greatest obstacle for the implementation of basic reforms." The diagnosis is obvious. The federal government and the 16 *Länder* block

each other's actions and the entire political process moves agonizingly slowly. The most obvious example is the blockades that both houses of the federal legislature, the *Bundestag* and the *Bundesrat*, have erected against each other.

There are other problems, such as the slow-moving coordination between the federal government and the *Länder*. Former Education Minister Edelgard Bulmahn complained about the chaos created by putting conditions on everything: "The 16 *Länder* ministers, the federal education minister and the Science Council should not be the ones to debate how the roofs of university buildings are to be supported."

This problem has been around for a long time, and it says something about how difficult it is to reform the German political process that only now is a solution being sought. At the end of 2003, a Commission for the Federal Political System — called "Kombo" by insiders — was created. The Kombo is composed of 16 governors of the *Länder*, plus the same number of members of the *Bundestag* in addition to federal ministers. Two political heavyweights led the negotiations, Edmund Stoiber, the governor of Bavaria and President of the Christian Social Union, and Franz Muntefering, leader of the Social Democratic Party in the *Bundestag*. But in the end it was all in vain. Sure, the Commission came very close to a compromise in December 2004, but in the area of education policy there were insurmountable obstacles between the centrists and the proponents of more rights for the *Länder*. And there was conflict among the political camps of the right and the left.

Left and right unite

This all changed in November 2005, when Germany came under the rule of the so-called Grand Coalition under Chancellor Angela Merkel, a Christian Democrat. The Christian Democratic Union and Christian Social Union (who together form a large conservative party) plus the Social Democrats are partners in the government. The old antagonism between left and right is gone. And there is more. The new government badly needs a success story. On the uneven terrain of economics and social policy it is difficult for the heterogeneous coalition to unite. The situation is different when it comes to federalism. This issue is less contested by the two coalition partners and this is where the new government will show its ability to negotiate.



German Chancellor Angela Merkel and Vice-Chancellor Franz Muntefering.

Hartmut Kühne studied law in Heidelberg and Geneva. He worked with the Senate of Berlin and was the Berlin bureau chief of the weekly *Rheinischer Merkur*. He is now the political correspondent of that paper. He is the author of *Auslaufmodell Föderalismus? ("A model for a federal takeoff?")*, Olzog Verlag, 2004.

The Christian Democrats and the Social Democrats came to an agreement last November to proceed resolutely with the reform of federalism. The Grand Coalition busied itself with this topic once again at the end of February. They want to transform the coalition agreement into a binding law. That transformation is expected to take place by this summer. By then the Basic Law (the German constitution) must also be amended. It will take somewhat more political power for this new government to succeed in this undertaking. And the Chancellor will need to pay strong attention to this project. Until now Angela Merkel has appeared timid about reforming federalism.



German Chancellor Angela Merkel and Bavarian government leader Edmund Stoiber.

Which cure for what ails German federalism?

What's it all about, exactly? What ails the German federal system and what medicine does the government want to prescribe for the patient? Or rather, what surgery is necessary? Let's look at the symptoms first:

First is the antagonism between the *Bundestag* and the *Bundesrat*. The *Bundesrat* is the strongest federal upper house in the world that is named by its subnational units. In it there are no members elected specifically for the chamber by their own constituent units, as is the case in the US Senate. Instead, in the *Bundesrat*, it's the governments of the *Länder* that have a certain number of votes. It is not individuals who are members of the *Bundesrat*, it is governments. That is also the case in the council of the European Union. There, the most populous member state in the EU, Germany, has more votes than, for example, Malta or Luxemburg. In the *Bundesrat*, Bavaria has six votes, and each of the smallest *Länder*, such as Hamburg or Bremen, has three.

And that's not the only peculiarity. The *Bundesrat* has considerable power — something else that differentiates it constitutionally from the second chamber in other federal countries. The *Bundesrat* holds veto power over 60 per cent of all federal laws. That veto covers almost all tax laws. In short, governors of the *Länder* can block the federal government when it comes to money matters or when it concerns their own governments. That means that nothing moves unless the *Bundestag* and the *Bundesrat* agree.

The *Länder* versus Berlin

This creates another problem. Majorities of different parties or different coalitions usually rule in both houses of the legislature. It has been 57 years since the Basic Law came into operation. For 37 of those years, the opposition party in the *Bundestag* had a majority in the *Bundesrat*. That hinders the federal government's ability to make decisions. The government certainly has a majority in the *Bundestag* — otherwise it would not have come to power. But the government can't get past the *Bundesrat*. Political scientist Franz Walter of Göttingen attributes this to what he calls the "politics of the veto". The powers held by the *Bundesrat* make speedy governance — and speedy reactions — impossible. Compromises are required. Citizens no longer know who is responsible for what.

There is another symptom: over the years, the *Länder* have been progressively drained of their powers. Not in the *Bundesrat*, obviously. But to exercise power in the second chamber, the *Länder* governments must co-operate at the federal level.

Another question is how much power do the *Länder* have at their own level. The answer is they do not have that much. They pass regulations governing universities and schools, and even administer the police. But there the power of the *Länder* stops. They can't levy any taxes of their own. They can't decide how much their civil servants will earn and they have no authority over civil or criminal law. And to make matters worse, Berlin intervenes even in the core areas of the *Länder*, such as in education. The federal government promotes, for example, the building of schools in which children will also be cared for in the afternoons. Such schools used to be scarce in Germany. And Berlin gives money to universities that excel. The federal government does not have jurisdiction over either of these fields, but the *Länder* accept this interference as long as they get a cheque from the federal government for each project in which the federal authorities are interfering. There is an old German saying: "Money never stinks." The result is that the poorer *Länder* are financially dependent on the federal government. Saarland, Bremen and the Land of Berlin could not survive without transfers from the federal government. They have more or less slipped into the status of administrative provinces.

More powers for the *Länder*?

That is exactly what will change if everything goes according to the plan of the Grand Coalition. It wants to strengthen the rights of the *Länder*. They will be able to pay their own civil servants in the future — an expenditure that makes up about 40 per cent of their budgets. Also, the federal government will more or less withdraw from the field of education.

What will the *Länder* give up in return? They will renounce a large amount of their veto rights on legislation in the *Bundesrat*. Experts hope that only 35 to 40 per cent of federal laws will be able to be stopped by the *Länder* governments. But the new rules are so vague that it is unclear whether the *Bundesrat* will give up as much power as many hope it will. However, the comprehensive reform of the federal system in Germany has begun. This could have the effect of getting things moving again in Germany. For that alone, the Grand Coalition would have been worthwhile.

Now, after both big parties have united in the Grand Coalition, the lobbyists are issuing their demands. The civil servants are preparing to defend themselves against the reality that in the future, Berlin will no longer decide how much they will earn. Rich *Länder* will be able to avoid this battle. As a result, teachers are warning that soon there will be a great gap between a school in Hamburg and a school in Munich. This could prove problematic as many Germans want the same standard of living everywhere in the country, as it is stated in one phrase of the constitution. Instead of competition among the *Länder* many want uniform regulations that apply everywhere. But only a federal country offers to its citizens the luxury of allowing for even small decisions to be made at the grassroots level. That fact does not appear to be clear to many Germans — and for that reason German federalism will certainly remain a work in progress. ⑨



Chancellor Schüssel's challenge

How to revive the spirit of the EU in Austria

BY MELANIE A. SULLY

Austria's presidency of the European Union started less than favourably — with an EU constitution many said was “dead”. The Austrian legislature, the *Nationalrat*, had ratified the Treaty on a Constitution for Europe in May 2005 and the second chamber, the *Bundesrat*, followed soon after. But just days later, the voters of France and the Netherlands, both founding members of the EU, rejected the Constitution in referenda. This double rejection plunged Europe into confusion and uncertainty (see *Federations* Vol. 5 No. 1, “Europe’s rude awakening from a federalist dream,” by Philip Stephens). The EU was in uncharted waters and experts disagreed on what to do next.

Austrian Chancellor Wolfgang Schüssel announced “the constitution is not dead, since the ratification process is still underway.” Technically this was true, and in February 2006, during the Austrian presidency, the Belgian parliament ratified the Treaty. But the peoples of Europe seemed less than convinced. Before EU accession in a referendum in 1994, Austrian voters had given the government a massive two-thirds majority for joining Europe. In the election to the European Parliament ten years later, only 42 percent of voters even bothered to go to the polls.



Austrian
Chancellor
Wolfgang
Schüssel

Austrian skeptics

A Eurobarometer poll of the European Commission published at the beginning of 2006 showed that Austria has become one of the most Euro-sceptic countries in the Union, rivalling even Britons. Only 20 per cent of Austrians support Turkish membership in the EU. Of all the federal states, Salzburg is the most proud to be seen as part of Europe. The poll showed that Austrians are especially disturbed by unemployment, wastefulness in the EU and crime often attributed to the recent enlargement of the EU to 25 members. In March 2006 the radical right Freedom Party (FPÖ) began a petition campaign against the admission of Turkey into the European Union.

The Austrian State Secretary for Foreign Affairs, Hans Winkler, said the EU presidency should not act as the Constitution’s forensic scientist, but admitted it was necessary to win back the confidence of Europe’s citizens. At a “Sound of Europe” conference in Salzburg to mark the 250th anniversary of Mozart’s birth, Austrian Chancellor

Wolfgang Schüssel proclaimed that Europeans did not know enough about each other and somehow saw each other as “foreigners.”

Europe Day

As a way of overcoming this apparent disinterest or even hostility to Europe among Austrians, the Austrian parliament changed its rules of procedure in 2005 to allow for so-called “Europe Debates.” Each parliamentary group could propose a topic for discussion within the framework of this debate dedicated exclusively to EU issues. Also, at the beginning of each EU presidency there is the opportunity for members of the Austrian parliament to debate the proposed work program set out by the EU presidency.

The first attempt at such a session of the Austrian parliament took place in September 2005 and was televised live for eight hours. Parliamentarians said that far from stimulating interest in EU affairs, it was met with apathy.

Anti-Europeanism

Although Austrians are less than enthusiastic about the European project, they were nevertheless shocked by the strength of anti-European feeling in the Middle East and Asia following the publication in Denmark of the controversial cartoons depicting the prophet Mohammed.

Scenes of violence and attempts to storm the Austrian embassy in Tehran showed that Austria was looked upon as a symbol of Europe during its presidency. Austria appealed for restraint defending freedom of speech but urging tolerance and respect for religious beliefs. The reaction to the caricatures left many wondering what to do when there is a clash between freedom of expression and respect for religion — both core European values. This in turn raises more questions than answers since EU countries are split on the question of Turkish membership in the EU and the implications of absorbing a large non-Christian country.

The Next Waltz

In July, Finland takes over the EU presidency and with it the debate on the Constitution. In Helsinki the diagnosis on the European Constitution varies. While some have written the whole thing off, others see a glimmer of hope.

European integration started in 1945, in part to counter the domination of Europe by superpowers. Today Europe is struggling to speak with one voice in the world — endeavouring to speak in a voice that echoes all its peoples, member states and regions. ☺

Melanie A. Sully is a Professor at the Diplomatic Academy in Vienna and the author of “The New Politics of Tony Blair” and “The Haider Phenomenon”.



The Sri Lankan peace process

Hopes are dwindling that calm will be restored

BY **ROHAN EDRISINHA**

The period since Sri Lanka's presidential election of November 2005 has been a chaotic one for the country's peace process.

Events have been so violent that many fear resumption of the conflict that plagued this country for more than two decades. Hopes are dwindling that the fragile ceasefire will hold at least for another month. Enormous challenges remain if the ceasefire is to survive and if effective peace negotiations are to occur.

Those fears were heightened in late April when a suicide bomber killed eight people in a military compound and seriously injured the head of the Sri Lankan army, Lt Gen Sarath Fonseka. The bombing, which had the markings of an attack by the LTTE (Liberation Tigers of Tamil Eelam), came on the heels of the killing of two Sinhalese in Sri Lanka's north, coupled with the slaying of two suspected Tamil rebels in Batticaloa, in the east.

The new Sri Lankan President, Mahinda Rajapakse, was narrowly elected to power last November largely due to his alliance with two hard-line Sinhala nationalist parties, the JVP (*Janatha Vimukthi Peramuna*) and the JHU (*Jathika Hela Urumaya*). Rajapakse was unsure of the full support of his own political party, the SLFP (Sri Lanka Freedom Party) which remained under the leadership of Chandrika Kumaratunga, whose support for Rajapakse was lukewarm to say the least.

Rajapakse depended on the two smaller nationalist parties — the JVP and the JHU — for organizational support. The two parties in return demanded that several commitments be incorporated into the Rajapakse election manifesto. These included a claim that the Ceasefire Agreement signed by former Prime Minister Ranil Wickremasinghe and Velupillai Prabhakaran, leader of the rebel LTTE was unconstitutional; a promise to end Norwegian facilitation of the peace process; and a commitment that any negotiated settlement to the island's ethnic conflict had to be within the framework of maximum devolution within a unitary state.

The last claim, in conjunction with statements made by Rajapakse following the election, contradicts the

commitment by the LTTE and the government to explore the possibilities of a federal structure within a united Sri Lanka, arrived at during the third round of the Oslo peace talks in 2002 under the previous government in Sri Lanka.

New President opposed peace initiative

The Rajapakse campaign for the November 2005 Presidential election was severely critical of rival

Wickremasinghe's peace initiative of 2002 and 2003 which it said was one of appeasement of the LTTE. Many members of the island's majority community, the Sinhalese, and the third largest community, the Muslims, seemed to share the Rajapakse critique of the Wickremasinghe peace process and Rajapakse's opposition to federalism. In a surprise move, the LTTE intimidated and prevented a large number of Tamils from voting in the north and east of the country, thereby helping Rajapakse, the hawk, to defeat Wickremasinghe, the dove.

Within a couple of weeks of the election however, the situation became tense as violence erupted in various parts of the north and east. There were several LTTE attacks on government security forces and assassinations of political leaders from rival Tamil political groups. As the violence increased, some Tamils in the north and east who feared a resumption of open hostilities fled to southern India, a development not seen for many years.

In the third week of January, a flurry of diplomatic activity bore fruit. First came the visit to Sri Lanka of Erik Solheim, the Norwegian Minister of International Development. Also, other countries such as India and Japan, as well as the EU applied considerable pressure on both sides to agree to talk in order to avert a resumption of open hostilities. Finally, Geneva was agreed upon as the venue. However, the agenda for the talks was to be very narrow and specific, focused on the implementation of the ceasefire agreement rather than on the larger issues central to the conflict.

Talks in Geneva bog down

The talks in Geneva on February 22 and 23 highlighted the gap between the two sides even on the narrow issue of the



In better times: Former Sri Lankan government chief negotiator G.L. Peiris (l.) and Liberation Tigers chief negotiator Anton Balasingham at peace talks in Bangkok in 2002.

Rohan Edrisinha is Head of the Legal Unit of the Centre for Policy Alternatives in Colombo, Sri Lanka.

Continued on page 10



Public consortiums in Brazil

New law stimulates federal cooperation

BY *GILBERTO MARCOS ANTONIO RODRIGUES*

They began as experiments in co-operation among Brazilian cities, to pool resources and build a hospital, or to provide drinking water and prevent floods in municipalities along the same river. By the time they were established in federal law in 2005, these bodies, called *consórcios públicos* or public consortiums, were the talk of the country. Some even won public management and citizenship awards from the influential Getulio Vargas Foundation in São Paulo.

Brazil's new law on the *consórcios públicos* took the concept far beyond co-operation among a few cities. The law has been trumpeted as an important instrument of intergovernmental relations between the union or central government, the states, the municipalities and the Federal District for the formulation and execution of public policy in Brazil.

Indeed, it is expected that the law on public consortiums, passed on April 6, 2005, will enable the saving of substantial sums of money, enhance the state of cooperative federalism and contribute to the improved governance of the country. The law on public consortiums is a form of intergovernmental agreement, which aims to promote the common interest of various jurisdictions in Brazil.

Some say that the most successful experiences of consorcios were begun by municipalities in the area of public health:

- 12 municipalities (pop.150,000) in the State of Goiás combined in 1998 to train health managers;
- 11 municipalities (pop. 163,000) in the State of Mato Grosso began offering a common service of lab testing in 1996;
- 29 municipalities (pop. 254,000) in the State of Paraná began offering lab testing, emergency assistance and basic medicines in 1993;
- 7 municipalities (pop. 82,000) in the State of São Paulo began offering mental health assistance and prescription medicine in 1986.

Gilberto Marcos Antonio Rodrigues holds a PhD in International Relations and is an attorney, professor for the Masters Degree Program in Law and coordinator of a research project on federalism, local power and paradiplomacy at the Catholic University of Santos, in the State of São Paulo, Brazil.

Since the approval of the law on consortiums, a number of innovative proposals have emerged for inter-municipal public consortiums. For instance, in June 2005 Niteroi and other cities from the Fluminense region of Rio de Janeiro signed a letter of intent for the formation of a public consortium for environmental administration.



Brazilian President Luis Ignacio Lula da Silva and his chief of staff Dilma Rousseff in Brasília.

Another example of a promising inter-municipal consortium is one between the cities of Cubatao, Guarujá and Santos in the coastal region of São Paulo. The cities signed a letter of intent in August 2005, for the economic and environmental development of the Port of Santos – the largest in South America and main route for foreign trade in Brazil.

Under the first Federal Constitution of the Republic of 1891, there were provisions for consortiums between municipalities and between states, but at that time they were considered private contracts. This provision was maintained under subsequent constitutions without any evolution. However, since the enactment of the Federal Constitution of 1988, federal status was conferred upon municipalities and the federal district, inaugurating three-way federalism in Brazil.

The framework for this new legislation came in 1990 with a law that created the Universal Health System. It authorized municipalities to build consortiums in order to jointly develop actions and provide health services. In fact, following the enactment of the law, public consortiums between municipalities in the area of health care have been more numerous and have contributed towards intensifying the growing culture of federal cooperation in the country.

Indeed, during this period, a group of seven municipalities from the South-East region of São Paulo, one of the most urbanized and densely populated of the country, became a virtual laboratory of public policy consortiums.

The increase in the practice of use of consortiums in the 1990s followed a wave of decentralization during that period. This resulted in a Constitutional Amendment to

the 1988 Constitution, establishing the possibility for public consortiums involving all entities at the federal level and the administration associated with public services between them.

The Brazilian Institute of Geography and Statistics, in a 2003 report on the profile of Brazilian municipalities, stated that there were 1,969 health-related public consortiums, 669 for the purchase or use of equipment, 241 in the field of education, 64 housing-related consortiums; 161 relating to sewer systems, 87 water treatment systems, 216 for the disposal of solid waste and 88 involved in data processing.

The way the law on public consortiums works, the union, the 26 states, plus the Federal District and the 5,561 municipalities can be part of a consortium under horizontal or vertical arrangements, under the following possible combinations: municipalities with municipalities; states with states; states with a Federal District; municipalities with a Federal District; states with municipalities; states with Federal District with municipalities; union with states; union with a Federal District; union with states and a Municipality; and union with states with the Federal District and with municipalities.

Only municipalities within the same State can join in a consortium. In other words, consortiums between municipalities of different states are not allowed, except if located on the border between states. President Lula explained that this is to avoid any disruption in the “federal peace,” preventing the interference of a state in the municipal affairs of another state. Thus, public consortiums have been designed as instruments of neighbourly cooperation, but not instruments of trans-

territorial cooperation – and this in order to avoid conflict and internal fragmentation.

The negotiation process for the formation of a public consortium usually entails the signing of a letter of intent that records the political will of the parties to constitute the consortium. What it boils down to is creating a synergy between the federal entities at different government levels, to rationalize and economize resources.

The government of President Lula stated that public consortiums is an essential instrument within the framework of “Federative Rearrangement,” which is composed of a joint set of initiatives aimed at developing new concepts of occupation and development of the Brazilian territory.

However, although the public consortiums can be useful and efficient instruments to resolve specific problems, care need be taken that they not become a fourth level of government. Peter Spink, titular professor at the Getulio Vargas Foundation in São Paulo, called them “very competent inter-organizational political and technical arrangements for co-ordination,” but added that public consortiums have “very little added opportunities of deliberative democracy.” Not every consortium lacks citizen and civil society involvement, but there is no institutionalized or built-in place for them.

It is too early to assess the full impact of the public consortiums, but they are expected to bring about significant outcomes in public administration, the economy, environment, and health care services and may well generate practices of interest to the international community. 6

Continued from page 8

Sri Lankan negotiations stalled

ceasefire agreement. The government wanted to amend the agreement but the LTTE said no.

One of the difficult issues that surfaced at the talks was that of Colonel Karuna (the *nom de guerre* of Vinayagamoorthi Muralitharan), the LTTE renegade who, with his followers, have challenged the LTTE particularly in the east, thereby weakening the LTTE’s military strength in the area. Karuna is a former member of the LTTE negotiation team and one of its most renowned military leaders. The government argued that the ceasefire agreement contemplated disarming paramilitary groups in existence at the time the agreement was adopted, and therefore did not apply to the Karuna breakaway group. The LTTE insisted that it did. The statement issued by the Norwegian facilitators at the end of the Geneva talks said that only members of the government security forces would be allowed to carry weapons and engage in security operations in government controlled areas. This does not resolve the issue of the Karuna forces, whose members do carry arms.

The ambiguities in the Geneva statement have raised disagreements between the parties on the subject of the disarmament of the Karuna rebels. The second round of talks, originally scheduled in April, has been postponed indefinitely. The increase in violent incidents by both the LTTE and government security forces is troubling — the BBC reported on April 25 that since April 1, more than 100 people had died in clashes and ceasefire violations in the country. In troubled Sri Lanka, a prolonged flawed ceasefire is better than outright hostilities with massive civilian casualties. 6

We want your opinion!

Please take 5 minutes and fill out our first-ever readers survey on page 32. You can mail it, fax it or fill it out online on our website, www.forumfed.org.



Bosnia and Herzegovina

Revised constitution loses by two votes

BY DR. VJEKOSLAV DOMLIJAN

A package of constitutional amendments was rejected by a mere two votes in Bosnia's lower house of parliament in late April, in a move that will delay the country's hopes to enter the European Union.

The amendments were seen as essential for Bosnia to begin negotiations to join the EU.

The day of the rejection was the most tempestuous in the Bosnian parliament since the Dayton Peace Accord, Bosnia's interim constitution, was signed in 1995. For the amendments to be adopted, two-thirds of the deputies attending the session of the house had to vote in their favour. However, out of 42 deputies, 26 supported the amendments and 16 voted against, which meant that the proposed amendments did not gain the required two-thirds majority.

The day after, EU Special Representative Christian Schwarz-Schilling expressed "profound disappointment" over the rejection of proposed constitutional amendments.

"Bosnia now needs time to reflect on last night's outcome and then agree on how to move forward," he added. "The need to modify the Bosnian Constitution will not go away. It is an issue that will have to be re-visited in order to better equip the country for EU integration, and better equip the government to serve its citizens."

The Dayton constitution produced the first government in Bosnia after the three-year Bosnian war, which had expelled more than 50 per cent of the population from their homes and killed at least 100,000. The Dayton deal provided the framework within which much of the transformation of Bosnia has been taking place. Some reforms have been made to the Dayton agreement since 1995, but not all the changes that were necessary for membership in the EU.

The reform was slated for adoption before May 4, when Bosnia's Central Election Commission was supposed to schedule the next elections, planned for Oct. 1. The commission did so, but the rejection means that the elections will be organised under the existing constitutional rules.

The draft constitutional changes had proposed:

- giving legislative authority to an 87-member lower house of parliament;

Dr. Vjekoslav Domljan is the former Ambassador to Canada from Bosnia and Herzegovina. He is currently Co-director of the London School of Economics Project "Support to Poverty Reduction Policies in Bosnia and Herzegovina."



Tired of the failures of their parents, Bosnian youths wrote their own new constitution and displayed it publicly.

- changing the role of the upper house to deal only with issues of vital national interest,
- the election of one president and two vice presidents by the Bosnian parliament and
- giving broader authority to the Bosnian cabinet.

The main opponents to the changes were the Party for Bosnia and Herzegovina, led by Haris Silajdzic, and a breakaway Croat party called HDZ 1990.

The urgency of constitutional changes became apparent in April 2005, when the European Parliament adopted a resolution which questioned and implicitly criticized Bosnia's constitutional framework. Representatives of the EU held a public hearing with Bosnian representatives on the Dayton Agreement in October 2005, and recommended revisions to it. On February 16, 2006, the EU parliament repeated its criticism, calling on the three ethnic communities in Bosnia to resume negotiations on reform of the Constitution. They also asked that the Constitution include values linked to democracy, human rights and equality of citizens in the text, as well as references for overcoming ethnic divisions and the simplification of state structures.

The need to modify the Bosnian Constitution will not go away.

- Christian Schwarz-Schilling, EU High Representative in Bosnia

"Entity voting" or pre-election game

As with many federations, the structures and number of constituent units are devised to accommodate particular geographic and ethnic realities.

While Canada has 10 provinces and Germany has 16 *Länder*, Bosnia has only two constituent units, called "entities." They are Republika Srpska (populated mostly by Serbs) and another entity, populated mostly by Bosniaks and Croats, called the Federation of Bosnia and Herzegovina. There is also the tiny internationally-supervised district of Brčko.

The differences that still need to be hammered out in a revised Bosnian constitution stem from differing

perspectives of the three major ethnic groups of Bosnia: the Bosniaks (who are mostly Muslims), the Croats (who are mostly Roman Catholics) and the Serbs (who are mostly Christian Orthodox). To make things more complex, the Federation of Bosnia and Herzegovina has ten separate constituent units called cantons. In addition, the Federation of Bosnia and Herzegovina has 84 municipalities while the Republika Srpska has 53 of them.

Those who voted against the constitutional changes reportedly did so mainly because the draft constitution retained a practice called "entity voting" in parliament. "Entity voting" sets three conditions for a vote to be binding:

- 1) a majority of those voting
- 2) at least one-third of the minimum majority vote to come from members from Republika Srpska
- 3) at least one-third of the minimum majority vote to come from members from the Federation of Bosnia and Herzegovina.

There are many constitutional models in the community of democratic nations that Bosnia could learn from and possibly adapt.

Opponents of the constitutional changes viewed entity voting as the maintaining of the division of Bosnia into two entities. In their view, the constitutional amendments were unacceptable because they would have legalized wartime gains. The "wartime gains" were both

territorial and economic. Because the map of the two entities was largely based on the territory controlled by one side or another when the fighting stopped, each local district belonged to one of the two entities. And after a district "belonged" to it, that entity's government had more power than the central government to set the terms of economic, political and social relations in that locality.

According to Werner Almhöfer, Ambassador of Austria, the country which currently holds the Presidency of the EU, some MPs voted against the proposed constitutional amendments in order to gain political points on the eve of the upcoming October elections, "focusing on political and ethnic issues, not on the European path."

Donald Hays, a senior U.S. diplomat and former principal deputy high representative in Bosnia, blamed the defeat on a "handful of people that are fixated on the past, who want to revive the agony of the war and settle old accounts."

Defending the rejection, the leader of the Party of Bosnia and Herzegovina, Haris Silajdzic, stated that the amendments had to be rejected because "entity voting" is detrimental to Bosnia as a country.

On the other hand, Milorad Dodik, the Prime Minister of Republika Srpska and the leader of the Party of Independent Social Democrats, said "the entity vote was used only a couple of times so far," and he did not understand why it posed such a big problem, especially for the Party of Bosnia and Herzegovina.

For the Croats, the preserving of the two entities is seen as a failure to create a space for Bosnians of Croat descent. This was the reasoning of those Croat members of parliament who defected from the HDZ to form HDZ 1990. They spoke out against constitutional solutions which "preserved two entities," meaning that Croats in Bosnia would have no constitutionally defined role in the country.

The most multicultural country in Europe

Bosnia is located at the intersection of the fault lines of three civilizations, Roman Catholic, Eastern Orthodox and Muslim ones, running from the Baltic and Black Sea to the Adriatic Sea converge in Bosnia, making Bosnia the most multicultural country in Europe.

It finds itself still haunted by the past, particularly before election time. It is easier to talk about "chosen problems," or rather about each ethno-religious group's traumas, than to address questions about "pressing problems," which require large, innovative policy changes.

It is widely accepted that the current institutional setup is administratively complex, fiscally expensive, economically unsustainable and politically ineffective. It makes negotiating with the EU and other international bodies extremely difficult. To address those deficiencies Bosnian political leaders have proposed four different constitutional models. The most frequently mentioned is "the Bosnia of entities," "the Bosnia as a citizen state," "the Bosnia of ethnicities" and "the Bosnia of regions."

The failure of constitutional changes showed that Bosnians can be indecisive when their future is in question.

A negative signal

In any case, a negative signal was sent to the international community by failing to pass the constitutional changes. Bosnia took a step backward and lost its momentum in the process of European integration. Bosnian politicians, primarily those of the Party of Bosnia and Herzegovina and HDZ 1990, should take the responsibility for that.

Milenko Brkic, president of the Croatian party, the HNZ, one of eight political parties that signed a Commitment to Pursue Constitutional Reforms on Nov. 23, 2005, said the process of changes must not stop and that it is the responsibility of all political forces that stand for a prosperous and European future for Bosnia.

There are many constitutional models in the community of democratic nations that Bosnia could learn from and possibly adapt. The Council of Europe, a 46-member body which Bosnia joined in 2002, has a special commission, the European Commission for Democracy through Law - the Venice Commission for short. This commission made a number of suggestions to Bosnia in March 2005. It recommended a transfer of responsibilities from the "entities" to the national level, making the election of members to national Presidency and House of Peoples compatible with the European Convention on Human Rights, and several other provisions. Whatever the changes, the EU will have to be satisfied that members of all three ethnic groups can get justice from the governments of both entities, and that the central government is strong enough to call Bosnia and Herzegovina one country. ⑥



India talks with Naga rebels

The challenge of peace in Nagaland

BY **RUPAK CHATTOPADHYAY**

There are times when the Government of India and armed separatists are not only willing to talk but to agree on something. That happened on January 31 in Bangkok when both India and one such group, the National Socialist Council of Nagaland — Isaac Muivah faction, known as NSCN-IM, extended an eight-year-old ceasefire for another six months as both sides attempt to find a solution to this long-running insurgency.

The Naga revolt is centred in the state of Nagaland – one of seven in North East India. They are known as the “seven sisters”: Nagaland, Assam, Manipur, Tripura, Meghalaya, Arunachal Pradesh and Mizoram, which are among the most neglected and underdeveloped parts of India. The North East is a remote region connected to the rest of India by a thin strip of land bordering on Nepal, Bangladesh, China and Bhutan. The eastern boundary of Nagaland is the India-Myanmar border. Very few of the inhabitants of this area speak Hindi as their mother tongue, and many are related to Tibetan and Burmese tribes in the region. The current revolt goes back to demands for independence from India in 1947.

The Naga ceasefire announcement came after four days of talks between the federal government and NSCN-IM leadership in Bangkok. The limits of Indian federalism have been continuously tested by rebellions and insurgencies since independence. Even when the Indian state has prevailed, the process of reconciliation has usually left its mark on the evolution of Indian federalism. From the Dravidian movement of the fifties to the Sikh separatist campaign of the eighties, each has contributed uniquely in the strengthening of India’s federal structure, either directly by forcing national compromise, such as the official languages policy, or indirectly by contributing to the demise of the political system dominated by a single party.

That the Naga ceasefire has largely held for eight years shows the seriousness of the parties’ intent to find a solution, as well as the difficulties of finding a solution that meets the aspirations of both sides. The involvement of civil society (especially students, church groups and tribal councils) in the peace process has been significant, symbolizing an intense yearning for peace. The Naga insurgency has been India’s longest running. It is also one



In New Delhi, the Secretary-General of India’s upper house of parliament receives members of the Nagaland Legislative Assembly.

of the most complex.

The Nagas before 1975

There are seventeen major and an equal number of smaller Naga tribes, each with its own recognizable dialect and customs, linked traditionally by a shared way of life and religious practices, and indeed more recently by Christianity. There are more than 14 tribes that make up the Nagas. Tribal conflicts have complicated the process of peacemaking in the state of

Nagaland, and other Naga inhabited areas, over the years. Nagas also reside in the states of Arunachal Pradesh, Assam and Manipur.

The Naga rebellion dates back to India’s independence in 1947, when separatist sentiments represented by A. Z. Phizo’s Naga National Council called for an independent state for half a million Nagas. This culminated in the establishment of Nagaland by the Indian parliament as a full-fledged state of the Indian Union in 1963. In creating the state of Nagaland, the Federal government broke with the precedent of establishing states along linguistic lines (as per the States Reorganization Act of 1956) and set a new precedent that has led to the creation of “tribal” states such as Mizoram, Meghalaya, Jharkhand and Chhattisgarh.

The creation of Nagaland provided political opening for more groups to join the political mainstream. Even though the NNC reached a ceasefire agreement with the Indian government in 1964, infighting led to the Council of Naga People (CNP) splitting off from the NNC. The emergence of the CNP followed by the liberation of Bangladesh and the resulting loss of insurgent safe havens in East Pakistan contributed to a significant weakening of the NNC and Naga separatism. The CNP and its allies went on to conclude a peace agreement, the Shillong Accord, with the Indian government in 1975.

1975: the NSCN revolts

Neither the granting of full statehood to Nagaland, nor the subsequent Shillong Accord, in which the NNC accepted the Indian constitution, diffused the separatist impulse in Nagaland. Those Nagas who viewed the Shillong Accord as a sellout of the Naga cause went on to found the NSCN, which gained the allegiance of many Naga nationalists. After 1975, the NNC was reduced to a marginal player.

What was missing in the Shillong Accord was a final settlement that would define the Nagas’ relationship with

Rupak Chattopadhyay is the program officer for South Asia/Pacific for the Forum of Federations.

India and something that would address the issue of a unified Naga political entity. Both of these issues became rallying points for the NSCN, established in 1980 by younger activists of the NNC — namely Isaac Swu, Thuingaleng Muivah, and S.S. Khaplang. Like movements before it, the NSCN too split along tribal lines in 1988 with Khaplang forming the NSCN-K.

In 1997 the NSCN-IM reached a ceasefire agreement with the Indian government. This was followed in 2000 by the NSCN-K. Talks between the Indian government and the NSCN-IM had begun earlier with Indian Prime Minister P.V. Narasimha Rao in the mid-1990s and were then followed up by subsequent Prime Ministers before a formalized structure of negotiations began between the Government delegation led by a representative of the Prime Minister and the Naga group led by Thuingaleng Muivah, who is the Kilo Kilsoner or Prime Minister of the “Government of the Republic of Nagaland.”

The motivations for reaching a ceasefire on all sides are many. Both factions have been under considerable pressure from civil society to participate in a political process that leads to a final solution. Decades of conflict have inflicted severe human and economic costs on the Nagas. Both parties have also suffered attrition at the hands of Indian and Myanmar security forces. From an Indian perspective, the Naga insurgency is the Gordian knot of northeastern insurgency. To untangle it would bring benefits not just to the region, but also to the entire country. First, the Naga insurgency — the NSCN-IM, in particular — provides the logistical and philosophical underpinnings for most of the other groups in the region — including the ULFA, NFLT and the Bodo groups. Without NSCN support, most of these groups would cease to function effectively. Indeed, two other armed separatist groups in North East India, namely the United Liberation Front of Asom (ULFA) and the National Democratic Front for Bodoland (NDFB) have recently reached ceasefire agreements with the Indian government. Second, a permanent solution would open the region up for investment; in particular its untapped potential for hydro-electric power might considerably ease the country's energy burden.

Challenges Ahead

A final agreement remains elusive, but there have been some significant attempts at reconciliation. Despite statements that represent movement away from earlier positions, recent pronouncements by the NSCN-IM indicate growing impatience with the slow pace of negotiations. Speaking in Bangkok at the beginning of 2006, Thuingaleng Muivah offered a glimpse of the NSCN's position:

“We have climbed down from our demand of absolute sovereignty and said we want a special federal relationship with India but India is neither moving decisively to implement it nor taking steps to unify Naga areas in northeast India.”

The NSCN-IM has been insistent on the integration of Naga-inhabited areas into a greater Nagaland — which they call Nagalim — thereby pressing a demand that

predates its creation. Given that this would involve the partition of three states — Assam, Manipur and Arunachal Pradesh —and require their consent, the federal government will find it very difficult to offer concessions on this issue without involving the relevant states.

The second main issue of “a special federal relationship” is likely to be more easily resolved. Speaking in Bangkok last January, Thuingaleng Muivah elaborated this demand, which represents a significant and pragmatic shift from the positions enunciated earlier by both the NNC and NSCN. He indicated that they were prepared to explore an appropriate federal relationship made sacrosanct in an agreement that cannot be changed unilaterally by either side in future. Furthermore, the NSCN-IM was willing to discuss how various competencies can be shared in such a way that they serve the interest of both New Delhi and the Nagas. In stating the Indian government's determination to explore “new initiatives,” Mr. Oscar Fernandes, the Indian Minister overseeing the process, underscored the seriousness of India's response to the NSCN's offers. Furthermore, the retention of former Union Home Secretary K. Padmanabhaiah as India's interlocutor by the current Congress Party led government shows how important the whole process is to India.

One of greatest hurdles to finding a permanent and comprehensive solution is deep-rooted tribalism with the Naga groups. The NSCN-IM's insistence that it speaks for all Nagas has been challenged not just by Khaplang but by several NGOs and church groups. There are significant tribes such as the Angamis, Aos and Konyaks whose interests the NSCN-IM doesn't represent. Muivah is a Thangkul from Manipur and his tribe has virtually no physical presence within Nagaland. Similarly, Isaac Swu represents one faction of the Sema tribe. The Konyaks, the single largest tribe, is represented by NSCN-K, which has some basis for demanding a say in any final settlement. The biggest challenge for the Indian government is arriving at a future settlement that is both inclusive and comprehensive, and doesn't repeat the shortcomings of the Shillong Accord. Given the past instances of arriving at innovating administrative arrangements (hill councils, territorial councils, etc.), the precedent exists for finding solutions that meet the aspirations of disaffected people. The challenge in Nagaland should not be underestimated and is sure to test the creativity of both Indian and Naga negotiators as well as the resilience of Indian federalism.

Since the nineties it has become fashionable to hold up Kashmiri disaffection as the test case for Indian federalism. Such a view overlooks the contribution that events in the northeast have had in shaping Indian federalism. With each subsequent insurgency, the state's capacity to deal with the security fallout has grown, but more importantly so has its creativity and pragmatism in identifying appropriate constitutional arrangements. The demilitarization of the Mizo National Front, the establishment of the Darjeeling Hill Council and the Bodo Territorial Council all offer lessons in the management of ethnically diverse societies within a federal system. 6



Spain's struggle with a new statute

How much power for Catalonia?

BY JOHN BARRASS

On March 30, 2006, by a vote of 189 to 154, Spain's lower house of parliament approved a bill that will give more powers to the region of Catalonia. The bill must now go to the Spanish senate, and then return to Catalonia for a referendum.

The act divided Catalonians — although the Catalan legislature voted overwhelmingly in favour of the proposed law. The coming referendum should bring out that debate in full.

The new autonomy bill, known as “the Statute,” had been previously approved by 90 per cent of the Catalan legislature. The Statute would increase funding for Catalonia from the central government and prevent some court cases from being appealed to Spain's highest court.

The Statute was first introduced in the legislature of Catalonia's regional government, now ruled by a left-wing coalition led by the PSC, or Socialist Party of Catalonia. The coalition was elected in November 2003 after 23 years of rule by Jordi Pujol, the former pragmatic leader of the moderate Catalan nationalist party *Convergència i Unió*. Pujol's government was adept at netting many a federal catch in the way of concessions and transferred competencies through bargaining with the Spanish central government under the socialist-led coalition headed by José Luis Rodríguez Zapatero and the former coalition government under conservative José María Aznar. However, hard-line nationalists of the left were still hungry for more recognition of their “nation” status — expressed in terms of history, language and cultural identity — and for larger tax drawbacks.

The proposed reform of Catalonia's Statute of Autonomy was sponsored by the ruling coalition of socialists, hardline nationalists and Greens, led by Pujol's successor, socialist Pascual Maragall, and supported by Pujol's nationalists, at present the main opposition party in the Catalan assembly.

As EU funding for Spain decreases from a torrent to a trickle, Catalonia will receive 2.5 billion fewer Euros, a cash cushion which had thus far helped the assembly finance its programs.

John Barrass runs the news desk at Radio Free Barcelona and was editor of the newspaper *Barcelona Business* for six years. He writes the *Catalonia Confidential* column for *Barcelonareporter.com* and contributes monographs to the *Institute of Catalan Studies*.



Spanish Prime Minister José Luis Rodríguez Zapatero shakes hands with Catalan politicians Joan Saura (left) and Joan Herrera (right).

The controversial new Statute aims to sustain this level of spending by Catalonia and finance it by contributing less to the central Spanish government, using the argument of the “fiscal deficit” — the money the autonomous communities lack to carry out their services to the public.

This move, critics argue, would turn progressive taxation on its head. Income tax and corporation taxes are paid at the same rates in Catalonia and the region of Extremadura. But Catalonia is one of Spain's wealthier regions. Some

economists claim this region contributes around eight per cent more tax revenue to state coffers than it receives from the central government in services. Though falling short of the new Statute's initial demands, Spanish central government concessions — if the Statute is amended and the law for financing autonomous communities is amended — will allow Catalonia to keep 50 per cent of all income tax and Value Added Tax (VAT) levied in the region and 58 per cent of revenue raised from fuel, tobacco, alcohol and other vices. These percentages will be raised over time to their new higher levels. The agreement could also include an additional sum of three billion Euros in promised public work schemes for Catalonia.

Spain's finance minister, Pedro Solbes, has suggested that the tax-sharing agreement could be extended to other regions. This move would transfer an extra 20 billion Euros a year to regional governments, thereby depleting the Spanish government's finances by 15 per cent.

A “government by the minority”?

Not everyone is pleased by these measures. The vagaries of parliamentary representation are criticized by the socialist leaders and the conservative opposition alike: Zapatero and his socialists — the *Partido Socialista Obrero Español* or PSOE — are twelve seats short of a majority, so they need the support of the Catalans in Congress in Madrid, and Maragall (26 seats short) needs the hardline nationalists, the *Esquerra Republicana de Catalunya* (ERC) in the Catalan assembly. Thus, by proxy, the Spanish Government is seen to be in thrall to the secessionist ERC. Luis María Anson, founder of *La Razón* newspaper, said that “the Constitution should be redrawn to establish an electoral system whereby a majority of any political stripe isn't subject to nationalist

blackmail." An extreme statement, but it underlines the inordinate power wielded by the ERC, which represents just 16 per cent of the Catalan electorate or 2.5 per cent of all Spanish voters. Anson is a controversial figure on the right in Spain, but his *La Razón* is one of six major Spanish daily newspapers.

Esquerra leader Carod-Rovira took a much tougher stand than assembly President Pujol. Demonised by Madrid's right wing press for holding secret meetings with ETA terrorists in Spain's Basque Country (there are some Spaniards who boycott Catalan goods for this and other reasons), the combative Josep Lluís Carod-Rovira said the new Catalan Statute has been watered down to an unacceptable degree. While Statute proposals were still being bartered in Madrid, Carod-Rovira led a pro-independence march in Barcelona on February 18, under the slogan "We are a nation and have the right to decide." The march organisers claimed a million-strong turnout at the time, but head-count specialists reckoned the crowd numbered a maximum of 70,000.

But the political representatives in Catalonia could be out of sync with the electorate. While 89 per cent of Catalan deputies in the assembly — representing a notional 87 per cent of the electorate — voted on September 30 for the new Statute in the assembly, an opinion poll shortly thereafter found that 49.4 per cent of Catalan respondents did not consider Catalonia a nation, compared with 46.8 per cent who did.

Rights, collective and individual

"The Catalan Statute reform project contains enough elements to strip individual rights of any meaning," wrote political commentator Jorge Vilches. Many legal experts are in agreement. For instance, Francisco José Hernando, president of Spain's High Court and General Judicial Council, has stated that he is "seriously worried" about Statute reform. Some draft demands would be hard to enforce, such as how might Catalan competencies in immigration matters be implemented within the two EU treaties: the Schengen Agreement and the Treaty of Rome?

The Constitutional Court has decided to delay an examination of the Statute while its articles are hammered out by a select committee. If approved by the Constitutional Court, the new Statute will be put to a referendum in Catalonia. Meanwhile, the conservative party in Madrid — the *Partido Popular* — has been collecting signatures, some four million so far, supporting a nationwide referendum on the question of the acceptability of the regional Statute. But the petition for such a referendum is doomed to be more of a public relations move because, for the outcome of the petition to have any impact, it would require a fundamental change in the law and because of devolution referenda precedents elsewhere.

The most contentious points of the new Statute proposal are reinforced protections for the Catalan language, revised tax redistribution and the-buck-stops-here judicial powers for Catalonia's High Court (*Tribunal Superior de Justicia de Catalunya*), considerably increasing its powers. If adopted, it would mean that certain cases could not be appealed to Spain's supreme court.

Justice peeps round the blindfold

In defending the revised Statute proposals, Catalan assembly minister for justice, Josep Maria Vallès, claimed it is mistaken to think that "Catalonia will have a separate judiciary which replaces Madrid's constitutional court with the regional high court as Catalonia's highest judicial authority."

The justice minister said that "what the new proposal does seek is the right of the Catalan government to have full power over non-judicial staff and to have a limited say in a number of judicial appointments, but not the full power to make them."

He maintained that "courts and judges in Catalonia would continue to be organised and appointed according to, and continue the enforcement of, Spanish law."

The minister insisted that this is not an extreme measure. "This is neither a separate judiciary, nor even the federal-state judicial system that exists in Canada, Germany and the United States."

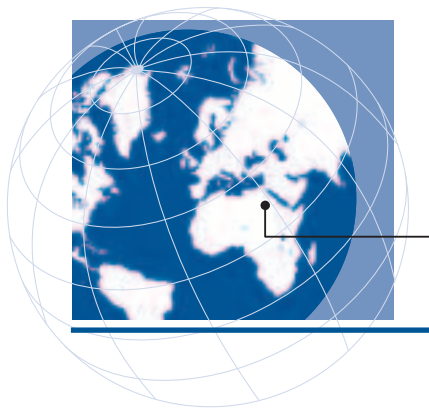
However, Vallès' defence of the Statute can be challenged on two counts. Regarding the appointment of judges, a high level of Catalan language skills will be "a determining merit," which could prove to be a euphemism for the exclusion of non-Catalan judges and magistrates. Secondly, the right to appeal to Spain's Constitutional Court will not be available in the vast majority of cases in which constitutional rights are not involved. So the final recourse for commercial litigation and fraud cases, for example, will be within the Catalan justice system, where the cases will be heard by a Catalan judge in the Catalan language (with courtroom translation into Spanish if requested).

Another critic of the proposed law, Euro-MP Aleix Vidal Quadras, of the Spanish conservatives, warned that Spain's Constitutional Court could become swamped with litigants claiming abuses, especially in language and industrial affairs, as Quadras contends that such abuses are already happening.

International limelight

The attention of the global media turned briefly to Catalonia around last New Year's when Lieutenant-General José Mena said that Article 8 of the Constitution, which empowers the military to defend Spain's territorial integrity, could be used against Catalonia and its moves to arrogate greater powers. This sabre-rattling elicited some sympathy for the Catalanist cause, but also exposed regional politicians to the kind of rough-and-tumble commentary that they are unused to from the local press.

Ciutadans de Catalunya, a group of centre-left intellectuals, planned to change their pressure group into a fully-fledged political party. It will be interesting to see if, in the next election, the non-nationalist *Ciutadans* garner substantial support among an estimated 500,000 folks who abstained from voting in the last election. That is the party's goal. If they won as many as twelve seats, they would have the balance of power in the assembly. Such an outcome would likely put a halt to any further erosion of rights of non-Catalans in Catalonia. ⑥



Federalism in Sudan

The Comprehensive Peace Agreement and beyond

BY SHAWN HOULIHAN

Proponents of federalism in Sudan have faced a bitter struggle since before independence in 1956. Fifty years and two devastating civil wars later, federalism is central to the Comprehensive Peace Agreement signed between the Khartoum government and the Sudan Peoples' Liberation Movement/Army on January 9, 2005.

From the early 1950s, Southern demands for more autonomy ranged from some type of federal arrangement to full sovereignty, but the failure to reach a compromise led to the first phase of civil war on the eve of independence. Over the next five decades, several rounds of failed negotiations or the breakdown of negotiated settlements left most Southern political actors bitter and skeptical. The result has been two major civil wars, from 1955 to 1972 and from 1983 to 2004.

The key grievances of the Christian and Animist South have basically remained the same: the "economic privilege" enjoyed by the Arab-Muslim elite from the North; programs of religious and cultural assimilation; application of Sharia law to non-Muslims and the role of Islam in politics generally; Khartoum's contentious use of water and land resource rights and attempts to re-draw the North-South border after oil reserves were discovered in Southern Sudan in 1982.

Federalism was a "dirty word"

Southern independence was unthinkable for the Northern elites and their allies during this time and "federalism" itself was frowned upon by some in the North. It was seen as untenable for a mix of reasons revolving around purported Islamic obligation, Sudanese-Arab nationalism, and other political and economic self-interests. Giving concessions to the Southerners was — and still is — seen as a major risk that could lead to similar demands from minorities in regions of the North, such as Darfur, and thereby lead to the Balkanization of Sudan.

In the fifteen months since its signing, the peace agreement has been under serious stress but managed to hold so far. In the meantime, just as peace was coming to the South, the Darfur conflict in Western Sudan flared into a full-scale armed conflict. Darfur became another humanitarian and

Is there a widening consensus around the role of federalism in Sudan?

human rights disaster, and a similar fate is threatening in the East.

There are two questions now on many peoples' minds:
Can the peace agreement hold in the current political environment?
Can similar federal-type power sharing arrangements be expanded to other groups in the North as the basis of a viable Sudan-wide peace?

Federalism in the Comprehensive Peace Agreement

Four levels of government are constitutionally recognized under the peace agreement:

1. the Government of National Unity (the central government);
2. a highly autonomous Government of Southern Sudan;
3. 26 state governments (16 in the North and 10 in the South), and
4. local governments.

The first three have major tax and spending powers; the status of localities (fiscally and politically) is more ambiguous. The central government, the Southern government and all 26 states have their own constitutions.

What is striking about the peace agreement is that it leaves almost all matters between the central government and the Southern states to be mediated through the Southern government. This highly asymmetrical form of federalism leaves almost no direct relationship between Khartoum and the Southern States. Also critical is that, according to the agreement, 50 per cent of Southern oil revenues — all extracted from Southern Sudan and previously monopolized by Khartoum — will now flow to the Southern government. Any further distribution to the Southern States is a Southern government prerogative. This highly autonomous regional government for Southern Sudan gives expression to the historical aspirations of the Southern Sudanese for more autonomy. The strong status of the states within the South also leads to a type of "federation within a federation" which may also serve to accommodate diversity and lessen inter-ethnic tensions of the South.

At the centre, there are several mechanisms for constituent units to exercise direct influence, most notably the role of the South in the central government. The President of the

Shawn Houlihan is Director for Africa Programs at the Forum of Federations. He can be reached at houlihan@forumfed.org.

Government of Southern Sudan is the First Vice-President of the Government of National Unity; there are quotas for Southern government appointments to the central government cabinet and civil service as well as for important central government Commissions such as the Civil Service Commission, the Fiscal and Financial Allocation and Monitoring Commission and the National Petroleum Commission, among others.

The executive and the legislature of the Southern government are heavily dominated by the Southern liberation movement, the SPLM/A (the Sudan People's Liberation Movement/Army). In Khartoum, the National Congress Party or NCP (an Islamist party) holds the majority of power in the central government with the SPLM as a significant minority partner. The Southern state-level governments are also dominated by the SPLM/A, while the Northern state-level governments are dominated by the NCP. This is reflected in membership of the central government's upper chamber, the Council of States. Other parties have only minor roles in both the Southern and the central governments and the states. It would appear that the peace agreement is largely a power sharing deal between the two main military forces in the civil war: the NCP and SPLM/A.

The peace agreement calls for a six-year interim period, after which the South will be free to hold a referendum on whether to stay in Sudan or opt for full independence. The strategy of the peace agreement is that the Interim Period will serve to finally "make unity attractive" to Southerners so that they will vote to stay in Sudan.

Beyond the Comprehensive Peace Agreement

The peace agreement has more than its share of critics and skeptics. Some of the skepticism is based simply on suspicions about the political will and real agenda of the NCP, which is largely the same group that came to power in a coup in 1989. Many believe that they are not truly committed to the letter or principles of the peace agreement; their record in the first fifteen months is seen as mixed. The NCP, while still the single most powerful group in Sudan at present, has only a tenuous hold on power, with threats from both outside and within the party itself. There are senior members of the NCP who feel that the Government gave away too much in the peace agreement negotiations.

Critics also point out that in the Comprehensive Peace Agreement, the word "comprehensive" is itself a misnomer. Geographically, it deals with the aspirations of the South. The negotiations did not include representatives of aggrieved minorities in the Northern "periphery" such as Darfur. Analysts have repeatedly noted that the Sudan "problem" is not just a North-South or even a Muslim-Christian conflict. While the North-South divide is a reality,

The peace agreement calls for a six-year interim period, after which the South will be free to hold a referendum on whether to stay in Sudan ...

there is a more general tension between the centre and the periphery. Resolving the conflicts with Northern minorities such as the people of Darfur is also fundamental to stability and a durable peace in Sudan.

The peace agreement is also not comprehensive, critics note, in that it largely excludes major political parties. Most notably, it excludes the UMMA Party and the Democratic Unionist Party, which dominated electorally in all the past free elections in Sudan.

These two parties still maintain

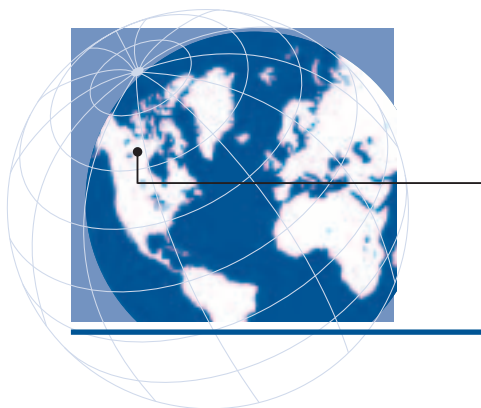
considerable loyalty among the elite families of Northern Sudan and their circles of allegiances throughout the country. Their strength has declined somewhat, and they do bear a considerable share of responsibility for the failed nation building of the first fifty years. However, most observers believe that the peace agreement cannot be sustained in the long run if these and other major political forces are not somehow incorporated.

The "federal idea" in Sudan

How the big and regional powers respond to what happens in Sudan is also important — and could change the course of events. While the situation remains fundamentally unstable, the simple fact is that the Comprehensive Peace Agreement represents the best chance for peace in Sudan's troubled history; it should be recognized as a major achievement and an illustration of the flexibility and innovation potential inherent in the "federal idea" for Sudan.

Much attention will be given by donors and others to the technical and institution building challenges of implementing federalism in Sudan, especially in the South. Certainly these will be important for the capacity of different levels of government to deliver a "peace dividend" and for building confidence — or the opposite — in the agreement and the "federal idea" in Sudan. But people should also take note that as Ron Watts, the eminent scholar of federalism wrote, "Federal systems are a function not only of constitutions, but also of governments, *and fundamentally of societies.*" [Emphasis added]

Underlying the unstable environment — the shifting calculations and manoeuvrings of political elites — is a more basic question. It concerns something we may be witnessing: a shift in attitude and the political culture in Northern Sudan. *Is there a widening and deepening, if still nascent, consensus among Northern political elites about the role that federalism should play in building an alternative vision for Sudan?* The interaction between short-term political calculations and deal-making on the one hand and a deepening knowledge and widening consensus of key actors who internalize *the federal idea* in Sudan on the other hand will form an important part of the long-term prospects for peace in that country. ☺



Canada's new Conservative government faces restive provinces

BY *JEFFREY SIMPSON*

In order to understand Canadian federalism, it helps to remember who usually runs the country's federal government — the Liberal Party.

Canada's Liberals are the western world's most successful political party, having been in power for about 75 of the last 105 years.

Once a generation or so, Canadians get fed up with the Liberals and give the Conservatives a crack at governing. So it was that on January 23, 2006, Canadians elected a minority Conservative government after about 12 years of Liberal rule. How long this Conservative government will last is anybody's guess. When there is no majority after an election, the party with the largest number of members of parliament forms a minority government. How long a minority government lasts depends on when the opposition parties decide to pass a vote of non-confidence. Minority governments in Canada usually hang around for 18-24 months before being defeated.

Conservatives are more often in opposition than government. Out of power, they develop certain attitudes towards Canadian federalism, based on the old adage that the enemy of my enemy is my friend.

They witness provincial premiers attacking the federal government, demanding more power and money and greater respect for provincial prerogatives. Federal Conservatives begin to believe that if they replaced the Liberals, harmony would prevail with the provincial premiers, Canadian federalism would run better, and the voters would be more satisfied.

The fact that all of these assumptions have been repeatedly demolished by reality does not stop Conservatives from believing in them. The world of opposition is a place of illusions and stunted historical memory.

Not surprisingly, the January election brought to power a Conservative government under Prime Minister Stephen Harper, imprisoned in the party's old belief that greater national harmony will flow from giving the premiers what they insistently demand in Canada: more money and power.

Since his election, his government has presented a budget in early May that will reduce the Goods and Service Tax, Canada's Value Added Tax known as the GST, from seven to six percent. That, with other tax breaks is expected to cut income taxes by \$20 billion over the next two years.

A prime minister from the West

That Harper comes from Alberta is of consequence. Alberta in particular, and western Canada in general, has often felt neglected by Ottawa. Alberta provincial governments usually wrestle with Ottawa, rejecting what it calls "incursions" into

provincial jurisdiction.

Some of this Alberta prickliness towards Ottawa influences how Harper sees Canadian federalism. He thinks, not without reason, that the federal government has intruded into provincial areas through the use of its unbridled spending power. He aims to curb that spending, although just how remains unclear.

Harper has pledged to rectify the "fiscal disequilibrium" in Canada. This unappetizing phrase has come to mean, in lay language, that the provinces have too few revenues to discharge their increasingly costly constitutional responsibilities, especially for health and education. Put more simply: Ottawa has too much money for its tasks, the provinces too little for theirs.

There's nothing new about this provincial complaint. Large provinces, notably Quebec, have been pounding this drum for decades. The existence of a "fiscal disequilibrium" is now accepted as gospel throughout Quebec and has gained adherents in other provinces and, apparently, in the new federal government.

Said the Harper campaign document: "A Conservative government will work with the provinces in order to achieve a long-term agreement which would address the issue of fiscal imbalance in a permanent fashion."

Harper has said that only in the Conservatives' second budget, next year, will the government begin the process of re-allocating federal surpluses and begin dismantling the fiscal imbalance. How this might be done and what might constitute a "long-term agreement" remain unknown. There are various possibilities, all strewn with traps.

In Canadian federalism, if you change one formula, that change inevitably affects others. Every province wants more, or at the very least is unwilling to take less. Therefore when the Conservative platform, as part of this rebalancing of the federation, pledged to rework to every province's advantage the national equalization scheme whereby money gets transferred to less affluent provinces, the promise left even the experts perplexed as to how this could be done without leaving at least some provinces worse off.

Soon after taking office, Harper began to shuffle verbally away from his bold promise to fix the "fiscal disequilibrium," and for good reason. The whole "fiscal disequilibrium" argument was underpinned by large — but overestimated — federal surpluses that caused envy in many provincial capitals.



Canadian Prime Minister Stephen Harper (r.) with Quebec Premier Jean Charest.

Jeffrey Simpson is national affairs columnist of The Globe and Mail, Canada's national newspaper.

From campaign promise to political reality

Then it dawned on the Conservatives, as a more experienced group of politicians would have understood, that the fiendish complexities of fiscal federalism cannot easily or quickly be overhauled. And a few voices in the Conservative Party, helped to this understanding by the federal civil service, began to realize that giving the provinces more power and money never left provinces grateful, did not slake their thirst for more, and seldom made the party in power in Ottawa more popular.

Nonetheless, the party promise stands. It must be implemented in some form. The Conservatives have usually been in opposition because of their weakness in Quebec. They won 10 seats there in the January election. Their objective is to win 20 to 30 more in the next vote, thereby becoming a majority government and replacing the Liberals as the natural governing party of Canada.

A Quebec provincial election looms in 2007. The federalist Liberal government in the provincial capital, Quebec City, has been trailing the separatist Parti Québécois. A Parti Québécois victory would likely mean yet another attempt to break up Canada. So a Liberal victory in Quebec is manifestly in the interests of Canada. That's another reason for Harper to accept the existence of the "fiscal disequilibrium" and by solving it give the federalists in Quebec a trophy to hold aloft during the next provincial election.

Since Quebec insists that a "fiscal disequilibrium" exists, and since gaining ground in Quebec is the Conservatives' number one political objective, something must be done. Enrich equalization for recipient provinces such as Quebec? Hand tax points over to all provinces? Increase the almost \$48-billion Ottawa already transfers to provinces? Give the provinces two or three points from Canada's Value Added Tax, the national Goods and Services Tax?

All these options (and others) will be canvassed. But there won't be that much of a surplus in the next two fiscal years, especially now that Harper is indeed reducing the Goods and Services Tax by one point, at a cost of about \$5-billion.

The best solution – and bad politics

There is a much better way of solving the "fiscal disequilibrium" than Harper's approach, but it requires a different definition of the term.

Rather than accepting that Ottawa has too much money and the provinces too little, another definition would accept that Ottawa has too much but that Canadian taxpayers have too little. Therefore, according to this definition, the Conservative government should cut taxes significantly, then say to the provinces: "Help yourselves to the tax room we have just vacated — if you dare. You, after all, have about the same taxing powers as the federal government does." But, of course, many provinces would not dare, especially Quebec, which has already imposed among the country's highest taxes on its citizens. It is easier for Premiers to demand money from Ottawa than to tax their own citizens directly.

Lower federal and higher provincial taxes would make sense, however, in a federation increasingly in a fiscal mess. Harper is right in one observation: Ottawa has used its spending power excessively in many areas of provincial jurisdiction. The previous Liberal government under Prime Minister Paul Martin was egregiously interventionist, barging into day care, urban transit, municipal infrastructure, health-care with an open chequebook.

Canadian Election Results

MPs elected on Jan. 23, 2006:

Conservatives	125
Liberals	102
Bloc Québécois	51
New Democrats	29
Independents	1
Total:	308

Canada elects all MPs by single-member electoral districts. The Green Party, which received 4.5 per cent of the vote nationally in 2006, elected no members of parliament.

Harper would like to clarify federal and provincial roles in the federation, without having spelled out how, by withdrawing Ottawa from aspects of its chequebook federalism and focusing federal efforts on area of uncontested federal authority such as defence and foreign affairs.

Even in foreign affairs, Harper nodded towards Quebec's demands, in May, when he announced that Quebec will play a formal role as a kind of associate member within the United Nations Educational, Scientific and Cultural Organization (UNESCO), just as it has since the creation of *la Francophonie*. Of course, it's only a matter of time before Quebec demands similar status within other international organizations. Harper is so anxious to make gains in Quebec that political expediency has banished considerations of coherence in Canadian foreign policy and analyses of future consequences.

Harper has only a minority government. Anything that requires parliamentary approval, such as major budgetary changes that would transfer money from Ottawa to the provinces, must gain support from some other parties. In the first year of his mandate, no party wants to precipitate an election; after that, all bets are off.

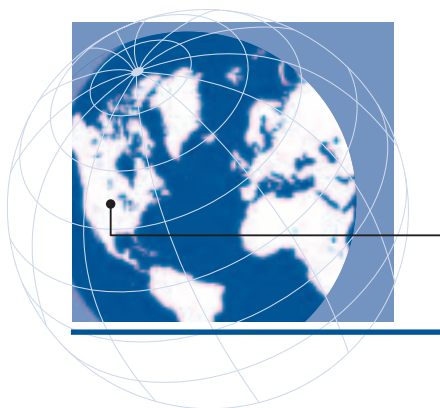
Room to manoeuvre outside parliament

There are, however, many issues in Canadian federal-provincial relations that do not require parliamentary approval, such as the UNESCO deal. Harper will use this non-parliamentary federal authority to try to improve relations with the provinces. But better relations with the premiers may prove difficult.

He will discover that Ontario now feels itself hard done by within Canada, claiming that \$23 billion is siphoned from the province to assist other regions while the provincial government has a deficit and its health, education and municipal systems are struggling.

He will find the four Atlantic provinces — Nova Scotia, Newfoundland and Labrador, New Brunswick, and Prince Edward Island — clamouring for more money to boost their economic prospects. In the West, he will find Saskatchewan wanting changes to the equalization formula that are felt unfair. He will find Alberta, with energy resources swelling provincial coffers, just wanting Ottawa to mind its own business. And he will discover that whatever concessions he makes to Quebec will be pocketed by the provincial government, with no thanks or credit except to itself for having extracted the money and power from Ottawa.

Harper will, in other words, become wiser about the ways of Canadian federation. He will learn that, as prime minister, managing the world's most decentralized federation is a lot harder than he might have thought as leader of the opposition. (6)



US public health coverage for poor and elderly

Washington cuts and states increase health insurance

BY JOHN MILGRIM

As First Lady of the United States, Hillary Rodham Clinton spent a good part of her husband's first term championing an overhaul of the country's health care system. It was touted as guaranteed health insurance for all Americans, but it was also criticized by citizens on the right as an unwanted move toward "socialized medicine."

That was 1993; Democrats controlled Congress and a good 14 per cent of the nation's \$6.6 trillion gross domestic product was being spent on health care.

The plan went down to an infamous failure, conservative Republicans gained control of Congress the following year and Mrs. Clinton shouldered much blame for the defeat of the Democrats.

"Been there. Didn't do that," she wrote recently on her earlier foray into health care reform.

Now, Clinton is a U.S. Senator from liberal-leaning New York State and a frontrunning candidate for the 2008 presidential election. She's also pushing a new health care reform plan, albeit far less ambitious. In fact, most politicians in Washington D.C. have proposed or signed on to a variety of initiatives to make over health care while complaining the system now is in crisis.

Health care costs continue to rise at a rate well above inflation, and U.S. Census figures showed 46 million Americans (almost 16 per cent of the population) had no medical insurance coverage whatsoever in 2004. And in the United States, while access to health care is not a legal right, some argue that guaranteed government-subsidized health insurance should be.

Universal coverage debate began decades ago

"This is a great debate that has been going on in America now for some years," said U.S. Rep. Maurice Hinchey, D-NY. "It's a debate that stretches back all the way to the (President Theodore "Teddy") Roosevelt Administration and the (President Harry) Truman Administration. Even the (President Richard) Nixon Administration tried to advance some form of national health insurance."

In 2004, health care spending of \$1.8 trillion made up about 15 per cent of the \$11.7 trillion U.S. gross domestic product. Estimates are that health care spending will rise to 17 per cent of GDP by 2011.

The health care reform plans recently pushed through Congress mainly include changes to Medicare and Medicaid, the nation's subsidized health care systems for



U.S. Senator Hillary Rodham Clinton of New York.

the elderly and those with low income. In February, 2006, President George W. Bush signed legislation to roll back spending on the entitlement programs. The legislation, the Deficit Reduction Act of 2005, was passed but is being challenged in court. Bush's law is slated to reduce the growth of Medicare and Medicaid spending by \$40 billion over 5 years, but its effect will be to shave fractions of a percentage point off of growth in entitlement spending. Critics called it an immoral decision while proponents hailed the move as a rational means to cut fraud and waste.

But the most significant change in recent years was signed into law in late 2005 and went into effect January 1, 2006. That's when Medicare began prescription drug coverage under the new and controversial Medicare Part D.

Simply put, Medicare is the federal government's health insurance program for older and some disabled Americans. Almost all Americans over the age of 65 are covered by Medicare. Medicaid, on the other hand, is federally subsidized coverage for low income Americans who meet other criteria for eligibility. Its guidelines are set at the federal level but states administer the programs, pick up between 24 to 50 per cent of the costs, determine eligibility levels and tailor programs to their political will. States often cover more "optional services" such as prescription drugs — which are often anything but optional in health terms. It is often the relative wealth of a state rather than political leanings which determine how many "optional services" they cover. The one service that does depend on a state's political leanings is abortion: Medicaid pays for abortions in most states in cases of rape, incest or when the mother's life is at stake. It will cover abortions in most other situations in 16 states, predominantly more liberal-leaning Democratic or "blue" states like New York, California and Massachusetts.

Florida Republicans increase health coverage

In Florida, a more Republican or "red" state popular among retirees and thus home to a preponderance of elderly, the politicians tailored government-run medical services to their constituents. It is one of 27 states where chiropractic care and private duty nursing is covered by Medicaid. It is one of 35 states where dentures are covered. However, Governor Jeb Bush (George W. Bush's brother) and the Republican legislature are pioneering efforts to introduce individual accounts into Medicaid, limiting the amount of health expenditure on an individual.

John Milgrim is a reporter for Ottawa News Service and is based in Albany, New York. He writes regularly about New York state politics.

State Sen. Durell Peaden, Jr., a Republican and chair of the state Senate Health Care Committee, said lawmakers concentrate on care for the elderly. They've provided incentives for geriatric care training at medical schools and are expanding independent living programs.

"Whatever we do we're usually two years ahead of everybody else," said Peaden.

The more conservative Louisiana offers far fewer optional services. It is one of six states with no dental care, eyeglasses are not covered and it is one of four states without mental health rehabilitative care, according to the U.S. Centers for Medicare and Medicaid Services.

"It's having enough money to get the (federal) grants that are being offered, that is the problem," said Louisiana State Rep. Sydnie Mae Durand, chair of the Health and Welfare Committee of the state legislature's lower house. "You have to have match money to get it and we have to utilize our money in the best way we can." Matching funds or the necessity to "match money" is both a blessing and a curse for local governments — it means they can get partial funding, but they have to raise the rest.

Most of the 44 million Americans without health insurance come from working families. – Senator Hillary Clinton

Just as entitlement programs such as Medicaid can vary by a state's political leanings, party control of the federal government can sway national policy.

Politicians like Hinchey, who is further left than most in Washington, say reasons are now more abundant than

ever to look again toward a national insurance system, but it is Republican control in Washington that keeps it from happening.

"Most people realize the time has come," he said, explaining corporate health insurance costs add anywhere from \$1,500 to \$2,000 to the cost of an automobile manufactured in the U.S. "The lack of national health insurance has made it much more difficult, especially for American manufacturing in the global economy."

The previous political and industry opposition to a national health insurance system dominated the debate by characterizing the proposal as "socialized" medicine. It was a term that once intimidated a link to communism and helped assure the proposal's demise, Hinchey said, especially among a generation familiar with the Cold War.

Meanwhile, Medicare's recent addition of prescription drug coverage has caused political fallout. The idea seemed simple enough: federally-subsidized private drug plans. The legislation, however, took 800 pages to print. Medicare recipients could choose a plan based on their drug needs, premiums and accompanying co-payments. But it has proven hard to do so because information from insurers was slow to be incorporated in the government data bases, and because so many plans offered different products. And those covered by both Medicare and Medicaid were automatically moved from Medicaid drug coverage to a particular Medicare drug coverage plan on January 1, 2006 — with much difficulty and political backlash.

States created safety nets

For some, the move increased drug costs or the new plans they were automatically enrolled in did not cover the drugs they had been using. Most state legislatures created emergency safety nets subsidizing drug coverage for those caught in the logistical web.

The surprise cost to New York State alone topped \$100 million in just the first two months of the program.

Sen. Clinton ultimately backed down from her public advocacy for a "universal health care coverage plan" during her husband's administration. She never gave up on it. Two years ago she filled the pages of *The New York Times Magazine*, reiterating and modernizing her earlier campaign. This time, however, she was calling mainly for incremental change and improvements to health information technology, not for anything remotely close to the large changes in financing and delivery called for in the 1993 Clinton plan.

She notes that most of the 44 million Americans without health insurance come from working families and that 18,000 people aged 25 to 64 die each year from a lack of coverage. At the same time, the United States remains far in front of all other nations in per capita health care spending while it ranks 48th in life expectancy, she said.

"All that we have learned in the last decade confirms that our goal should continue to be what every other industrialized nation has achieved — health care that's always there for every citizen," she wrote. (6)



U.S. President George W. Bush.

Health care spending in 13 federal countries*

The chart below shows that the USA spends more of its Gross Domestic Product on health than any other country in the list, but 16 per cent of US citizens have no health insurance coverage at all.

Country	Per cent of GDP spent on health care in 2002
Australia	9.5
Austria	7.7
Brazil	7.9
Canada	9.6
Ethiopia	5.7
Germany	10.9
India	6.1
Mexico	6.1
Nigeria	4.7
South Africa	8.7
Spain	7.6
Switzerland	11.2
USA	14.6

* These figures from the World Health Organization include both public and private expenditures on health care.



the **Practitioner's** *page*

Canisius Braun, Secretary General of the Cantonal Governments Conference, Bern, Switzerland

The importance of horizontal and vertical collaboration within the Swiss federal State from the perspective of the Cantons

Federalism is one of the basic principles of the Swiss Confederation. It guarantees unity in diversity for the four regions of the country, which have their own language, culture and identity. It also greatly contributes to the effective and efficient execution of tasks and strengthens the competitiveness of the Swiss economy.

The Swiss federal system guarantees a high and decentralized capacity to resolve disputes in the best interest of the citizens of the country. The protecting of cantonal autonomy and organizational flexibility is therefore a major national objective that makes increasing demands on the cantons.

The increasing internationalization of politics, and the subsequent blurring of limits between foreign and domestic policies, reinforces already existing centralizing trends. There are a variety of factors that make it necessary for the cantons to heighten their levels of cooperation, issues such as the integration of Switzerland in a politically and economically developing Europe, the general trend towards globalization, and the pressing need to execute tasks effectively despite the country's limited territory.

If the cantons are to maintain and strengthen their position in the federation, this vertical and horizontal collaboration must be adapted to new developments and redefined accordingly. To this end, the Conference of Cantonal Governments (in French, *Conférence des gouvernements cantonnaux* or CdC) has become, since 1993, an essential element in the power-sharing arrangement of the Confederation.

Creation and functions of the CdC

At the beginning of the 1970s, the Cantonal Conference of Governmental Presidents was created. Switzerland's 26 cantons — 20 full cantons and 6 half-cantons — are all members of this body. At the end of that decade, the Confederation-Cantons liaison body was introduced. The CdC has done almost from the start what those two bodies were unable to accomplish. It became an effective coordinating body between the cantonal governments ensuring their meaningful participation in the Confederation's decision-making processes, including in complex political issues. The lack of participation in Switzerland's failed efforts regarding European integration

created a moral burden to which the CdC owes its rapid success (in a 1992 referendum, a majority of the Swiss population and cantons voted to reject membership to the European Economic Area, an agreement that turned out to be beneficial for the other countries who did become members).

The goals of the Conference of Cantonal Governments are to promote collaboration within cantons in their field of jurisdiction and, in federal matters relevant to the cantons, to ensure the coordination and communication of critical information, particularly in the fields of:

- renewal and development of federalism,
- distribution of powers between the Confederation and the cantons,
- development and formulation of decisions at the federal level,
- execution of federal tasks by the cantons, and
- foreign policies and integration.

The supreme body of the CdC is the Plenary Assembly, in which each canton is represented by a member of its government. The role of the Plenary Assembly, which meets quarterly, is to make political decisions. The votes of at least 18 cantons are required for an official cantonal position to be presented to the Confederation.

The executive body of the CdC is the *Bureau* and each of its nine members is appointed according to a regional distribution formula. The *Bureau* oversees ongoing projects, makes decisions in urgent matters, and prepares matters for submission to the Plenary Assembly.

The CdC is supported by a secretariat composed of 15 members. For important cases, special commissions are set up and include political and technical representatives. More than 200 people from many cantons took part in these commissions. The credibility and success of the CdC depends in large part on the quality of the work performed by these bodies and the work often has to be done within extremely short time frames. The CdC has had a positive political impact primarily because of the knowledge available in the cantons, the politicians involved in the special commissions, and the optimal networking of all cantons.

The CdC often works closely with the Intercantonal Conferences of Directors, which are composed of the

members of government responsible for a particular department in each canton. They are bodies that harmonize and coordinate both within cantonal departments and with the federal agencies responsible for specific fields of activity. There are 17 Conferences of Directors. The most important fields are education, health, finance, social programs, internal security, the economy, public works, land use planning and the environment.

Unlike the Conferences of Directors, the CdC is statutorily dependant on the joint sovereignty of the cantons and on the combined will of all cantonal governments. As a result, the CdC plays a key role in cross-cutting domains. Although foreign policy initiatives fall within the CdC's jurisdiction, the body tends to limit its domestic policy initiatives to matters relating to institutional policies, to the global principles of federalism, or to cross-cutting matters.

Areas of cantonal participation in federal politics

The kinds of matters handled by the CdC highlight its importance as a pivotal body for the cantonal governments in their dealings with the federal authorities. In terms of national policies, it contributed considerably to the renewal of federalism in Switzerland particularly with regard to the drafting of the project of the Federal Council for a New Federal Constitution in force since January 1, 2000. This brought about a modern type of federalism that clarified the distribution of powers between the Confederation and the cantons.

In terms of foreign policies, the CdC has ensured the participation of cantons in bilateral accords negotiations between Switzerland and the EU. The legislation related to the participation of cantons in the Confederation's foreign policy passed the test during various bilateral negotiations. The legislation was developed by the Confederation and the cantons as equal partners and entered into force in 2002. It established the right of the cantons to participate in the foreign policy decision-making process.

The key accomplishment that brought about the renewal of Swiss federalism is the reform of financial equalization and tasks distribution between the Confederation and the cantons (RPT). The people and the cantons ratified the RPT in November 2004 and paved the way for several improvements, namely a clear distribution of tasks between the Confederation and the cantons, the financial autonomy of the cantons and increased inter-cantonal collaboration.

Another progressive step that came in 2001 was the enhanced relations between the CdC, cities and communes. This came with the formation of the Tripartite Conference on Municipalities (CTA), a body which brings together the Confederation along with cantons, cities and communes. It promotes the development of a common policy on communes as well as vertical collaboration between the Confederation, the cantons, and the communes.

At present, the CdC is dealing with more than 30 issues, including more than 20 related to federal policy projects in the fields of foreign, domestic and financial policies.

The Confederation also benefits from the CdC

The initiatives of the CdC are not solely in favour of the cantons. It is also a way for the Confederation to engage the cantons in its political objectives. The quality and effectiveness of its decisions and positions are essential factors for the coherence of Swiss policy as a whole, especially at the federal level. The Confederation therefore has a vital interest in structured and inter-cantonal

collaboration from which flows a progressive environment, a national consensus on the decision-making process, and an ability to take action.

The fact that the CdC provides the cantons with an opportunity to be heard and to intervene in relatively short time frames and on the basis of sound processes, is sometimes considered to be a disturbing factor for national policy. In this context, the legitimacy of the CdC is often questioned.

Legally speaking however, and from the cantonal law point of view at least, the goals, objectives and workings of the CdC are perfectly consistent with the constitutional mandate of the cantonal governments, which is to be the external representative of the cantons. All cantonal governments are the legitimate representatives of their canton's foreign interests. If the Parliament or the people have particular rights of participation, it is the duty of each government to respect these prerogatives. A government could, for example, express such reservations when it presents a position statement or decides not to take a position on a particular question or issue. Thus, it is perfectly accurate to state that cantonal governments are the representatives of their cantons and that the CdC is only a forum that facilitates the common presentation of individual cantons' position statements to the Confederation. The critical national policy decisions made by the CdC are based on all cantonal governments' decisions, and must therefore follow clear rules.

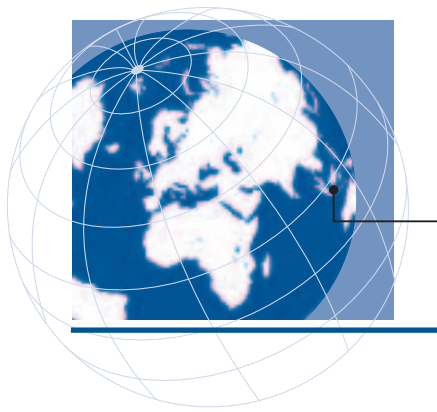
In the last two years, the debate on the legitimacy of the CdC has dramatically changed direction and even partly ended. In 2003, through a process coordinated by the CdC, the cantons, with their first referendum in 130 years, successfully opposed a series of fiscal measures introduced by the Confederation. They were able to convince a clear majority of voters that the measures were unconstitutional in May 2004.

Summary and perspectives

In the short history of the CdC, it has become a catalyst for the canton's participation in federal politics. The CdC continues to gain importance as the complexity of tasks to be executed increases, the influence of foreign policy on Swiss domestic policy intensifies and interest groups' demands on the state multiply. The cantons have acknowledged that it is necessary, because of their high level of autonomy, to have efficient and effective institutions of inter-cantonal collaboration.

In Switzerland as in other countries, federal politics follow their own principles and often overlook the sub-national units. Today, whether federal politics is nationally or internationally oriented, parties, associations, NGOs and the national media now form part of the bigger picture. Until the historic May 2004 referendum, the cantons had only played a secondary role. The success of the referendum and the victory of the cantons in the vote on the fiscal package have significantly enhanced their role. It is now up to the cantons themselves to ensure, by their ongoing participation in federal politics, that their constitutional importance is also respected in federal political issues. In this context, the CdC helps the cantons assert their constitutional role within the federal state, not out of self-interest but because it is in the best interest of the cantons that federal tasks be executed efficiently and that they meet the needs of the citizenry. ⑥

To visit the CdC website, go to www.cdc.ch



Analysis: Aceh's non-federation with Indonesia

BY DAMIEN KINGSBURY

When the Aceh peace agreement was signed in Helsinki on August 15, 2005, it ended 28 years of conflict in that Indonesian territory. The signatories to the agreement were the Indonesian government and the rebel group in Aceh, the Free Aceh Movement or *Gerakan Aceh Merdeka*, better known by its initials GAM. For an outcome that employed the ideas of both federalism and autonomy, the agreement studiously avoided both these terms. The term "autonomy" was unacceptable to GAM because it denoted the status quo, while federalism posed a direct challenge to the unitary nature of the Indonesian state.

At certain times in a country's history, political appearances are often more important than reality. So what is said in Indonesia today does not necessarily correspond to what exists. Hence the Aceh peace agreement described an autonomous, federated relationship, but refused to call it that.

The conflict which was ended by the Aceh peace agreement started in 1976. That was when GAM rose up against the Indonesian state, re-asserting the pre-Dutch, independent status of Aceh. After GAM began its military actions, the Indonesian government and its military responded, leaving more than 15,000 dead, thousands of homes destroyed and a population of a little over four million in terror.

"Special autonomy"

In 2002, following the 32-year reign of President Suharto, Aceh was nominally granted special autonomy, as well the other territory of Papua (most of the west half of the island of New Guinea, across from now-independent Papua New Guinea) under a program of political reform that recognized their historical status.

In the rest of Indonesia, measures aimed at bringing about certain levels of regional autonomy devolved some political and economic authority to the sub-provincial district level. The intent was to alleviate over-centralization and a lack of responsiveness while ensuring that autonomous districts remained too small to be independently viable.

The special autonomy granted to Aceh and Papua differed in that it devolved authority to the province rather than the district. This was meant to placate separatist sentiments. In reality, little of the income from these resource-rich provinces remained within them, a high level of centralized

political control continued and there was an increase in already high military activity.

GAM thus rejected the notion of special autonomy, claiming it to be a sham. Thus, any peace agreement to be reached in Helsinki could not include this word.

From the Indonesian government perspective, the term federalism was equally problematic. Indonesia was established as a federation in 1949, but federalism was ended the following year. Its critics claimed it was unworkable and served as a front for continuing Dutch colonial interests.

Generally, federalism is held to be an appropriate model for polities in which there is a relatively high degree of pre-established local political identity, but increasingly also a wider political commonality.

Indonesia spans eight major island groups and some 13,000 inhabited islands, with more than a dozen major languages and 350 or so minor ones. Its main point of commonality is its colonial history. The Netherlands — who as a colonial power ruled Indonesia from 1700 to 1949 — established federal states there between 1946 and 1949 as a counterweight to the Republic of Indonesia that Sukarno and Mohammad Hatta had proclaimed in August 1945 after the end of the Second World War. In December 1949, (Dutch) federal Indonesia had 16 partner-states and autonomous territories. Indonesian nationalists saw this federal structure as an instrument of Dutch imperialism, another example of the old imperial principle of "divide and rule". Against this background, though Indonesia could have been an ideal candidate for federalism, the Republic of Indonesia reconstructed itself as a unitary state in 1950.

From 1950, Indonesia was recast not just as a unitary state but, in a sense, as a recreation of the thirteenth century Javanese Majapahit Empire. Indonesian school children still learn of its imperial glories from their history books. But there was and remains little room in an empire for a relationship between equals.

It is not surprising, then, that no sooner had the Indonesian government in Jakarta collapsed Indonesia's federal structure than South Sulawesi and then Ambon rose in separatist revolt. The Indonesian military quickly prevailed, but the rebellions cemented in the minds of the army officer corps the idea that federalism was a threat to the unity of the state. Indonesia would have to be held together and a nation created, they believed, by force if necessary.



Indonesian President Susilo Bambang Yudhoyono.

Damien Kingsbury is Associate Professor in the School of International and Political Studies and Director of the Masters in International and Community Development, Deakin University, Victoria, Australia. His books include "The Politics of Indonesia" 3rd ed. Oxford, 2005. In 2005, he was adviser to GAM at the Helsinki peace talks.

Aceh's involvement in a wider Islamic-inspired rebellion from 1953 and another regionally-based rebellion in 1958 also added to Indonesia's sense of state insecurity. The periphery, it seemed, could not be trusted. Following the defeat of these rebellions, Indonesia shifted from parliamentary democracy to an executive presidency, further centralizing political authority.

Federalism vs. a unitary Indonesia

After the fall of President Suharto in 1998 and in light of what was increasingly seen as the failure of Indonesia's national project, a leading anti-Suharto political figure, Amien Rais, briefly and unsuccessfully flirted with a proposal to re-establish Indonesia as a federal state. Rais, the speaker of Indonesia's upper house of the legislature from 1998 to 2004, was chair of the National Mandate Party and the former leader of one of the largest Muslim organizations in Indonesia. He ran for president in 2004 but came in fourth, with just 15 per cent of the vote.

However, it was also around this time that East Timor began to look like it might have its own relationship with Indonesia recast. East Timor was invaded by Indonesia in 1975 and integrated in 1976, both acts in defiance of international law. Responding to the possibility of East Timor's separation, the army initiated both a covert military campaign against it and stepped up its rhetoric of asserting that the unity of the state is of capital importance. The rhetorical term used to assert state unity was *Negara Kesatuan Republik Indonesia* (NKRI), the Unitary State of the Republic of Indonesia.

NKRI became a military and nationalist mantra, especially after East Timor's separation in October 1999. In Aceh, the army insisted that public servants not only swear an oath of allegiance to NKRI, but also be tested on its meaning. The answer to the perceived threats of political plurality, it seemed, was to reassert the unitary state.

Given Indonesia's delicate democratic transition and the continuing influence that the army played in politics, no Indonesian politician would ever say in public that Indonesia was anything other than a unitary state. During the Aceh peace talks it was impossible for Indonesian government negotiators to accept, much less propose, any political solution that challenged the rhetorical validity of NKRI. Federalism was an unacceptable term.

GAM gives up independence for autonomy

In reaching an agreement, GAM gave up its claim for independence in exchange for a high degree of genuine autonomy. The Indonesian government agreed in practice to allow Aceh semi-independence, and hence a functionally federated status.

In the heady days following the signing of the Aceh peace agreement, there was widespread discussion in the Indonesian media that it could constitute a way forward for political relations between Jakarta and the rest of the state.

In particular, a question that quickly arose was whether the similarly troubled province of Papua could also achieve an Aceh-like agreement. Further, the question went, if this was possible, would this not open the way for Indonesia to become a genuine federation?

Before this question could be addressed, Indonesia's president, Susilo Bambang Yudhoyono — a former general who served in East Timor in the 1970s — and some leading politicians in the Indonesian legislature pushed through the division of Papua into three provinces. A subsequent Constitutional Court ruling allowed two of the divisions, with the third case pending.

The claimed intention of this move was to better allocate resources within Papua. However, the move appeared to be designed to isolate and better control Papuan separatist sentiment. One of the key objectives of the policy of dividing Papua into three or more provinces was to prevent the implementation of the Papua version of Special Autonomy. The advocates of division feared that such a move would empower a local elite who they suspected would use autonomy to push for independence.

Given this division, Papua's capacity to negotiate an Aceh-like agreement now seems remote.

After a promising earlier start, indigenous Papuans did not achieve a high degree of internal cohesion. Unifying leaders have been rare. The charismatic leader, Theys Eluay, was murdered by army special forces troops in 2001, and more recent candidates became political exiles and one of them suffered a serious stroke.

For the rest of Indonesia, reverting to a federal structure would require the other Indonesian provinces to press for a new political arrangement, based on concessions to demands for devolution or separatism. Such claims are heard in Indonesia, but not with much conviction and rarely with any force. And the Indonesian army has made it clear that it will respond harshly to such initiatives.

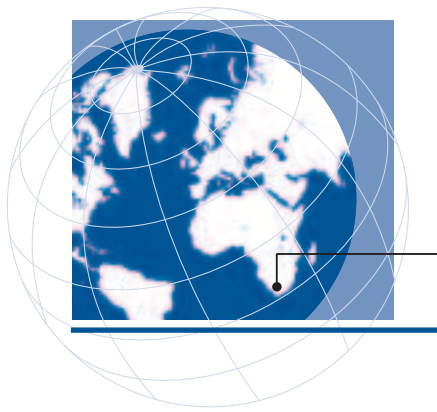
Could a federal Indonesia emerge?

Given that the Indonesian government is playing a delicate game of trying to reduce the effective independence of the military, it is most unlikely to initiate any move that would bring it into direct confrontation with the armed forces. In this, it is worth remembering that current President Susilo Bambang Yudhoyono is a former army major-general.

Federalism could be a logical proposition for Indonesia, given its fragmented geography and cultures, and its largely separate pre-colonial history. But the forces arrayed against federalism are substantial and, for the foreseeable future, probably overwhelming.

Assuming the intention of the Aceh peace agreement is manifested in reality, Aceh will have achieved a functional federated relationship with Jakarta. This has been achieved, though, by a costly guerilla war waged by the Acehnese and a willingness to negotiate for something less than complete independence. Their example could inspire others to push for local autonomy.

But the chances of federalism — as opposed to local autonomy — are slim. Because of a lack of local commitment, the vehement opposition of the Indonesian army and the nationalist fervor of opportunist politicians in Jakarta, such a federation — rhetorical or functional — no longer appears likely elsewhere in Indonesia. 6



From shantytowns to modern dwellings

South Africa's cities face housing shortage

BY *DONWALD PRESSLY*

The city of Cape Town has been called one of the most beautiful places on earth. From Table Mountain towering 1,000 metres above the city in the northeast to the Victoria and Alfred waterfront, the surroundings can take your breath away. But this great South African city — since 2000 an agglomeration of three million people — is still struggling to provide housing and other basic resources for all its citizens. South Africa is still working to erase the legacy of 46 years of apartheid.

Cape Town — as a major metropolis in South Africa — is expected to be a provider of public housing. However, it is largely failing in the task. The previous mayor, Nomaindia Mfeketo of the African National Congress, acknowledged in December 2005 that the city needed about 750 million rand (\$121 million US) a year over the next five years to eradicate its housing backlog. Cape Town needs to build somewhere between 20,000 and 30,000 houses a year. In 2003-2004 it built 342 houses. In 2004-2005 about 2,000 were built. At the same time 16,000 poor people come to Cape Town each year to live in shacks. That same year, the Western Cape provincial government underspent its housing budget by 112 million rand (\$20 million US). In 2005-2006 the Western Cape underspent by some 94 million rand (\$15.2 million US).

While South Africa's cities were recognized as a separate order of government in the 1996 constitution, they are dependent to a limited extent on the national government for their revenues. But the national government is keeping a tight lid on the purse strings. South Africa's fiscal restraint has surprised even the opponents of the ruling African National Congress (ANC). When the ANC won power in the first non-racial national election in 1994, critics predicted an unrestrained spending spree. But fiscal prudence won out, with deficits substantially lower than during the apartheid period. The bulk of national revenue goes to the nine provincial governments — which are almost entirely centrally funded — but local government also gets a cut from the central kitty.

Local government has, indeed, gone through many teething problems since the advent of democracy, much of it the result of 887 cities and towns that were based on apartheid being compressed into just 284 municipalities by the year 2000. After municipalities were deracialized in 1995 and 1996, the goal was to make local government financially viable. Cape Town merged seven local municipalities into one mega-city. Johannesburg contended with merging a number of administrations with, in some cases, incompatible electricity and traffic management systems.

Donwald Pressly is political correspondent for I-Net Bridge, a South African financial wire service. He also writes for the Mail and Guardian. He is based at Parliament in Cape Town.

Overall the picture for local government is not pretty — with burgeoning outstanding debt and a fiscal base seemingly built on shifting sands of changing tax systems. Against this backdrop, waiting lists for public housing are lengthening and vast shack settlements proliferate at the edges of the country's towns and cities.

The provision of housing in South Africa is a shared competence of the national and provincial governments — with local government having delegated authority to implement housing schemes through provincially-provided subsidies. Housing Minister Lindiwe Sisulu recently acknowledged that the number of shack dwellings in South Africa had risen from 1.45 million in 1996 — two years after the ANC took power — to 2.14 million in 2003. Much of this can be attributed to the many years under apartheid when black Africans were restricted from moving at will to towns and cities.

Capacity lacking

Some municipalities do not have the capacity to provide housing or direct the appointment of housing contractors. It is in these municipalities that the poor tend to build their own houses.

South Africa intends to eradicate shack lands by 2014 and wipe out housing backlogs. Lack of capacity, however, is the main impediment to achieving these aims.

2006: the cities vote

Twelve years into ANC rule, South Africans went to the polls for the third time at the local government level on March 1, 2006, and cast 66 per cent of their votes for the ANC.

But in an upset victory in Cape Town, the official opposition Democratic Alliance won enough votes to make its candidate, Helen Zille, the mayor, with support of smaller parties.

And in late March, the ANC was facing what the *Mail & Guardian* called a "mayors' revolt" in more than a dozen municipalities where city councillors — including those from the ANC — voted for their own choices for mayor, ignoring the ANC's official candidates.

However, the ANC won re-election in South Africa's five other major metropolitan councils, where the bulk of the population lives. This area includes the economic hub of Johannesburg and the industrial hub of Nelson Mandela Metropolitan, which includes the city of Port Elizabeth.

The housing challenge is simply one of many facing the young South African democracy as it strives to attain racial harmony and economic development.

It can be argued that South Africa has a hybrid federal system with significant powers at the local government level. There is, nevertheless, an institutional and constitutional bias towards the centre — something which has been encouraged by President Thabo Mbeki.

At the political level, management of local government has been increasingly centralized with the ANC national executive committee having the final say over the selection of mayoral candidates for the metropolitan municipalities. Just a few weeks before the municipal elections, the ANC announced that it would only be naming the mayoral candidates after voters went to the polls. The reason given was that voters were voting for a party and not an individual.

**President Mbeki
sees local
government as a
key delivery
agent.**

Local governments have a variety of means to raise their funds. South Africa's consolidated national, provincial and local government expenditure was about 435 billion rand (\$72 billion US) in 2005-2006. Local government got about 20 billion rand (\$3.2 billion US) of this amount. Local government itself raises about

86 per cent of its own revenue or a further 114 billion rand (\$18.5 billion US). The nine provincial governments, which received about 210 billion rand (\$34 billion US) in 2005-2006, raised just 5.7 billion rand (\$923 million US) from motor vehicle licence fees, hospital fees and gambling taxes. This situation makes provincial government largely dependent on the fiscal dictates of the national government.

Provincial government, therefore, has a fiscal noose around its neck. The equitable share allocation is an unconditional grant over which the provinces have discretion on how it is allocated among the functions they perform. The province's share is based on a formula constructed on economic development and poverty-related policy considerations. But health, education and social welfare spending makes up the bulk of these expenditures while conditional grants require that money be spent on matters such as integrated housing or comprehensive HIV and Aids grants.

A Sword of Damocles over the provinces

A political Sword of Damocles also now hangs over the provinces — or at least some of them — with the central government indicating that it is open to a debate on whether South Africa needs as many as nine provinces. Fewer provincial governments may bring down costs.

At the local government level, the major development was the announcement that by June this year, regional service council levies will be scrapped — possibly in favour of a more efficient system of business tax. This will centralize the process of tax collection, and would be feasible, providing that the business tax revenues flow back to the district and metro councils. The central government announced in the February 15, 2006, budget that it will provide transfers to councils in the medium term to make up for budgetary shortfalls.



South African President Thabo Mbeki greets supporters in Cape Town during the ANC birthday celebrations.

New infrastructure or fiscal restraint?

The pressure is on for local government to deliver effectively to communities and President Mbeki sees it as a key delivery agent. But there remains the unresolved problem of uncollected fees for local government services. Fortunately, the Municipal Finance Management Act requires disclosure of bad debt. Unfortunately, this may have a direct impact on a municipality's credit rating. Most municipalities provide free basic services to all citizens — a limited amount of water and electricity — charging consumption fees above the basic minimum.

Nevertheless, Auditor General Shauket Fakie described the 19.2 billion rand total debt (\$3.1 billion US) of 23 of the country's largest municipalities (as of March 2005) as "a phenomenal amount of money." This sum is almost equivalent to the amount the central government provides to local governments. This means that local authorities do not have access "to a large pool of funds for service delivery and infrastructure investment."

Finance Minister Trevor Manuel told MPs on February 16 that many municipalities had municipal managers with "low skills base" and the result was that "you are not going to be able to have an accountable local government in those instances." For example, South Africa's biggest municipality, Johannesburg, is owed 7.3 billion rand (\$1.2 billion US) due to non-payment of rates and service levies by residents at the end of 2004. It also faced consumer anger over chaos with regard to electricity and water billing. To tackle the issues, private and public business leaders are advising these municipalities. One success was that Johannesburg announced late in 2005 that it had exceeded its revenue collection target by 164 million rand (\$26.5 million US) and the city now gives priority to account query resolutions and clearances, as well as to credit control. It has initiated a repayment program that allows for writing off some household debt if regular payments are made.

How will South Africa's housing problem be solved? It is politically unlikely that the ANC will move away from centralist thinking. The answer may lie in empowering a national housing agency with a more effective mandate and approach than that which is currently exercised by the national Department of Housing to coordinate housing delivery in association with local government. This would follow the path of the proposed centralization of local taxes such as regional service council levies. It may be the only answer in the medium term while local and provincial governments learn the ropes of effectively delivering the needed housing units. 6



Iraqi delegation learns Canadian and Swiss federalism first-hand

BY ROD MACDONELL

A delegation of prominent Iraqis recently left their ravaged land to learn the intricacies of Canadian and Swiss federalism in an intensive 17-day study tour that took them to four Canadian cities and five more in Switzerland. They arrived in Montreal on February 13 and ended their tour in Zurich on March 2.

The purpose of the visit was to understand the mechanical workings of two functioning and mature federations and to determine what could be used and what would work in the Iraqi context.

Although Iraqis have adopted a constitution, there is expected to be a window of opportunity for it to be revised. The lessons learned in Switzerland and Canada may well feed into the amending of the legal cornerstone of the new Iraq.

The delegation that arrived in Montreal was composed of three members of the Iraq National Assembly, a senior judge, the governor of Najif, and a number of lawyers involved in non-government organizations working in the field of human rights. Members of the delegation were Sunnis, Shias, Kurds and Christians. In Switzerland, additional Iraqi delegates joined the group.

The tour was organized by the Forum of Federations and the Government of Switzerland, with the support of the National Democratic Institute.

Everywhere they went — from Montreal, Kingston, Toronto and Ottawa in Canada, to Berne, St. Gallen, Moutier and Basel in Switzerland — the delegates' thirst to learn was boundless.

Each presentation offered by the many experts was followed by a flow of questions that explored and probed deeper and deeper into the complexities of the subject matter at hand. Whether the issue was fiscal federalism, securing a federal state, sharing power at the centre, or oil and gas management, everything discussed was something the Iraqis needed to be able to implement back home.

For the Iraqis, perhaps the most sobering words came from Daniel Turp, a member of the Quebec National Assembly and one of the leading figures of Quebec's secessionist



Wijdan Salim of Iraq (l.) and Alaa Abdullah Alsaadoon (r.), members of the Iraq National Assembly with Nawel Hamidi (centre) at the Forum office.

Parti-Québécois, a party whose primary objective is to eventually win a referendum and gain sovereignty for the majority French-speaking province:

"No matter how badly we want Quebec to separate from Canada, we will never ever resort to violence or condone it," said Turp. "That is absolutely out of the question."

Turp's words, for the Iraqis — both Sunni and Shia Muslims, as well as their Kurdish compatriots — were greeted with the knowing, unspoken silence of participants who called home daily to receive the grim reports of the latest terrorist bombings and killings in a country that is at risk of tipping into civil war.

Phone line echoes fighting back home

One of the Iraq National Assembly members, Wijdan Salim, confided to a friend that when she telephoned home that morning to speak to her husband and children, she could hear the thundering echo of bombs over the long distance line to Baghdad. The blasts were occurring in her neighborhood.

Her Sunni colleague from the National Assembly, Alaa Abdullah Alsaadoon, told a newspaper reporter in Kingston, Ontario, that she lives in a state of siege in which there is round-the-clock vigilance. There are five armed guards living in a small building outside her house to protect her and her family of eight children and a husband. Her children cannot ever go out to play.

In parts of Iraq, there are insurgents intent upon savaging and sabotaging the attempts at democratizing the country, combined with the ever-mounting tensions between the religious communities. The tour offered the participants the opportunity to distance themselves from the tumult of Baghdad and contemplate future options.

In Kingston, Ontario, the participants were offered a four-day course on comparative federalism, bringing in the experiences of federal countries all around the world. The course was organized in conjunction with Queen's University's Institute of Intergovernmental Relations.

One day, the sessions were held at Canada's Royal Military College, where senior officers explained how, in a federal democracy governed by the rule of law, the military

Rod Macdonell is the senior director of public information and education at the Forum of Federations. He handled media relations during the Canadian leg of the tour.

answers to the orders of an elected government. The delegates no doubt knew the theory of civilian rule, being teachers and lawyers, urban planners and the like. But seeing and hearing it makes it all the more real.

The tour offered the participants considerable subject-matter expertise, and the occasional foray into the daily reality of life in a federation. One such experience was a morning spent at a high school in Toronto, a city where more than half of the three million residents were born in a foreign land.

The school has an enrolment of children from 45 different countries, several of them from Iraq. The delegates asked the students about their opinion of federalism and diversity in Canada. The teenagers explained that the country's multi-ethnic fabric is such that they are free to celebrate their national identity in a multicultural context. So, despite long and intemperate winters, they have bought into being Canadian.

The calming interlude with the students was followed by a visit to a Toronto think tank, the C.D. Howe Institute, where the topic was the management of oil and gas. Iraq's vast oil reserves will likely pay the toll to rebuild a nation whose fragile infrastructure deteriorated under the criminal neglect of Saddam Hussein. Much of what is left is being blown apart by terrorist bombs. The bill will be staggering.

So who will pay that bill and enjoy future growth depends in large part upon who owns the oil. The new Iraqi constitution appears to have created a state of uncertainty regarding the ownership of that oil, an issue of considerable concern to the Sunnis who inhabit part of Iraq where there is a scarcity of oil reserves.

How to share the oil revenues?

At the panel discussion at the CD Howe Institute, three experts described how Canada handles its oil revenues and how it taxes them. The Iraqi participants asked their advice on the redistribution of oil revenues in Iraq. Panelists agreed that having two types of taxation — an income tax system that would also cover oil producers and a royalty system on resource (oil) extraction — would help in diversifying how revenues are distributed. They also discussed the merits of having an equalization formula which would ensure the equal redistribution of revenues to the regions in Iraq that do not produce oil.

A Sunni delegate told the *Toronto Star* newspaper that he is no longer opposed to the federalist outcome, so much so that he plans to share with other NGOs in Iraq what he learned about co-operative federalism in Switzerland and Canada.

"Now I've changed my mind," said Zyad al Kovaeshy. "Canada and other countries have used a federal system successfully, and the results have been better and better."


Federalism à la Suisse

In Switzerland, the participants briefly caught their breath before they launched themselves into absorbing the ways of an even more complex federation with four official languages, German, French, Italian and Romansh, instead of Canada's two. They arrived in Switzerland tired, and when they departed they were exhausted.

The participants learned a vast array of information about amending the Swiss constitution, co-operation between the cantons, accommodating linguistic diversity, fiscal federalism, security, the fiscal implications of establishing federal states and conflict resolution. The Kurdish members of the delegation, whose community leads a relatively autonomous existence in Iraq, showed considerable interest in discussions that dealt with topics such as treaties and international relations of sub-national units. They expressed their agreement when told of the powers of the cantons.

Various Swiss hosts held three official dinners for the visiting Iraqis, one given by the federal department of foreign affairs, where the guest of honor was the former president of Switzerland, Arnold Koller, currently the Chair of the Board of the Forum of Federations.

One delegate recalled that while the participants found that the rules of the Canadian federation are complex, those of Switzerland, known for its tradition of co-operative federalism, are even more so.

In recent communications with the Iraqi participants, they explain that they have recovered from the fatigue of their demanding mission. Most remain doggedly optimistic that Iraq will see better days and that it shall overcome the insurgency, internal strife and chaos that has so imperiled its viability. 

Forum sends federal experts to Iraq

In June and July 2005, the Forum sent six experts to Baghdad to speak at roundtables with members of the Iraqi National Assembly. Bob Rae, former Premier of Ontario and former President of the Forum of Federations; Professor David Cameron of the University of Toronto; and Tim Guldemann, representing the Swiss government, spoke about the practice of federalism. Professor Violeta Ruiz Almendral of the University Carlos III de Madrid and Rajeev Dhavan of the International Commission of Jurists spoke about constitutional law in federal countries. George Anderson, President and Chief Executive Officer of the Forum of Federations spoke about natural resources in federal countries.



Briefs & Updates

Montenegro to vote on independence

The constituent republic of Montenegro will vote on independence from Serbia on May 21. Montenegro's Prime Minister Milo Djukanovic wants to cut the ties that bind Serbia and Montenegro, currently united in a federal government. Djukanovic's pro-independence coalition in Montenegro's Parliament and the opposition agreed on the referendum after negotiations with the European Union. The EU set a threshold of 55 percent of more than half the electorate for a vote in favour of independence to succeed.



Milo Djukanovic,
President of
Montenegro

ETA declares "permanent" ceasefire in Spain

The armed Basque separatist group *Euzkadi Ta Askatasuna* (Basque fatherland and liberty or ETA), which has been blamed for up to 800 deaths since the late 1960s, declared a "permanent" ceasefire on March 22, 2006. The cease-fire statement was read on Basque television by a masked woman flanked by two masked men. The group, founded in Spain during the Franco dictatorship, declared a previous ceasefire in 1998, which was followed by a number of fatal bombings when talks with then Prime Minister Jose Luis Aznar broke down. The current prime minister, José Luís Rodríguez Zapatero, reacted cautiously to the declaration, as did French President Jacques Chirac. Spanish newspapers with pro-government editorial stands lauded the declaration as a breakthrough. The more circumspect Spanish online news service, *Periodista Digital*, commented to the *New York Times* that it was naïve to take the ETA at face value. The ETA declaration also called on France as well as Spain to begin respecting the right of Basques to self determination. There are almost two million Basques in Spain and about 250,000 across the border in France.

Somalia's parliament meets as fighting threatens

The first meeting of Somalia's parliament inside the war-torn country on the Horn of Africa has been overshadowed by the most serious fighting there in years.

The violence in the ancient capital of Mogadishu raged off and on from late February 2006 to the end of April, and caused many to flee the city. Nonetheless, the parliament of Somalia's transitional federal government went ahead and met 240 km southwest of Mogadishu in Baidoa town, the

newly-proclaimed capital of Somalia during the same period as the fighting. There is as yet no united Somali army, and many regions of the country are controlled by militias, local warlords or political factions.

The fighting in Mogadishu was taking place between three warlords and Islamist forces. The Islamists, known as the Islamic Courts militia, want to impose Sharia law to end the violence in the capital. The warlords, Mohammed Deere, Mohammed Qanyare and Bashir Rageh, have united as the "Alliance for the Restoration of Peace and Counter-Terrorism." They claim the Islamists are harbouring a Sudanese man, known as Zuweydan, who is sought by the U. S. as a suspect in terrorist attacks. Deere, Qanyara, Rageh and their business allies control large parts of Mogadishu and airstrips around the capital.

The parliament in Baidoa marked the return to Somalia of the newly constituted federal government from its exile in Kenya (see "Somalia's transitional government starts building a federal democracy," *Federations* Vol. 4 No. 4, March 2005).

New editor of *Federations*:



Rod Macdonell is the new Senior Editor of *Federations*. Before joining the Forum of Federations in December 2005 as Senior Director of Public Information and Education, he was the Executive Director of Canadian Journalists for Free Expression, based in

Toronto. He also worked for the World Bank Institute in Washington, D.C., designing training for journalists in developing countries and delivering that training both by video conferencing and in person in numerous countries in Africa, Southeast Asia, Latin America, and Central and Eastern Europe. He previously worked for the Canadian Press, and as an investigative journalist for the *Montreal Gazette* and taught courses on the press and the law at Concordia University's Journalism Department in Montreal. He was the winner of three Judith-Jasmin Awards, Quebec's highest award for journalism. He has a law degree from Université de Sherbrooke in Quebec.

Federations Reader Survey

Dear Reader of *Federations*:

You are one of our valued 15,000 recipients of *Federations* magazine from all around the world. I would like to ask you to take a few minutes to complete this survey. Please tell us what you like and dislike about the magazine and how it could be improved. You can complete the survey by going to www.forumfed.org; or you can fax your reply to us at 613-244-3372; or you can mail it to us at: Federations Survey; 700-325 Dalhousie St; Ottawa, ON; Canada; K1N 7G2.

Many thanks for sharing your thoughts with us,
Rod Macdonell
Federations Editor.

1. Where do you work? (Check one or more):

- ☐ a. GOVERNMENT, specifically:
 - ☐ i. as a civil servant
 - ☐ ii. as an elected official
 - ☐ iii. other
- ☐ b. COLLEGE OR UNIVERSITY, specifically:
 - ☐ i. as a teacher or professor
 - ☐ ii. as a student
 - ☐ iii. other
- ☐ c. AGENCY or NGO, specifically:
 - ☐ i. in environmental issues
 - ☐ ii. in human rights
 - ☐ iii. in development
 - ☐ iv. in governance
 - ☐ v. other
- ☐ d. THE JUSTICE SYSTEM
- ☐ e. THE MEDIA
- ☐ f. THE PRIVATE SECTOR
- ☐ g. RETIRED
- ☐ h. OTHER

2. What is your gender?

- ☐ a. Male ☐ b. Female

3. Federations magazine: frequency of publication

Federations magazine is changing with this issue and will be published 3 times this year instead of 4; will have 32 pages in each issue instead of 24; will have MORE articles each year.

Do you think *Federations* will now be published:

- ☐ a. Too frequently
- ☐ b. Not frequently enough
- ☐ c. Just frequently enough
- ☐ d. No opinion

4. In *Federations* magazine: what do you like most?

Please rank these three answers (1=most favourite; 2=second-most-favourite; etc.)

- ☐ a. news articles or features about issues in individual federal countries
- ☐ b. feature articles about a policy issue or best practices comparing many different federal countries
- ☐ c. briefs and updates on current news in different federal countries

5. In future issues of *Federations*, what topics would you like to read about?

Tell us your top three topics (1=most favourite; 2=second most favourite; 3=third most favourite)

- ☐ a. Conflict resolution
- ☐ b. Economy, fiscal policy
- ☐ c. Environment & energy
- ☐ d. Language rights, minority rights, Aboriginal issues
- ☐ e. Politics (constitutions, elections, parties, constitutions, intergovernmental relations)
- ☐ f. Social and health issues
- ☐ g. other _____

6. What do you think of the Forum's electronic newsletter, @Forumfed

- ☐ a. Like it a lot
 - ☐ b. Like it somewhat
 - ☐ c. Don't like it
 - ☐ d. Have never read or never received it
- If so, fill in your email if you wish to receive it:
- _____

7. Do you wish to continue receiving *Federations* by mail? ☐ a. Yes ☐ b. No

8. Would you prefer to be notified by email when *Federations* is published and download it from the website? ☐ a. Yes ☐ b. No

9. In *Federations* magazine: what can be improved?

In your own words, tell us what you like about *Federations* magazine and what you think could be improved.

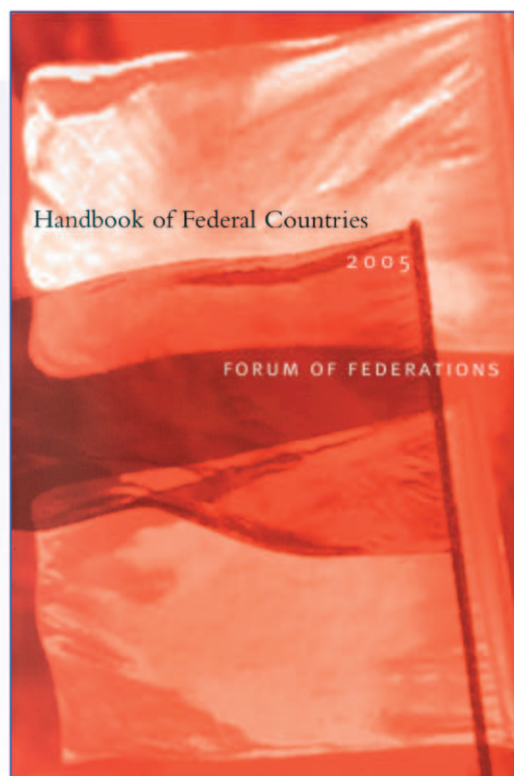
Handbook of Federal Countries, 2005

EDITED BY ANN L. GRIFFITHS,
COORDINATED BY KARL NERENBERG

This is *the* indispensable reference book on the developments, political dynamics, institutions, and constitutions of all the federal countries of the world. This is a newly revised edition, with up-to-date information on 25 countries including Nigeria, India, Belgium, Germany, USA, Canada, Brazil, Mexico, Spain and South Africa. There is also a new foreword by Forum of Federations President Bob Rae.

0-7735-2888-1 \$65.00 cloth 6 x 9 488pp
30 Maps

Published for the Forum of Federations



Guide des pays fédéraux, 2005

SOUS LA DIRECTION DE ANN L. GRIFFITHS,
COORDONNÉ PAR KARL NERENBERG

C'est l'ouvrage de référence indispensable sur l'évolution, la dynamique politique, les institutions et les constitutions de tous les pays fédéraux du monde. Il s'agit d'une nouvelle édition, comprenant des données actuelles sur 25 pays dont le Nigeria, l'Inde, la Belgique, l'Allemagne, les États-Unis, le Canada, le Brésil, le Mexique, l'Espagne et l'Afrique du Sud. L'ouvrage s'ouvre sur une préface inédite de Bob Rae, président du Forum des fédérations.

0-7735-2896-2 65,00 \$ relié toile 6 x 9
512 pages 30 cartes

Publié pour le Forum des fédérations

McGILL-QUEEN'S UNIVERSITY PRESS

www.mqup.ca



Constitutional Origins, Structure, and Change in Federal Countries

EDITED BY JOHN KINCAID AND G. ALAN TARR

"This illuminating book is the written equivalent of listening to the wisdom of experience of other federal countries." *Dr Arnold Koller, former president of Switzerland*

"This impressive volume will be of value to practitioners as well academics, a difficult balance to strike. I hope my US compatriots will engage in this vital dialogue." *Dan Sprague, Executive Director of The Council of State Governments*

0-7735-2916-0	\$29.95	paper
0-7735-2849-0	\$85.00	cloth
6 x 9	472pp	13 maps

Available in French in Spring 2006 under the title:

Origines, structures et changements constitutionnels dans les pays fédéraux



Dialogues on Constitutional Origins, Structure, and Change in Federal Countries

Edited by Raoul Blindenbacher and Abigail Ostien

0-7735-2939-X	\$12.95
paper 6 x 9	68pp

French edition under the title:

Dialogues sur les origines, structures et changements constitutionnels dans les pays fédéraux

Dialogues on Distribution of Powers and Responsibilities in Federal Countries

Edited by Raoul Blindenbacher and Abigail Ostien

0-7735-2940-3	\$12.95
paper 6 x 9	68pp

French edition available June 2005

under the title:
Dialogues sur la répartition des compétences et des responsabilités dans les pays fédéraux



 **Forum of Federations**
www.forumfed.org

iacfs
INTERNATIONAL ASSOCIATION OF
CENTERS FOR FEDERAL STUDIES

McGILL-QUEEN'S UNIVERSITY PRESS

www.mqup.ca

Return undeliverable Canadian addresses to
Forum of Federations
325 Dalhousie, Suite 700
Ottawa, Ontario K1N 7G2 Canada

Canada Post Publications Mail Agreement no. 40745010