FEDERALISM AND INTERNATIONAL RELATIONS

THE ROLE OF SUBNATIONAL UNITS

edited by

HANS J. MICHELMANN
AND PANAYOTIS SOLDATOS

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Hans J. Michelmann
Panayotis Soldatos

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ABBREVIATIONS

Arge Alp	Arbeitsgemeinschaft Alpenländer
Arge Alpen-Adria	Arbeitsgemeinschaft Alpen-Adria
CDU	Christlich Demokratische Union (Christian Democratic Party—FRG)
CSU	Christlich-Soziale Union (Christian Social Party—Bavaria)
CGIS	Commissariat general voor de internationale Samenwerking (Belgium)
CGRI	Commissariat général aux relations internationales de la Communauté française (Belgium)
DARE	Direction d'administration des relations extérieures (Belgium)
DIHT	Deutscher Industrie und Handelstag (FRG)
EC	European Community
ECSC	European Coal and Steel Community
EFTA	European Free Trade Association
FAO	Food and Agriculture Organization
FDP	Freie Demokratische Partei (Free Democratic Party—FRG)
FIGA	Department of Federal and Intergovernmental Affairs (Alberta, Canada)
FIOC	Flanders Investment Opportunities Council (Belgium)
FRG	Federal Republic of Germany
GATT	General Agreement on Tariffs and Trade
GDR	German Democratic Republic

ILO	International Labour Organization
KAL	Korean Air Lines
KMK	Kultusministerkonferenz (FRG)
MITSI	Ministry of International Trade, Science, and Investment (BC, Canada)
MITT	Ministry of Industry, Trade, and Technology (Ontario, Canada)
NATO	North Atlantic Treaty Organization
OECD	Organization for Economic Co-operation and Development
OPEC	Organization of Petroleum Exporting Countries
PLO	Palestine Liberation Organization
SPD	Sozialdemokratische Partei Deutschlands (German Social Democratic Party)
UN	United Nations
Unesco	United Nations Educational, Scientific, and Cultural Organization
WHO	World Health Organization

EDITORS AND AUTHORS

HANS J. MICHELMANN is Professor of Political Studies at the University of Saskatchewan, Canada. He is Co-editor of the *Journal of European Integration*, Director-General of the Canadian Council for European Affairs, and Vice-President of the Institute for the Study of International Cities.

PANAYOTIS SOLDATOS is Professor of Political Science at the University of Montreal, Canada. He is Co-editor of the *Journal of European Integration*, Vice-Chairman of the Canadian Council for European Affairs, and Director-General of the Institute for the Study of International Cities.

IVO D. DUCHACEK, deceased 1988, was Emeritus Professor of Political Science at the City University of New York and Visiting Professor of Political Science at the University of California, Berkeley.

ELLIOT J. FELDMAN was formerly Director, University Consortium for Research on North America and Research Associate Professor at Tufts University, Medford, Massachusetts, USA. He presently practises law in Washington, DC, with the firm of Steptoe and Johnson.

LILY GARDNER FELDMAN is Associate Professor of Political Science at Tufts University, Medford, Massachusetts, USA, and Research Associate, Harvard University.

EARL H. FRY is Professor of Government and Director of Graduate Studies and Research, the David M. Kennedy Center for International Studies, Brigham Young University, Provo, Utah, USA.

JOHN KINCAID is Executive Director at the US Advisory Commission on Intergovernmental Relations, Associate Professor of Political Science at North Texas State University, Denton, Texas, USA, and Editor of *Publius*.

YVES LEJEUNE is Professor of Law at the Catholic University of Louvain, Belgium.

ANTON PELINKA is Professor of Political Science at the University of Innsbruck, Austria.

JOHN RAVENHILL is Senior Fellow, Department of International Relations, Australian National University.

LUZIUS WILDHABER is Professor of Law at the University of Basle, Switzerland.

1

Perforated Sovereignties: Towards a Typology of New Actors in International Relations

IVO D. DUCHACEK

As managers of economic, social, cultural, and environmental affairs, non-central governments in North America and Western Europe, especially in federal or regionalized systems, have been increasingly induced to react to events abroad and respond to or initiate various contacts with foreign centres of economic, cultural, and political influence. These contacts involve not only immediate neighbours across sovereign frontiers—such as northern Swiss cantons, the West German *Land* of Baden-Württemberg, and French Upper Alsace (Regio Basiliensis)—but also distant centres of industrial or investment power. In 1985, for example, twenty-nine US states had fifty-five permanent offices in seventeen foreign countries (eighteen US states had their separate missions in Tokyo) while only four states had overseas representation in 1970. (In Chapter 10 Earl Fry lists and analyses numerous other US state initiatives abroad.) In addition, eighteen US port authorities and cities had their representatives in Europe, ranging from Alabama's Port of Mobile to the Texas Port Authority of Corpus Christi. Six Canadian provinces (Alberta, British Columbia, Nova Scotia, Ontario, Quebec, and Saskatchewan) have established forty-six permanent missions in eleven foreign countries: as the Feldmans point out in Chapter 7, the Canadian provinces' commitment to defend their interests 'beyond Canadian borders challenges the conventional concept of sovereignty and the federal view of a national monopoly in foreign policy'.

Trans-sovereign activities of non-central governments obviously

The original version of this chapter was edited and revised by Hans J. Michelmann after Professor Duchacek's death.

presuppose that the locally elected officials and their staffs possess a considerable degree of jurisdictional autonomy in domestic affairs, which they now tend to expand to include closely connected international issues in the areas of investment, trade, and environment. For this reason, external activities of subnational governments are observable and significant primarily in the case of territorial components of democratic federal or decentralized systems, such as US and Australian states, Canadian provinces, Swiss cantons, West German and Austrian *Länder*, Spanish regions (such as Catalonia), and the Walloon and Flemish segments of Belgium.

International activities of non-central governments rarely make the first page of national dailies. They are neither alarming nor dramatic—they can hardly compete for public attention with wars, arms talks, international terror, and other forms of conflict or co-operation among sovereign nations. Their impact on national foreign policy, involving decisive centre-to-centre relations, has remained modest: primarily they deal, so to speak, with the territorial daily bread. But, as every struggle for our daily bread, these internal concerns with their external dimension significantly affect the welfare of millions, their local and provincial leaders, and through them the complex interaction between domestic and foreign politics.

Today, in contrast to previous eras of international relations, trade, investment, technology and energy transfers, environmental and social issues, cultural exchanges, migratory and commuting labour, and transfrontier drug traffic and epidemics have forced their way on to the foreign-policy agenda, usually below, but sometimes parallel with, the great issues of national security, military balance, and diplomatic status. This expansion of the field of foreign policy into non-military and non-diplomatic issue-areas began after the First World War, accelerated after the Second World War, and has now become a characteristic feature of global and regional interdependence. Such a broadening of the scope of international concerns has necessarily affected the interactive relationship between external and internal decision-making processes within and among all nation-states: authoritarian and pluralistic, industrialized and developing, relatively homogeneous and explosively multicommunal, centralized and decentralized in general and in federal systems in particular.

So far, no political system has developed new effective processes or

institutions to handle the new subnational governmental initiatives or responses as they traverse the national boundaries, coming from both within and without. We observe that, in response to these various percolations of national sovereignty, some national élites, as could have been expected, advocate a tighter centralization in the conduct of *all* external relations to prevent predominance of one territorial sector at the expense of another. Some other élites, taking into account the inevitability of the contemporary porousness of sovereign boundaries, appear resigned to the concept of inevitable segmentation of the conduct in non-security fields of foreign policy. There has also developed an active search for such institutional or political devices that could transform haphazard diplomatic segmentation into a more or less co-ordinated pattern, including acceptable duplication and 'marbled diplomacy' in which not only the issues but also national and subnational actors dealing with them are co-operatively intertwined. (For a discussion of the US and Canadian Supreme Courts and their uncertainties concerning constitutional limits of the role of federal components in international relations, see the analyses in Chapters 7 and 10.)

Since this study focuses on the international roles of the territorial components of democratic federal or decentralized systems, it is appropriate that we first define our frame of reference before proceeding any further.

FEDERALISM AND DEMOCRACY

By federalism this study means pluralistic democracy in which two sets of governments, neither being fully at the mercy of the other, legislate and administer within their separate yet interlocked jurisdictions. This is a short and quite adequate working definition of federalism.

The first critical ingredient of this definition is the practice of competitive, pluralistic democracy (including majoritarian as well as consensual decision-making modes) both between and within the two interlaced layers of government. As I have argued elsewhere, federalism is simply a territorial twin of democracy. Communist and fascist systems that claim to be federal are pseudofederations, since, under a single party rule, no segment of the polity, territorial or not, may be endowed with any degree of decisional autonomy. The leading élites, committed to central planning and authoritarian

control of economy, employment, and education, logically abhor any division or diffusion of their monolithic power.

The second critical feature of our working definition is a commitment to an internal division of powers between two orders of government, one with a jurisdiction over the total of the national territory, and the other with a jurisdiction over geographically delineated portions of the territorial whole. Thus a federal union, a composite 'nation', is able to assert its sovereign unity *vis-à-vis* other nation-states while cultivating jurisdictional diversity inside. This concept of unity is usually buttressed by an implicit or explicit elimination of the right of territorial secession on the part of any component territorial communities.

The dialectic encounter of unifying and fragmenting tendencies within federalism represents, in my view, a useful conceptual link with contemporary interdependence and its two themes of integration and disintegration—the latter every so often reflecting the fear of smaller nations that interdependence might become neo-colonial dependence.

In the study of federalism, people's and their élites' commitment to the pairing under federalism of the two opposites, unity and diversity (or, as Rufus Davis expressed it, 'union without unity'), has sometimes been called 'federal political culture', as opposed to centralist 'unitary political culture'—both cultures being credited with a greater importance for the working of federalism than its institutions and constitutions. The more we study federal non-centralization (and unitary decentralization), the more we are struck by the observed federal predisposition and behaviour of both the citizens and their leaders.[1] As carriers of the territorial diffusion of roles and power, federal and subnational institutions behave, as it were, 'federally', and this appears to be due not only to a federal constitution and pluralistic democracy, but also to that elusive variable, federal culture, mirroring tradition, constant practice, and the belief in the possibility, desirability, and practical value of a co-operative interaction between integrative themes and segmented differentiations. We may tentatively suggest that flexible federal systems are positively predisposed to handle the problems of global and regional interdependence more effectively than unitary or authoritarian systems.

In accordance with the eighteenth- and nineteenth-century concept of an international system consisting of sovereign nation-

states, speaking one to the other with one legitimate voice, the federal constitutions have assigned a monopolistic, undivided power over the conduct of war and diplomacy and over foreign trade to the national or central government. Contact with or commitments to external governments by the territorial components are either forbidden or severely limited. The US Constitution of 1789 (Article 1, Section 10), for example, sternly warns the thirteen federal components: 'No State shall, without the consent of Congress... keep troops or ships of war in time of peace, enter into any agreement or compact with... a foreign power.' Naturally, an even more centralist tone would be found in unitary systems, dating back to the eighteenth century. In post-revolutionary centralist France, for example, a decree of 1796 ordered all foreigners accredited to the French Government 'to communicate with the government only through the intermediary of the Minister of External Relations' (Decree of 22 *messidor*, *an* [year] VII).

Nevertheless, since the 1960s, in response to the imperatives of contemporary interdependence, the US states have begun energetically to pursue their various investment and trade interests beyond the national borders, generally with the consent and encouragement of the federal Department of Commerce. Even in France, only timidly regionalized by the government of President Mitterrand, the Ministry of External Affairs had to establish a special office to co-ordinate the 'external activities of local collectivities'.[2] In Canada, initially under the initiative taken by Quebec in the early 1960s, the provinces have adopted and successfully defended *vis-à-vis* Ottawa the position that they have an undeniable right to act internationally in their areas of constitutional jurisdiction (which includes control over natural resources, giving them, in contrast to the US states, considerable clout).

Some federal constitutions, however, have long permitted the component territorial governments (e.g. cantons in Switzerland and *Länder* in West Germany and Austria) to engage in direct, though marginal negotiations with foreign governments, especially the neighbouring ones. The case of the Soviet federation, whose Brezhnev Constitution (1977) as well as the former Stalin Constitution (1936) endowed all the fifteen component Union republics with the right to conduct independent foreign policy, need not be elaborated on here; it is a Potemkine confederal façade superimposed on a tightly controlled monolithic centralism.[3]

THE IMPERATIVES OF INTERDEPENDENCE

Whether global, continental, or regional, interdependence is certainly not a novel fact or concept, but the subnational awareness of its pressures and opportunities and the need to react to them, is. The awareness of subnational vulnerability to extranational, distant events has now, as it were, trickled from beyond the borders down to subnational elected officials and their staffs responsible for the progress and well-being of their respective subnational territorial communities — and for their own political survival in them. In order to remain custodians of the living standard of their people, not only nations but also subnational territorial communities have to engage in trans-sovereign activities that often catapult them politically and physically far beyond the national frontiers.

The world recession in the wake of the oil boycott by OPEC in 1973; astronomical national budget deficits, reflecting the continuing arms race and increased social services; the rise in unemployment; and the decline in export trade — together these have resulted in the dwindling of national resources, earmarked or earmarkable for non-central authorities, and national governments' frugality with regard to subnational or territorial development and welfare programmes. Governor Bruce Babbit of Arizona, as chairman of the Advisory Commission on Intergovernmental Relations, expressed the situation succinctly in the autumn of 1983: 'States will probably have to assert themselves as never before in modern times. . . . The message is clear: *the national government will no longer bail us out*' (italics added).

In practical terms, the well-being of the subnational electorates, and therefore their leaders' own staying power, has clearly begun to depend on these leaders' ability to couple their primary links with the national centre and its funding agencies with their new lines to foreign sources of economic, financial, and industrial power. Wolfram Hanrieder's perceptive argument about internal power — vertically applied and vertically supported — being sustained by horizontal external co-operation has also begun to apply to the territorial components of federal and decentralized unitary states. They too have now been 'compelled to turn to external sources in order to meet the demands pressed upon them by their electorates'.[4]

In this framework the newly reasserted loyalties to close-at-hand collectivity (regional, ethnic, linguistic, religious, or ideological)

confront, compete, and interact with global or continental perspectives: thus, paradoxically, localism and regionalism are in the process of being globalized by the perceived or directly experienced effects, occurring far beyond the national boundaries, and affecting nations and their subnational segments selectively and unevenly, from Chernobyl, Basle, the Arab oil embargo, acid rain, and international terror to everyday fluctuations of prices and credits on the world markets. Alberta's then-Premier, Peter Lougheed, speaking on 19 October 1983, expressed the problem of segmental (provincial) vulnerability succinctly: 'We remain directly affected in Alberta and in Canada by decisions that are made in Riyadh, Geneva, Tokyo, Beijing, Hong Kong, London, or you name it.' Not only nations but also their territorial subunits feel the need to react to distant threats or opportunities and so diminish the first and capitalize upon the second and for that purpose develop new skills and techniques.

Discussing this global crisis of authority and the explosion of subgroupism, James N. Rosenau pointed to a substantial enlargement of the analytic aptitude of citizens throughout the world as a characteristic feature of our era.[5] As mentioned above, neither central nor non-central governments appear able or institutionally equipped yet to handle the new vulnerabilities which have resulted from complex interdependence. On 11 October 1985, while signing a nine-page charter between six US states and two Canadian provinces (Ontario and Quebec) on the subject of preservation of the Great Lakes water resource against future raids by the water-hungry south, the chairman of the meeting, the Ohio governor, Richard R. Celeste, correctly noted: 'Most of our tools of government do not fit the problems we have today.'

The separation between foreign policy and its traditionally dominant focus on security and status, on the one hand, and the 'other concerns', on the other, has been blurred. The seemingly economic, social, cultural, and environmental issues affect security and are, in turn, affected by diplomatic and prestige concerns. The fields of diplomacy and foreign policy have been extended into areas which, in the era of traditional diplomacy at the time of Richelieu, Castlereagh, Talleyrand, and Metternich, were either handled by private initiative or were under the jurisdiction of municipal or non-central authorities rather than under that of the central governments. Not only interdependence, but also the advent

of a tutelary concept of welfare governments on all levels (local, regional, national), has contributed to the internationalization of many issue-areas which were previously clearly domestic, and domestication of previously international issues; these have often been pulled from their respective diplomatic olympuses down to the state capitals, town halls, streets, or campuses.

It should be noted that the issues raised by subnational elected officials, while predominantly concerned with economic, social, environmental, and cultural issues, occasionally also contain concerns of purely political import, seemingly a reserved domain of the national government rather than subnational governments. In the United States, for example, various states and localities have approved local ordinances on such issues as the right of sanctuary for their ideologically preferred political refugees (a challenge to federal immigration laws). Other communities have approved non-binding resolutions to protest US policy in Central America (adopted by San Francisco and Seattle), to support the fatal hunger strike of Irish Republican Army member, Bobby Sands (Berkeley), or condemn Soviet violations of human rights (Los Angeles). Thirteen state liquor commissions banned sales of Soviet vodka when the USSR downed a KAL 747 transport jet, thus, via 'Stolichnaya', making their entry upon the diplomatic scene. Politically more significant were the laws and municipal ordinances adopted in the mid-1980s by various US states and cities forcing their large pension funds or their state universities to divest their holdings in banks and corporations still doing business with South Africa; they were followed in 1986 by other sanctions and divestments on the national scale. But, while the anti-apartheid sanctions remained limited to actions by states and larger cities, they offered a good illustration of the way in which our interdependent era can catapult subnational governments on to the foreign-policy scene by means of their otherwise legal, though strictly local, use of fiscal means.

As to national defence matters, in 1986 some state governors raised the issue of the federal training missions of the National Guard in Central America (state militias being, in principle and law, still under the governor's authority). Another example of potential local inroads not only into foreign policy but even into national defence matters, are the zoning ordinances passed by 132 US communities, banning the production or emplacement of nuclear weapons within their boundaries. As seen from the local perspective, the nuclear-tipped missiles, though 'protecting' the

whole nation, are necessarily located within a particular area, whose health and ecological well-being are under the jurisdiction of that particular territorial component, whose citizens may object to a federal decision to transform their self-governing domain into a potential target for nuclear devastation. In this connection, over one hundred US communities and counties also refused to co-operate with the Federal Emergency Management Agency's civil defence and evacuation plans.

Though clearly marginal, the above examples nevertheless illustrate a trend which has elsewhere been called 'globalization of localism' or, in Rosenau's words, the 'increase in skill and sophistication' of subgroups in approaching international politics from a local perspective and by local means.

INFLUENCING EXTERNAL RELATIONS FROM WITHIN

In all federal democratic frameworks, of course, elected officials of non-central governments and their staffs have always tried to have an influence or significant role in all federal policy-making, including the conduct of relations with foreign nations. Such lobbying, from the bottom up in the case of individual citizens and their functionally or ideologically organized groups and, as it were, 'sidewise' in the case of federated territorial components, has always been consistent with both democratic and federal theory and practice.

We should remind ourselves that, historically, non-central governments in federal systems have long preceded the national government in what we now call the welfare or social service roles of modern states. Education, social services, and general welfare were on the agendas of local and provincial authorities long before 'socialist nationalism'; that is, long before national governments began creating various agencies, ministries, and departments to deal with individual and group welfare.

The imperatives of interdependence have not created but only intensified this need, as well as the frequency of contacts between non-central elected officials and the national agencies dealing with external relations, foreign trade, and national security. Within the autonomous territorial components of all federations, the defence establishments are often all-important employers, creators of jobs, and buffers against unemployment.

In the United States state governors and state legislators, for

example, monitor the legislative work with a vigilant eye focusing on those bills and proposals that could affect, adversely or positively, their constituents. In this framework a direct and co-operative contact with the legislators, elected by a particular state (or states with similar problems), has always been essential, especially when state governors and the state house and/or senate representatives share the same political ideology or at least a similar practical view of the issue at stake; such a state–federal partnership is a powerful force indeed. In the United States, state-elected representatives in Congress have always served as state lobbies with the aim to co-shape those aspects of national policy that could be of direct concern to their constituencies, such as tariffs, trade promotion, immigration, environmental protection, and even basic research.

Federal components are usually represented on a proportional-population basis in one house, and by equal or balanced representation in the upper house. As Earl Fry correctly notes in his study (Chapter 10), in the United States 'regional or state-based issues can be given greater priority by members of Congress'; this is in partial contrast to countries in which strict party discipline weakens the territorial linkages, especially in federations that have adopted the Westminster-type of cabinet system. But, clearly, the territorial connection is never absent even in those cases, as the experience of Canada (with both strong party discipline *and* powerful provinces), the FRG (with its *Land* governments as implementors of national policies), or Australia indicates.

In both Canada and the United States provincial and state governments have their own representatives in the national capital, serving not only as eyes and ears but also as spokesmen and lobbyists with both the legislators and those executive departments and agencies that deal with international economic, social, and cultural relations.

In addition, various groupings of subnational units should not be overlooked, since they may serve as powerful lobbies when and if the various state, provincial, or cantonal interests can be combined in a more or less unified phalanx promoting some common interests of federal components *vis-à-vis* the federal centre. In Canada this collective pressure is represented by the various interprovincial ministerial conferences and provincial premiers' meetings. In the United States the National Governors' Association represents an

important source of pressure, not only through its annual meetings of the fifty state governors but perhaps even more importantly through the work of the association's permanent research staff serving the association's Committee on International Trade and Foreign Relations.

The purpose of all these links and processes is clear: to be involved in major decisions (including international treaty-making affecting the economic, social, and labour jurisdictions of subnational units) before the final decision has been reached in centre-to-centre negotiations or before an international treaty is signed.

Subnational units, by using their powers to protect or further local interests, have sometimes also undertaken actions that are contrary to international commitments of their central governments. Thus Canadian provincial governments gave advantage in the sale and distribution of wines to domestic products in a manner contrary to Canada's GATT commitments. Similarly, US states have enacted 'buy American' policies, have prohibited foreign investment in specific business protected by local interests, or have restricted foreign purchases of land. At the same time, one finds states that excessively favour foreign investments by grants of a particularly favourable tax (which may not be to the liking of the Department of Treasury) or other fiscal, zoning, labour or even educational privileges (such as Japanese schools as a lure for Japanese local investment).

While these subnational activities do affect national foreign policy—negatively, complementarily, or positively—have they really transformed subnational governments into international actors? After all, subnational lobbying activities in Ottawa, Berne, Bonn, Canberra, and Washington do not place subnational authorities directly on to the international scene. While this is true, four points merit our attention.

First, we examine what we describe here as intra-federal inputs from the subnational bottom to the federal top. Foreign nations and their consulates naturally observe, monitor, and react to these activities, controversies, or co-operative arrangements. A foreign diplomat stationed in a federal democracy or a significantly regionalized country would be ill advised if s/he failed carefully to observe and report on the international consequences of seemingly domestic, territorially circumscribed processes, especially new state laws affecting international relations. In this indirect sense even

those states, provinces, and other territorial units of self-rule whose governors or agents never leave the confines of their territorial domains have become part of international processes: they are international actors *sui generis*, since their legislative acts and lobbying activities may affect international politics and so attract extra-national attention and reaction.

Second, in a direct connection with the above point, non-central governments, especially their legislative branches, have necessarily become targets for foreign interference such as lobbying efforts and potential bribes.

Third, transnational corporations have funded various publicity campaigns in favour of their interests threatened or promoted by governments within federal territorial components. A Japanese corporation, for example, funded a broadly based publicity campaign with the aim to influence the Sacramento legislature to repeal California's unitary tax (see Chapter 10)—which was finally done in 1986. Subsequently, the then-Governor George Deukmejian paid an official visit (difficult to imagine twenty years ago) to the headquarters of the ruling Liberal Democratic Party in Tokyo. A monthly published by the Japanese party in English (*Liberal Star*, 10 February 1987) quoted Deukmejian as follows: 'I supported the effort to remove California's unitary tax...This was a good faith move and we hope Japanese business will further expand in the state because of this.' He then asked for the co-operation of the Liberal Democratic Party in helping to increase California's exports to Japan.[6]

Fourth, foreign and domestic media usually cover the most newsworthy provincial incursions into international relations (this was the case of Quebec in the 1970s and of the US states and cities[7] with respect to South Africa in the 1980s) as well as some of the purely local gestures concerning diplomatic or defence issues (as, for instance, the previously mentioned nuclear-freeze propositions approved by US state and local referenda). Thus, mass media contribute to the projection of subnational concerns and actions on to the international arena.

To sum up, the preceding section has described some of the most frequent forms of intra-federal influence in the realm of international relations; while predominantly directed to economic, financial, and environmental issues, that influence is occasionally directed also towards political controversies (for example, in the

case of South Africa) and even defence issues. The above examples of various *intra-federal* inputs is only illustrative; it is far from complete.[8] For brevity's sake they were called 'intra-federal', since, in principle, they do not bring subnational elected officials into a direct contact with foreign governments.

SUBNATIONAL GOVERNMENTS GO ABROAD

Intra-federal foreign-policy demands or challenges represent only one form of subnational governments' influence on foreign policy, which is usually mediated by the national government to the international scene. The Swiss Constitution, for example, provides specifically for such a mediation in Article 10: 'Official intercourse between canton and governments of foreign states or their representatives takes place through the agency of the Federal Council.'

The preceding Article 9, however, permits the cantons to conclude agreements with foreign states on matters of public economy, neighbourship, and police relations. In Chapter 9 Luzius Wildhaber analyses the actual Swiss federal–cantonal practices in depth. Intra-federal forms of assertion of subnational influence on foreign policy are novel only in their contemporary intensity and frequency as they reflect the global and regional impact of interdependence.

The second form which is analysed in this section is not only relatively novel but also quite conspicuous. It is the open, often well-publicized, presence and activity of provincial or state officials directly on the international scene, reaching far beyond the sovereign boundaries.

Whatever the language of any federal constitution may be—either absolutely interdicting subnational contacts and compacts with foreign powers (as in the case of the United States) or permitting them to a limited extent explicitly (as in Switzerland, the FRG, or Austria) or implicitly (as in Canada by provincial interpretation of their jurisdictional domain)—non-central governments in federal unions and even in some decentralized unitary states have begun to play such active and direct roles abroad in those areas of international relations which may affect their territorial jurisdiction and interests.

Thus, in addition to transnational corporations and other private trans-sovereign institutionalized contacts and informal flows, locally or provincially elected officials, and their staff too, contribute today

to what I have called otherwise 'percolated sovereign boundaries'.[9] This percolation through inter-sovereign 'sieves' occurs in two directions: either 'from within out', when subnational authorities initiate trans-sovereign processes to protect or promote their own domestic concerns; or 'from without in', when subnational governments become targets for trans-sovereign contacts (or interference) and decide to respond on their own to the lures of external opportunities (reverse investment, for example) or to some threat of damage (foreign tariffs, migrating labour, or environmental problems).

Six principal ways and formulas by which non-central governments can promote and defend their interests and assert their international competence abroad are:

1. Establishment of permanent offices in foreign capitals or centres of commerce and industry to represent non-central governments abroad—the most visible and expensive signs of what we have called 'globalization of provincialism'. By maintaining permanent missions abroad non-central governments clearly assert their international competence and roles. The two main purposes of such permanent missions are: first, to encourage reverse investment and trade by appropriate promotional activities and direct (paradiplomatic) negotiations with foreign private and governmental institutions; and, second, to serve the growing demands on the part of highly placed provincial or state officials for a way of understanding and dealing with national foreign governments as well as timely information for the purpose of a more effective (lobbying) influence on the conduct of national trade and investment policies.
2. The well-promoted and well-publicized trips abroad undertaken by the leaders of non-central governments, in particular Canadian and West German premiers.[10]
3. Short-term, professional fact-finding missions dispatched abroad by state and provincial governments.
4. Trade and investment shows that feature provincial/state manufacturing and technological know-how. Publicity campaigns promote foreign trade, investment opportunities, and tourism, which, in many cases, represents a substantial contribution to state and provincial treasures. For example, according to the *New York Times* (14 July 1986), figures

compiled by the United States Travel Data Centre in Washington indicate that in 1985/6 the US states spent more than $2 billion* in tourism promotion, most of it abroad.

5. Establishment of foreign trade zones (by thirty US states, for example).
6. Participation of the representatives of non-central governments in the work of international conferences or organizations or even in the formal diplomatic representation of their national government in foreign capitals. One example is the leading role of Quebec and participation of bilingual New Brunswick in the Canadian delegation attending the French-inspired and -directed Francophone Summits. Another example was the inclusion of the representatives of the Tyrolean government in the Austrian delegation during the 1960–2 negotiations in the UN concerning the question of South Tyrol (see also Anton Pelinka's Chapter 4 in this volume). In his analysis (Chapter 9) Luzius Wildhaber points to the harmonious co-operation between the federal capital and cantons as well as inclusion of cantonal representatives in the work of the European Council and European Court of Human Rights in Strasburg. In the 1980s, during the controversy concerning the Garrison Dam between the Canadian province of Manitoba and the US state of North Dakota, a representative of Manitoba interests and expertise in the matter was temporarily attached to the Canadian embassy in Washington. In 1986 the new Liberal government of Quebec proposed a possible 'co-location' or joint appointment of the Quebec foreign-service officers in the framework of some Canadian embassies or consulates-general. By 1987 several provinces had accepted the offer of the Department of External Affairs and appointed their own provincial 'foreign-service officers' to Canadian embassies abroad.

PARADIPLOMACY: THREE TYPES

The direct and indirect entries of non-central governments into the field of international relations vary greatly in form, intensity, frequency, and goals, which are dominantly technical and eco-

* All references to billion in the text are to the US usage, i.e. a thousand million.

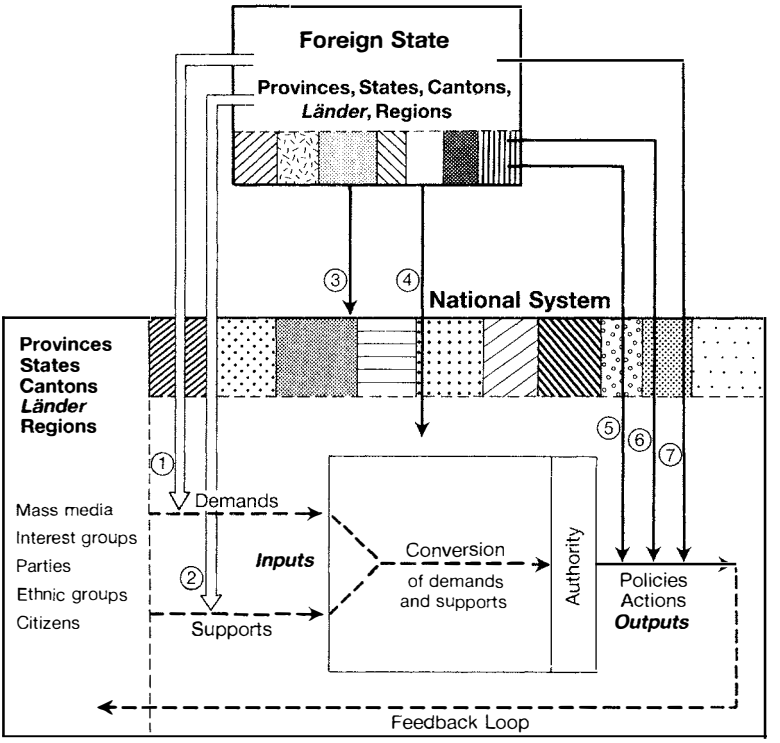
nomic and only partly political—except in the case of secessionist provinces. As to their geopolitical dimensions, three basic categories of negotiating lines may be distinguished: (1) transborder regional paradiplomacy,[11] (2) transregional (or macroregional) and paradiplomatic contacts, and (3) global paradiplomacy.

If by diplomatic negotiation we mean processes by which governments relate their conflicting interests to the common ones, there is, conceptually, no real difference between the goals of paradiplomacy and traditional diplomacy: the aim is to negotiate and implement an agreement based on conditional mutuality. Both sides pledge a certain mode of future behaviour on the condition that the opposite side act in accordance with its promise. In contrast to domestic law, in international relations (whether on a micro- or a macrodiplomatic level) no common superior authority can be invoked in case of violation. Yet, as we know from international relations, such unenforceable bargains are generally observed, since both sides continue to have a very similar interest in preserving the assumed advantage assured by the initial bargain; in adhering to their pledges as a reaffirmation of credibility, an essential ingredient for future bargains; and in reconfirming the principle of goodwill.

If, as this study basically argues, paradiplomacy by non-central elected officials and their aides is here to stay—here complementing, there challenging, and often duplicating the macrodiplomacy conducted by central governments—several quite practical questions should be posed. Should foreign-service officers, who manage the nation's macrodiplomacy, be better informed about the problems and management of the various forms of paradiplomacy? (Note that each year the US Pearson Program sends about twenty-five foreign-service officers for training in and exposure to the transborder and paradiplomatic relations of state governments.) Should, on the other hand, non-central 'paradiplomats' have some exposure to centre-to-centre macrodiplomacy before they are assigned abroad, as the Canadian Senate once recommended?

TRANS-SOVEREIGN PERCOLATION

Fig. 1.1 presents an illustrative diagram of international links of subnational units based on David Easton's simplified model of a political system in which people's demands and supports—*inputs*—are converted by the authority into actions and policies—*out-*



1. Interference (aim: inflating demands)
2. Interference (aim: deflating supports)
3. Transborder regional paradiplomacy
4. Transregional paradiplomacy
5. Global paradiplomacy
6. Protodiplomacy
7. Macrodiplomacy (traditional centre-to-centre diplomacy)

FIGURE 1.1 Paradiplomacy, macrodiplomacy, and interference

Source: Based on Easton's 'Simplified Model of a Political System' in D. Easton, *A System Analysis of Political Life* (New York, 1965), 2.

puts. The feedback loop indicates that further demands and supports may, in part, be shaped by the responses of the central authority.

Easton's model has been modified for our purpose in two aspects. First, a foreign state was added to the picture as a potential source of activities that pass through the national boundaries with the aim of inflating demands and pressures upon the national centre (line

1); or, on the contrary, of undermining and deflating popular or sectional supports (line 2). This is a graphic illustration of foreign interference in the domestic affairs of a nation, a current practice in our interdependent 'global village' with its mesh-like fences.

Second, territorial components (provinces, states, cantons, *Länder*, regions) were added to both systems (Easton's national system and the added foreign state). Provinces of unequal size (and clout) are represented by various geometric patterns.

Line 3, representing transborder regional paradiplomacy, symbolizes the informal and formal interactions between provinces, states, cantons, *Länders*, or regions.

Line 4 (transregional paradiplomacy) illustrates the provincial 'diplomatic leapfrogging' over the frontier into distant areas but still within the neighbouring state—such as Alberta's direct links with Texas and New York, or Quebec's links with Louisiana.

Line 5 (global paradiplomacy) denotes direct links between provinces and foreign central or subnational governments for the purpose of influencing general trade, investment, and other policies and actions (for example, US states' trade negotiations with socialist countries).

Line 6 (protodiplomacy) represents a direct link with foreign national governments, as does line 5, but the *contents* and *goals* are political (separatist) in support of future independent statehood.

Line 7 (macrodiplomacy) illustrates traditional centre-to-centre diplomacy, which is usually concerned with issue-areas that are related to national security and status.

Fig. 1.2 is a diagram of the paradiplomatic relations in North and North Central America. The diagram is extremely simplified, and only a few samples of the links are included. If all linkages involving the non-central governments of Canada, the United States, and Mexico were to be indicated, the web would be so dense as to be indecipherable.

Northern Mexico, which is contiguous with four US states in the south-west (California, Arizona, New Mexico, and Texas), consists of six states (Baja California (Norte and Sur), Sonora, Chihuahua, Coahuila, Neuvo Leon, and Tamaulipas), but only four of them are noted on the Mexican segment of the diagram.

By *transborder regional paradiplomacy* is meant transborder contacts—institutional, formal, and, above all, informal—which are predominantly conditioned by geographic proximity and the

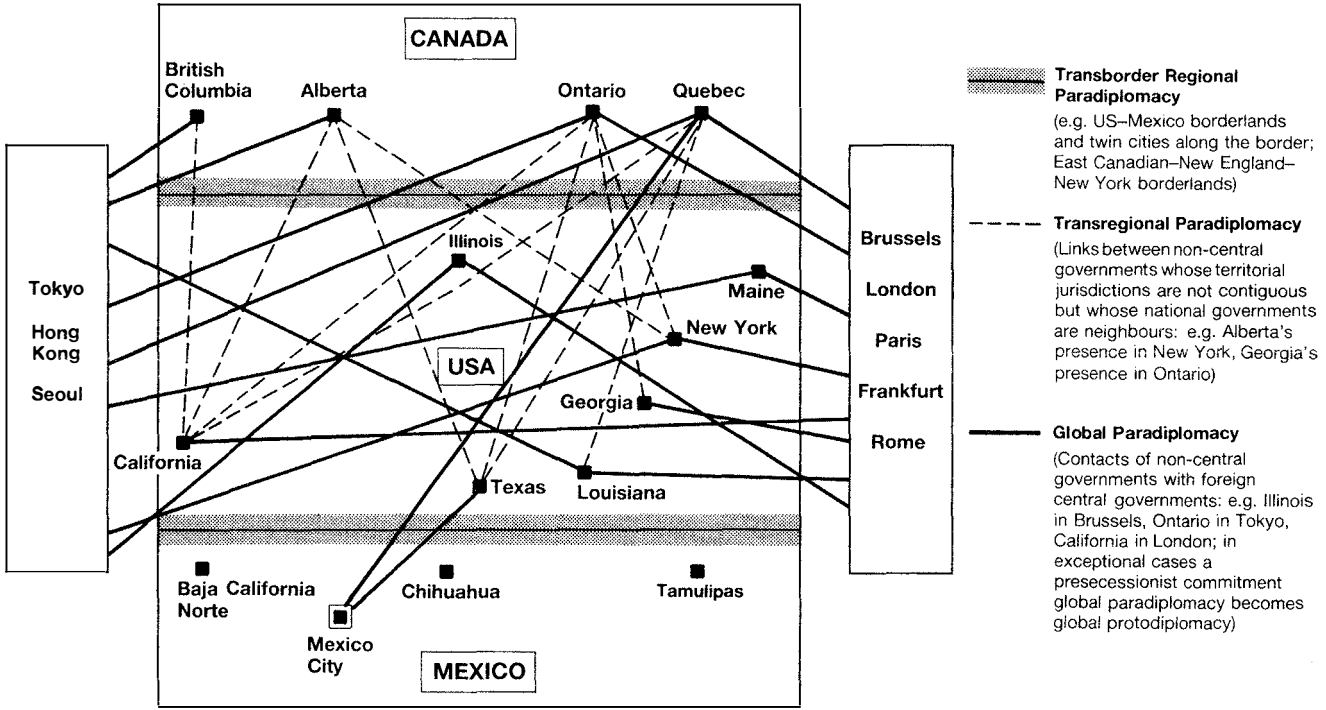


FIGURE 1.2 Trans-sovereign links of non-central governments (selected samples)

resulting similarity in the nature of common problems and their possible solutions. Currently, transborder regional paradiplomacy manifests itself by various co-operative contacts across a national boundary in such matters of common interest as technical aspects of border crossings by migrants and immigrants; the legal movement of manufactured goods; prevention of smuggling: shipments of stolen goods, drug traffic and excessive purchases across the border (along the US–Mexican border following the various devaluations of the Mexican peso); the management of water resources; problems of pollution (acid rain, Mediterranean fly, etc.); energy tranfers (gas and hydroelectric power as between Quebec, New York State, and New England states); civil defence; sewage; prevention of natural disasters, such as fires in border forests or twin cities, and flooding; various transfrontier manufacturing and/or ecological ventures such as the co-operative framework along the River Rhine linking the Swiss cantons with French regions and the West German *Länder*, the 1986 jointly financed water development in the Souris River Basin, linking Saskatchewan, North Dakota, and Manitoba; or the assembly of twin plants (*maquiladoras*) in the north of Mexico and the US south-west. All these formal and informal arrangements have clearly resulted from and now reflect the ever-increasing permeability of intersovereign national boundaries.

Examining transborder regional paradiplomacy and summitry, one is constantly struck by the importance of informal inter-élite networks that do without any formal institutions yet perform their daily transborder tasks of co-ordination and adaptation of national policies to borderland realities quite effectively. The telephone (direct-dial diplomacy escapes unnecessary monitoring or meddling by central governments), improvised meetings, and luncheon appointments ('We go for lunch to Mexico,' said an official in El Paso) seem to be the most preferred instruments for borderland problem-solving. In contrast to the US–Canadian border, the biethnic Mexico–US frontier region represents a Hispanic–US intimacy that is much deeper than the one prevailing in the centre-to-centre relations between Mexico, DF, and Washington, DC. In fact, both sides of the border share a critical attitude to their respective national capitals. In other border regions in North America or Europe it would be difficult to find a reputed scholar who would, like Ellwyn Stoddard, argue: 'We depend on one another. To try to separate us

[the US side from the Mexican one along the borders] will kill both of the Siamese twins.'[12]

In Western Europe, the major preoccupation of both central and non-central governments in the 1980s is with the asymmetric development of regions, some of which are well inside the national boundaries while others straddle them and engage in regional para-diplomacy. The EC and its Parliament, as well as the loose association of European nations (including the Scandinavian ones) called the 'Council of Europe' with its headquarters in Strasburg, had a number of conferences and expert workshops in their effort to remove the gross disparities between the prosperous and the underdeveloped regions of Europe.[13] The European Conference of Local Authorities, established in 1957, was also meant to be a counterweight to the EC, based on international agreements among the participating central governments. By 1975 the conference had added Regional to Local in its name and so came to represent all the territorial authorities in Western Europe below the level of the nation-state. It has tried to play the role of champion of the 'Europe of regions' rather than just of nation-states.[14] Some regionalists advocate—or hope—that the regions may form a second chamber of the European Parliament, a 'European Senate' of sorts.

Today there are twenty-four transborder European regions in operation or in the advanced planning stage. Some of them, like Regio Basiliensis, have been in operation for several decades; others are still in their infancy. Their rather loose frameworks are referred to as 'transborder working groups'. In addition, there are numerous transborder co-operative arrangements that link up districts and municipalities from the Pyrenees to the Norwegian–Swedish–Finnish far north; these interlocal transfrontier co-operative frameworks operate much as do the Mexican and US or Canadian and US municipalities and counties in North America, that is, quite effectively, under the relatively benign eyes of their respective central and regional governments. In Europe, too, the focus of these intermunicipal arrangements is primarily on mutual help in emergencies, sewage, water management, air and water pollution, and other curses of modern civilization. In European transfrontier regions, the problem of migrating workers also looms large (about 12 million in 1978),[15] especially in the matter of children's education and workers' participation in local politics and labour unions.

Transborder regionalism in the North American Atlantic north-east represents one of the most advanced forms of regional para-diplomacy. The premiers of the five eastern Canadian provinces (Quebec, New Brunswick, Nova Scotia, Newfoundland, and Prince Edward Island) and their six New England counterparts (governors of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut) hold annual summit meetings. By 1986 fourteen such annual meetings had been held; they started initially as a social, clambake affair, held alternately in the various attractive resorts of the north-eastern United States and Canada, but over the years they developed into full-fledged workshop conferences, prepared by and then followed up by adequate field-research and policy work of professional staffs on both sides of the US–Canada border (for example, in the matter of energy transfers, potato and lumber exports, acid rain, and tourist and truck traffic).[16]

Transborder regional paradiplomacy has made the Quebec–New York–New England boundary the most porous as well as the most constructively co-operative in North America. While often, on the Quebec side, some of its motives for interlacing its trade and energy interests with those of neighbouring New York State and New England may have been inspired by domestic political considerations (the 'cultivation' of the United States as an alternative or challenge to Ottawa), the common material interests of both sides of the border seem to have remained dominant (absolutely dominant on the US side).

A dictionary definition of an international boundary usually suggests an image of a barrier that 'fixes the limits of neighbouring sovereignties and national identities'. This is also the meaning central governments promote and protect but, as this study suggests, non-central governments qualify or modify. The similarity of social, economic, and environmental problems, resulting from geographical proximity, has often been a reason for border governments to look towards their immediate neighbours beyond the intersovereign dividing line rather than towards their respective national centres.

It would be wrong, of course, automatically to credit any neighbourhood with inherent harmony: closeness between individuals, regions, and nations sometimes does invite trust and co-operation, but at other times distrust and competition. The two potentially opposite effects of any contiguity were succinctly expressed by

Cardinal Richelieu in the seventeenth century: 'The light of nature teaches each of us in his private life to maintain relations with his neighbours because as their near presence enables them to injure so it enables them to do us service.'

Transborder neighbourhood linkages—and the ensuing need for their regulation—are probably as old as humanity itself, and our including them in this summary is certainly not done for the purpose of novelty. A particular vicinity on land, however intimate it may be, cannot, of course, be isolated from the larger neighbourhood framework. The four south-western US states facing the six northern Mexican states, for example, must be studied not in separation from but in close connection with the general US–Mexican political and economic relations and their historical evolution; and this caution naturally applies also to the north-western Swiss–Alsatian–southern German co-operative framework along the Rhine River, which is both separate from and an integral part of the larger Berne–Bonn–Paris framework.

In Western Europe, all nations, including centralist France, have ratified the Outline Convention on Transfrontier Co-operation between Territorial Communities and Authorities, which was negotiated and signed in 1979. That document approves the various steps and procedures for closer transborder co-operation among neighbouring non-central authorities. France signed the Convention last and did so with many reservations, to preserve the last word for the national government.

In 1982 federal Switzerland organized a working group of all its cantons that are contiguous with France (Groupe de concentration des cantons frontaliers limitrophes de la France) for the specific purpose of conducting direct negotiations with neighbouring French *régions* and *départements*. The Swiss Constitution specifically authorizes the cantons to engage in transborder activities in matters within the cantonal jurisdiction. In Delémont, the capital of the new francophone canton of Jura (clearly, a deliberate choice), the then Swiss President and Foreign Minister, Pierre Aubert, carefully drew the line between the Swiss federal and cantonal 'diplomacy': 'The Swiss Federation intervenes as soon as there is cantonal contact with a foreign *capital*, but a canton may enter into direct contact with the representatives of those local communities which are comparable to our cantons.'[17] On the other hand, when the newly established canton of Jura negotiated a treaty with the

distant Republic of Seychelles, it was not the cantonal representative but the Swiss ambassador who signed the final document on Jura's behalf (see Chapter 9).

When we read some of the eight hundred agreements and letters of understanding linking the Canadian provinces with the US counterparts we note in them the appropriate polite bow towards federal Washington and Ottawa, but that is followed by a matter-of-fact description of how the agreement pertains to both sides of the border. The 1969 agreement on civil defence emergency planning between Montana and Alberta reads, for example, in part:

> Subject to review by Federal Authorities of both the United States of America and Canada where federal interests are involved...the Civil Defense Organization within the State of Montana and the Emergency Measures Organization within the Province of Alberta will render all possible help one to the other...channels of communication will be between the office of the Director, Montana State Civil Defense Agency, and the office of the Co-ordinator, Alberta Emergency Measures Organization.

In our interdependent world, neighbourhood dyads interact not only with their neighbours and their neighbours' neighbours within the national borders, but also, through the collective national whole, with other parts of their own and other continents. In sum, transborder regional paradiplomacy, established and maintained by regional paradiplomacy, refers to the networks of communication channels, implicit and explicit rules, and informal and formal procedures[18] that, within a trans-sovereign region, permit and relate co-operative interaction between municipal and regional governments as well as private enterprises and individual citizens. The result is the contemporary emergence of rudimentary co-operative frameworks astride sovereign boundaries, a subcategory of international regimes which, paradoxically, combine respect with disrespect for territorial sovereignty. These transborder configurations reflect and implement the imperatives of regional interdependence between two or more territorial segments of contiguous sovereign national systems.

Similar to the relations between sovereign states, the contacts between two neighbouring territorial authorities, separated by inter-sovereign boundaries, lack a common authority superordinate to both sides of the border. Each of the two contiguous non-central governments operates within the limits of its respective sovereign government (as, for example, Quebec–Boston under Ottawa–

Washington, or Ciudad Juarez–El Paso under Mexico City–Washington, or Basle–Freiburg–Colmar under Berne–Bonn–Paris).. The intended goal of transborder co-operative regionalism is primarily to facilitate trans-sovereign movement of commodities, products, data, energy, cultural programmes, and humans, not a creation of a new 'borderland nation' or 'zonal nation'. There are some integrating elements[19] present but in rather weak doses.

Facing each other across national boundaries, territorial authorities have, of course, always (or at least since 1648, the official birthdate of modern territorial states, when the Peace of Westphalia ended the religious wars in Europe) found some informal and formal, mutually advantageous ways of regulating specific border problems. Today, however, the number, urgency, and importance of such transborder issues that are of immediate concern to both sides of the international border have increased exponentially, ranging from the relatively prosaic 'border maintenance' problems such as forest fires (quite disrespectful of human-drawn frontiers), sewage and water management, to electronic data traffic, energy transfers, unwanted media penetration, and other modern-age issues. Some of these transborder/regional problems are purely local in their origins and impact; others have assumed regional significance by their local application and consequences but have resulted from or reflect issues either settled or disputed by the two national centres—that is, macrodiplomacy.

In the absence of any authority, superordinate to both sides (each of which remains under the sovereignty of its respective nation-state), the mode of transborder regional decision-making is not, and cannot be, democratic-majoritarian; it is necessarily consensual. The term 'paradiplomacy' seems appropriate indeed; the term 'para', in fact, indicates not only something parallel, but also, according to the Webster Dictionary, something 'associated in a subsidiary or accessory capacity'.

Transregional paradiplomacy is the term used to describe connections and negotiations between non-central governments that are *not* neighbours (in contrast to transborder regional paradiplomacy) but whose national governments are. Such subnational units are separated by other provincial/state jurisdictions from the international border which, in order to establish and maintain their links, they have, as it were, to leapfrog. Examples are the Canadian provincial trade missions in non-contiguous US states, such as those representing Alberta and Quebec in Texas; Quebec in Louisiana;

Alberta, British Columbia, Ontario, and Quebec in California; and Alberta, Ontario, and Quebec in New York City—from which the three Canadian provinces reach out not only towards the mid-Atlantic area but also, if not primarily, towards the national government in Washington, DC.

In contrast to the informality of regional microdiplomacy (with its brief outbursts of formality during the gubernatorial summits), transregional paradiplomacy has a more formal pattern. In our era, in which nations have not yet adapted to the international presence of non-central governments, these forms of diplomacy necessarily raise questions of diplomatic protocol, leading to potential tensions with the diplomatic and consular representatives of a central government abroad, as well as problems of compliance with foreign laws concerning non-diplomatic foreign agents.

From the point of view of US law, for example, the Canadian provincial representatives in the United States are foreign agents and, as such, must file semi-annual reports on their activities with the US Department of Justice. These reports indicate that, in a significant departure from transborder regional microdiplomacy in its narrow sense, the Canadian provinces target their transregional activities to much larger areas than their geographic location would suggest. The Alberta, Toronto, and Quebec missions in New York City, for example, include under their respective 'jurisdictions' all the mid-Atlantic states, a part of the South, and, above all, Washington, DC. The Quebec representation in Boston covers the whole of New England. The top political officers of the three Canadian provincial missions in New York City commute at least once a week to the national capital to meet and lobby both the federal administrators and the congressmen concerned with economic, ecological, energy, or cultural matters affecting the three provinces.

Global paradiplomacy consists of political–functional contacts with distant nations that bring non-central governments into contact not only with trade, industrial, or cultural centres on other continents (Quebec in Düsseldorf or Ontario in Frankfurt) but also with the various branches or agencies of foreign national governments (as Quebec and ten US states in Brussels—the EC headquarters). Non-central contacts with foreign national centres are, of course, to be expected in our era of welfare/warfare nation-states; and they are unavoidable in contacts with socialist authoritarian

systems in which one party and central government authority is fully in charge of all aspects of the national economy. During trade-promotional trips to the People's Republic of China, for example, both the New York City mayor and the British Columbia premier primarily negotiated with the central government and its agencies in Beijing. As mentioned before, the majority of Canadian provinces and the majority of US states have established in total more than one hundred permanent missions abroad. In some major US cities there are two or three Canadian provincial houses in co-operative and sometimes competitive relationships with the consulates of Canada.

The Canadian provincial and US state representatives abroad and their efforts to monitor and influence central governments are non-diplomatic and non-political in the accepted sense of the term; yet it is clear that their activities are bound to have some political dimension, as all governments today combine their political authority with economic and social responsibilities.

No similar global paradiplomatic contacts seem to have been attempted by the Mexican states. In Europe, West German *Länder* and French *régions* have now added some paradiplomatic initiatives to their transborder regional contacts. The two territorial segments of Belgium, the Walloon and Flemish communities, initially sent separate missions to Quebec (sometimes nicknamed the 'graduate school of microdiplomacy'), and extended their cultural promotional activities into various European countries. (In Chapter 6 Yves Lejeune discusses the complex framework of Flemish and Walloon relations with Belgium's neighbours, France and the Netherlands.)

The term *protodiplomacy* may be used to describe those initiatives and activities of a non-central government abroad that graft a more or less separatist message on to its economic, social, and cultural links with foreign nations. In such a context, the regional/provincial parent authority uses its trade/cultural missions abroad to prepare the international ground for a future secession and recognition of a new sovereign unit, as was the case of Quebec until 1985.

WHY NATIONAL CENTRES WORRY

The various forms, contents and goals of paradiplomacy in its broadest sense — trans-sovereign encounters of a new kind — point

to the reasons why international activities of non-central governments, whether partly political or primarily economic, social, or environmental, arouse both interest and worry on the part of central authorities in charge of national foreign policy. First, subnational contacts with foreign centres of political power may become vehicles for various forms of trans-sovereign meddling. Second, too many subnational initiatives abroad may lead to chaotic fragmentation of foreign policy and cause a nation to speak with stridently conflicting voices on the international scene. Third, the cautious or negative attitudes on the part of central national élites towards subnational paradiplomacy reflect also their opposition in the name of constitutional principles concerning the eminent domain of national foreign policy (in the United States, 'a single legitimate national voice abroad' was, after all, what the Constitutional Convention in 1787 was partly about); there may also be concern for institutional tidiness and efficiency, institutional inertia opposing any change of routine, and fear of provincial egoism at the expense of the national whole as well as the other territorial communities. Perhaps there is also a worry, not entirely unwarranted, about provincial officials' lack of training and experience in the harsh world of international relations.

In one way or another, the problem of segmented foreign policy in federal or decentralized states and the possibility of and need for new forms of co-ordination have been placed on the agenda of federal democracies and decentralized systems. The very concept of federal segmentation in the field of foreign policy is based on the central assumption of this study that international activities undertaken by democratic non-central governments have already become facts of international life, however much their effects may be minimized as marginal and purely technical by some, or described as portents of diplomatic chaos by others.

From the standpoint of traditional centre-to-centre diplomacy the very concept of segmentation of the national conduct of external affairs contains several undesirable features which may undermine the authority and effectiveness of the central government's activities abroad. This study does not underestimate this problem. Nevertheless, neither the tradition nor the added complications can, of course, alter the reality of trans-sovereign relations as we note them today.

Four plausible scenarios are suggested:

1. *Secessionist fragmentation* of both policies and actors, in preparation for territorial secession. If this occasionally is the case, a territorial community and its leaders in fact engage in what we have called protodiplomacy, rather than paradiplomacy.
2. *Tight centralization in foreign policy* as a reaction to too many international actors. The rationale for such centralization would be the prevention of anticipated chaotic situations in *all* issue-areas. Recentralization can also be justified by the need to discipline egoism on the part of territorial components in decentralized systems.
3. *Combinative foreign policy*; that is, a co-ordination of foreign policy in matters other than national security. Combinative foreign policy accepts the imperative need to combine various initiatives coming from the territorial components *ab initio* into newly co-ordinated streams. In such a scenario the existence of many or two voices is known to and observed by the outsiders but only marginally affects the foreign monitors' perception of the nation-state as a basically univocal actor.
4. *Co-operative/competitive segmentation.* By this is meant a mix between co-operation on the part of non-central governments in some issue-areas but duplication or competition in others. The outward sign of such a mixed situation may manifest itself, as in the case of Quebec and other Canadian provinces, by the establishment of separate provincial missions abroad, top echelon visits of provincial leaders to foreign capitals, and perhaps some efforts to obtain either full or observer participation in some or all international intergovernmental organizations. This mix of co-operation and competition, however untidy, is the most probable scenario in the democratic world in general, and the federal world in particular. Politics, after all, resists working in neat 'either/or' categories.

Variants of (3) and (4) permit or call for various co-ordinating institutions and formulas. Thus, the final results of internally segmented but partly or fully co-ordinated foreign policies in the fields of trade, investment, environment, and cultural and technology exchanges may ultimately be presented to, and even perceived as univocal by, the outside world.

Panayotis Soldatos has argued that a co-ordinated, decentralized process in foreign policy is present when the federal government joins forces with the subnational unit, co-ordinates or monitors subnational international initiatives, and manages to harmonize the various trans-sovereign activities with its own policies: 'Hence decentralization could enhance unity and efficiency in external relations. *The élites' capacity to adapt and to respond . . . could transform the crisis into a process of rationalization where [foreign-policy] actor segmentation does not become policy segmentation and a subnational paradiplomacy helps to rationalize the whole foreign policy process.*'[20]

And, vice versa, it should be added that segmentation of foreign policy in terms of its various and simultaneous targets and the means to attain them, as imposed by the international environment and requiring multiple expertise, does not mean actor fragmentation; the various functional and geographic divisions, sections, and desks in any ministry of external affairs are signs not of chaotic fragmentation, but of rational segmentation.

Segmentation of policies and actors seems natural to all democratic federal systems, and especially to their foreign-policy-making. Such segmentations may make the life and action for all concerned quite complicated. But what else could be expected in our era of complex and complicated interdependence?

NOTES

1. See A. Wildavsky's search for an explanation of why and how people come to share their opposition to or support of institutions in his 'Choosing Preferences in Constructing Institutions: A Cultural Theory of Preference Formation', *American Political Science Review*, 81/1 (Mar. 1987), 3–21: 'Preferences come from the most ubiquitous human activity: living with other people. Support for an opposition to different ways of life, the shared values legitimating social relations (here called cultures) are the generators of diverse preferences.'
2. The Prime Minister's circular letter of 2 May 1983 specifies that, besides being a source of information and advice, the new office is 'to see to it that the initiatives of the communes, *départements*, and regions respect the rules fixed by the Constitution, and do not interfere with the external policy of France'.
3. Both the Stalin (1936) and Brezhnev (1977) Constitutions gave each of the fifteen Union Republics the right to enter into direct relations with foreign states. Article 80 of the Brezhnev 1977 Constitution states: 'A Union Republic has the right to enter into relations with other states, conclude treaties with them, exchange diplomatic and consular representatives, and take part in the work of international organizations.' Only two of the fifteen Soviet republics, the Ukraine and Byelorussia, have become voting members of the UN, but neither has direct diplomatic or consular relations, not even with their neighbours (Poland, Czechoslovakia, Rumania, and Bulgaria). The participation of

the two Union Republics in addition to the Soviet collective membership, agreed on by the United States and Great Britain at Yalta in 1945, makes no sense at all. If the USSR views itself as a loose confederation or commonwealth of fifteen nations, it should have fifteen votes in the General Assembly if the Soviet Constitution were to be taken seriously. If the USSR considers itself as a true federal union, it should have only one vote as any other federation (the United States, Canada, Mexico, India, Malaysia, Nigeria, United Arab Emirates, Australia, Argentina, Venezuela, Brazil, the FRG, and Austria). Article 72 of the same Constitution states: 'Each Union Republic shall retain the right freely to secede from the USSR.' If a reader limited him/herself to reading these articles, s/he would have to conclude that the USSR is a loose confederation of sovereign states, but not a federation.

4. W. F. Hanrieder, 'Dissolving International Politics: Reflections on the Nation-State', *American Political Science Review*, 71/4 (Dec. 1978), 1277.
5. Indebtedness to J. N. Rosenau's studies of 'Cascading Interdependence' is here gratefully acknowledged. See in particular, Rosenau, 'A Pre-theory Revisited: World Politics in an Era of Cascading Interdependence', *International Studies Quarterly*, 28 (1984), 245–305, especially p. 254, and his paper 'The State in an Era of Cascading Politics: Wavering Concept, Widening Competence, Withering Colossus, or Weathering Change?', presented at the International Political Science Association Congress held in Paris, 14–20 July 1985.
6. In Chapter 10, E. H. Fry has calculated that 75% of the largest corporations (many of which are transnational) engage in lobbying efforts in one or more states.
7. Major US cities have become prominently instrumental in foreign-policy initiatives *vis-à-vis* South Africa. A large number of them have passed ordinances refusing to buy equipment from companies doing business in South Africa. The rising number of municipal pension funds which either were forced by city governments or determined on their own to sell shares in companies active in South Africa has driven down or threatened the stock prices of top companies such as IBM, and thus may make it more difficult for these concerns to raise new capital. Over thirty cities have passed laws that curtail the awarding of contracts to corporations operating in South Africa. Chicago gave an 8% bidding preference to companies not operating in South Africa. The State of Maryland barred by law the awarding of contracts greater than $100,000 to companies operating in South Africa (*New York Times*, 8 Sept. 1986).
8. H. J. Michelmann, for example, described in interesting detail the complex arrangements for co-operation in international cultural matters between the federal governments and *Länder* of the FRG (the so-called Kultusministerkonferenz (KMK)) and some of the features of the so-called 'Lindau Convention'. See his article 'Federalism and International Relations in Canada and the Federal Republic of Germany', *International Journal*, 41 (summer 1986), 551–3.
9. I. D. Duchacek, *The Territorial Dimension of Politics Within, Among, and Across Nations* (Boulder, Colorado, 1986); this section contains several paragraphs and research data contained in the above book's chapters 8 and 9.
10. In his study 'Federalism and International Relations', p. 562, Michelmann emphasized the frequent travels of the *Länder* ministers abroad.

    Even though Bavaria and its former premier Franz Josef Strauss represent a special case, the political rather than economic aspect of the Bavarian–Chinese contacts should be noted. The *German News Service* (7 Oct. 1985), for example, reported on Strauss's description of his meeting with China's supreme leader Deng Xiaoping as follows: 'The way to China is not an *economic* adventure, but a rewarding task with a future' (italics added).

11. Initially, I used the colloquial term 'microdiplomacy'; since a derogatory sense could be read into it, I gladly accept Professor P. Soldatos's much better term 'paradiplomacy'. Not only has it no derogatory sound, but 'para' expresses accurately what it is about: activities parallel to, often co-ordinated with, complementary to, and sometimes in conflict with centre-to-centre 'macro-diplomacy'.
12. E. Stoddard, 'Overview', *El Paso Herald/Special Report: The Border* (summer 1983), 97.
13. In Western Europe, where national systems are dominantly unitary, the very terms 'regional/spatial planning' (a newly coined English term for the French *aménagement du territoire*) and 'regional policy' are defined as 'measures taken by the central government authorities to promote the socio-economic development of less prosperous regions' (Council of Europe, Standing Conference of Local and Regional Authorities of Europe, 'Report on the Regional Policy of the Member States of the Council of Europe and the European Institutions' (Strasburg, 18–20 Oct. 1983), 3).
14. Council of Europe, *The Conference of Local and Regional Authorities of Europe* (Strasburg, 1980), 54, describes the European regional ideology as follows:

> To build Europe is an obvious need, but it does not mean building a new, abstract, unitary diagrammatic and technocratic entity. It means federating, developing institutions from the bottom, following the rising order of federalism, in which unity is founded upon diversity. This implies recognition of the *nation*, its institutions and history, and of the municipalities which are the birth place of civil liberty. Between the municipal primary cell and the nation stands the *region*, an operational intermediary and living reality. . . . European unity . . . would be all the stronger for being based on local realities.

15. Council of Europe, 'Participation of the Individual in Local Public Life' in *Conference of Local and Regional Authorities of Europe* (Strasburg, 2–22 June 1978), 34.
16. For a well-researched analytical study of the last ten transborder summits, see M. Lubin, 'The Conference of the New England Governors and the Eastern Canadian Premiers', presented at the 26th Annual Meeting of the Western Social Science Association, San Diego, 26 Apr. 1984. See also Professor Lubin's full treatment of the Quebec co-operation with New York and the New England states, 'New England, New York, and their Francophone Neighborhood,' presented at the Workshop Conference on 'Quebec and the United States: Two Special Relationships,' held at the City University of New York, 20 Nov. 1986.
17. 'La Conféderation intervient chaque fois qu'il y a un contact avec une capitale étrangère, alors que le canton peut entrer *directement en contact avec de représentants de collectivités locales comparables*' (11 Oct. 1982; author's translation, italics added). There exists today an Association of European Border Regions and, since 1975, a European Regional Development Plan, established by the Commission of the European Community. Both Strasburg and Brussels (as well as Luxemburg) are centres for many of these regional and interregional institutions and programmes.
18. In the comparative examination of various transborder regional co-operatives, this study has applied several insights derived from the concept of 'international regimes', in particular S. D. Krasner, 'Structural Causes and Regime Consequences: Regimes as Intervening Variables'. *International Organization*, 36 (1980), 185–206 (revised and reissued as S. D. Krasner (ed.), *International Regimes* (Ithaca, NY, 1983)); R. O. Keohane and J. S. Nye, *Power and Interdependence: World Politics in Transition* (Boston and Toronto, 1977), 19; and

E. B. Haas who, in *International Organization*, 36 (1980), 358, defines an international regime as 'norms, rules, and procedures agreed to regulate an issue-area'.

19. If we adopt Nye's list of integrating factors, we may detect their attitudinal aspect (an emerging sense of mutual identity and obligation), some policy integration in terms of interdependence in policy formulation, but a near absence of institutional integration in terms of an emerging transborder (binational) authority and corresponding increase in administrative staff and budget. Cf. J. S. Nye, *Peace in Parts: Integration and Conflict in Regional Organization* (Boston, 1968), 37.
20. P. Soldatos, 'An Explanatory Framework for the Study of Federated States as Foreign Policy Actors', paper presented at the Annual Meeting of the American Political Science Association, 28–31 Aug. 1986 (italics in original).

2

An Explanatory Framework for the Study of Federated States as Foreign-policy Actors

PANAYOTIS SOLDATOS

THE ESSENCE OF THE PHENOMENON

As a result of a crisis at the level of the nation-state's systemic process and foreign-policy performance, as well as a process of reacting to and attempting to remedy this crisis, the 'many voices'[1] phenomenon in foreign policy (called here 'segmentation') appears most often within advanced industrial federations[2] in which individual federal governments and federated states (in this study often called 'federated units') compete for foreign-policy roles. It is, moreover, more pronounced in societies such as Canada, where the 'nation-building process' is unfinished and *de jure* and *de facto* decentralization allows for a more active provincial, regional, and even municipal role in external relations.[3]

The role of federated and other subnational units in external relations is not new, nor are its reasons all that contemporary. To limit ourselves to one example, Quebec appointed a general agent to Paris in 1882, on the grounds that 'the business relations between the province of Quebec and Europe are increasing constantly and that big firms, financial institutions and other enterprises, created or enhanced by French capital, [have] witnessed a considerable development'.[4] However, when we observe the more contemporary process of external-policy-making, particularly as seen in the 1960s and 1970s, especially in advanced industrial societies of the federal kind, we witness a more pronounced process of erosion of the sovereign state government's prerogatives in foreign relations. Indeed, the development of the EC as a supranational actor in the field of external economic relations,[5] the increased involvement of federated units in external affairs, and

the numerous international activities of various other subnational (regions, urban communities, cities) and transnational (e.g. multinational corporations) actors, brought into the forefront of the specialized literature the concept of new actors in foreign policy and the related phenomenon of segmentation.

The external activities of federated units of advanced industrial societies may be characterized as new phenomena in the following senses: first, in qualitative terms, such activities have been direct and relatively autonomous in that the federated unit often has and deploys its own domestic and 'foreign-service' channels and machinery, as well as substantial amounts of its own financial resources, in pursuit of its own body of foreign-policy objectives. Second, the external activity of federated units, or of the most dynamic federated units at least, is unprecedented in quantitative terms, in that its pace has accelerated as it has become increasingly wide in scope (in terms of systemic matters covered by it) and in relationships (measured by volume of interaction and by number of partners). This external activity has, therefore, the constitutive elements of a foreign policy (even if the literature often prefers to use the term 'external relations' rather than 'foreign policy'[6]), in that it has objectives, strategies, tactics, institutions, a decision-making process, instruments, and a 'foreign-policy' output. In addition, its manifestations — e.g. visits and missions abroad, agreements with foreign actors, external direct representation, etc. — are often similar to the foreign-policy activities of nation-states.

A CONCEPTUAL FRAMEWORK EXPLAINING THE DEPENDENT VARIABLE

The foreign-policy activity of a federated unit, in the setting of an advanced industrial society, involves a whole array of concepts, the 'hard core' of which could be reduced to the following, presented in the subsequent rubrics as part of a few taxonomies on *segmentation*, *paradiplomacy*, *paradiplomatic actions*, *segmentation of actors and activities*. The purpose of such conceptualization is to allow for more precision in the definition of the dependent variable that we are trying to explain in this study, i.e. the *paradiplomacy of federated states*.

Although in our previous writings we used the term 'fragmentation' within the context of Canadian and US politics, we decided to

adopt here the concept of segmentation, proposed in I. Duchacek's work. Such conceptualization could be more appropriate in indicating that segmentation is not always, within the above context, a disintegrative phenomenon (as the term fragmentation may imply), but could, in many instances, be part of a rationalization process in external relations.

There are two types of segmentation: (1) *territorial segmentation* (TS) (also called *vertical*, since it concerns different levels of government—although this verticality, when it refers to the federal and federated governments, should not necessarily imply a hierarchical relationship between the two, in terms of powers and importance), where various levels of government (federal, federated, or even municipal) are directly active in the area of external relations and foreign-policy-making; and (2) *functional (horizontal) segmentation* (FS), where, within the same level of government (federal or federated), different departments and government agencies are directly involved in international affairs, due to the process of 'domestication' of foreign policy, i.e. the development of foreign-policy activities in the area of 'low politics'.

Territorial segmentation, which is our topic here, comprises four different levels.

1. *Objective (situational) segmentation* (OS) refers to a variety of characteristics differentiating territorial units and having an impact on foreign-policy activities. The differences are expressed, for example, in terms of economic structures, geographic situations, and political, linguistic, cultural, and religious characteristics. Such segmentation is very prominent in some federal states, most notably in Canada.[7]

2. *Perceptual (image) segmentation* (PeS) refers to the segmentation of attitudes, perceptions, loyalties, conceptions of interest, etc. of élites and populations, leading to 'many voices' in foreign policy.[8] Perceptual segmentation is, of course, based on the reality of objective segmentation or on a perception of such segmentation which could be enhanced by a certain degree of subjectivity.

3. *Policy segmentation* (PoS) refers to the results of the previous two levels of segmentation, and leads to a variety of positions on external policies.

4. *Actor segmentation* (AS) refers to the cascade process, by which the previous levels of segmentation can induce federated

states to become foreign-policy actors, and, thus, to use their own institutional machinery to develop a foreign-policy activity. Actor segmentation may increase policy segmentation: the direct involvement of federated units in foreign policy may lead to differentiation (from the federal and the other federated governments) in the perceptions of domestic interest and international reality. However, it is also true that in the case of a *co-operative paradiplomacy* (see below), policy segmentation can be reduced to a minimum.

Yet, policy segmentation does not always lead to actor segmentation. Federated units enjoying a dominant or merely strong position with a federal system can use it to their own advantage, thereby accommodating themselves with the federal machinery of foreign policy, at least for some issues. In Canada, for example, Ontario, because of its dominant position in the Canadian federation, often felt a lesser need for direct foreign-policy involvement than did Quebec, or, for that matter, than did some western provinces. Lack of resources can also lead to the avoidance of actor segmentation.

Actor and policy segmentation are two constituent elements of federated units' *paradiplomacy*,[9] i.e. direct and, in various instances, autonomous involvement in external-relations activities. We have two main categories of paradiplomacy: first, *global paradiplomacy* (using the adjective 'global' in a functional rather than in a geographic sense, the latter use being proposed by I. Duchacek[10]), where federated units deal with issues concerning the whole international system (e.g. peace and war, liberalization of international trade). An example of such action is the orders, made in 1983 by New York Governor Mario Cuomo and New Jersey Governor Thomas Kean in response to the downing of a KAL airliner, to deny landing clearance to any Soviet aircraft bringing Soviet Foreign Minister A. Gromyko to the UN.[11] Such a global paradiplomacy is not common, since federated units usually deal with issues of 'low politics' and matters of regional relevance. Our second type of paradiplomacy is *regional*,[12] where the issues involved are of a regional relevance to the communities taking part in a subnational activity (e.g. issues involving relations between the province of Quebec and New York State).

There are two kinds of regional paradiplomacy: first, *macro-regional*, which takes place when the actors are dealing with issues concerning communities which are non-contiguous (e.g. Quebec–

France); and, second, *micro-regional*, where the issues concern communities that have a geographical contiguity (e.g. Quebec–New England states). Micro-regional paradiplomacy can be *trans-border* or *transfrontier* (when the contiguity implies common boundaries).

Whereas micro-regional paradiplomacy usually generates minimal controversy, macro-regional paradiplomacy, normally involving actors of different regional systems, can become politicized, even it is refers to a 'low-politics' issue. An example is the 1965 agreement on education matters between Quebec and France, which at the time created a systemic storm in Canada.

As Fig. 2.1 illustrates, paradiplomatic actions can be of varying nature. *Co-operation (supportive) action* in foreign policy is possible when subnational actions on the part of federated units are co-ordinated by the federal government (e.g. through umbrella-agreements or through federal–state—in Canada federal–provincial—relations institutions, permanent or *ad hoc*) or developed in a joint fashion (joint missions, joint approaches *vis-à-vis* a foreign actor, etc.). In the FRG, for example, such co-operative action often takes place between the central government and the *Länder*. *Parallel (substitutive) action* is also possible. This can be developed in a harmonious climate, where the federal government

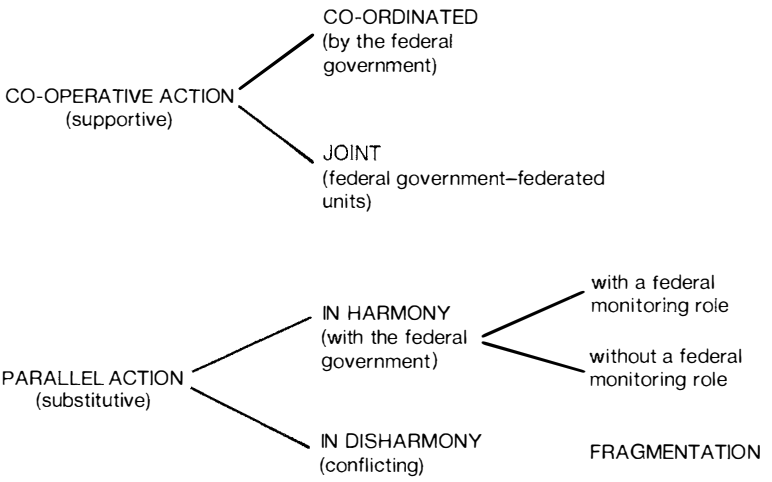


FIGURE 2.1 Nature of paradiplomatic action

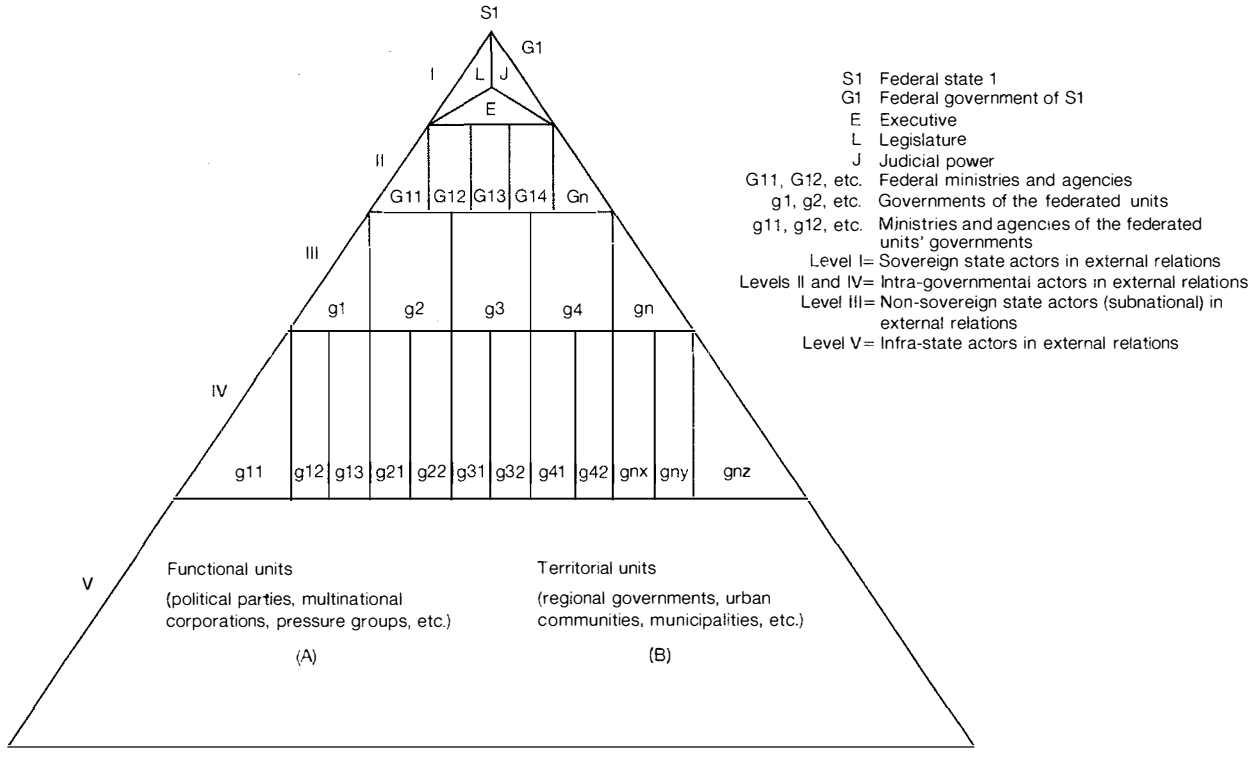


FIGURE 2.2 Actor segmentation in external relations

accepts the rationality of a federated unit's independent action in external relations, with or without federal monitoring.[13] On the other hand, such action can be in conflict with the federal government, the latter opposing such an action or its content or form.[14]

It is evident that not all foreign-policy actions on behalf of federated units involve conflict in this sphere, even though, in the specialized literature, an emphasis is often placed on the conflicting aspects of segmentation.[15] As will be explained in the course of this chapter, segmentation could be a rationalization process in foreign policy and, in some instances, is accepted as such by federal governments. In Canada, for example, provincial activities in the foreign-policy sphere are not always a source of friction between federal and provincial governments, especially when such action is the work of a province other than Quebec. (Quebec was often perceived in Ottawa, particularly when the Parti Québécois was in power, as having aims conflicting with those of the federal government.) Co-operative or harmonious parallel action frequently takes place in the other countries examined in this book.

Fig. 2.2 and Table 2.1 help to define the kinds of actors having external-policy roles and creating foreign-policy segmentation,[16] and the types of activity and segmentation involved. Here, we ought to specify (referring to this figure and table) that our concept of *transgovernmental* activity conforms with the Feldmans' usage,[17] i.e. it is 'activity abroad, conducted by the constituent governments of a federal union or subunits of a central government' or (we add) subunits of a federated government, rather than Keohane's and Nye's definition of a more limited scope, 'referring to subunits of government on the occasions when they act relatively autonomously

TABLE 2.1. Type of activity and segmentation in external relations

Type of activity	Type of segmentation
Transgovernmental activity Levels II and IV	Functional or horizontal segmentation
Transgovernmental activity Level III	Territorial or vertical segmentation
Transgovernmental activity Level V (B)	Territorial or vertical segmentation

from higher authority, in international politics'.[18] However, we extend the Feldmans' concept of transgovernmentalism further, to include activity conducted abroad by regional and municipal governments.

DETERMINANTS OF THE PARADIPLOMACY OF FEDERATED UNITS

Territorial segmentation, as a phenomenon of policy and actor segmentation, at the level of the federated units, represents, in a sense, a phenomenon of crisis for the nation-state and its federal government, for the following reasons. Although ideological considerations, as will be seen below, are not to be excluded (e.g. national and constitutional motives for the Parti Québécois's development of a provincial foreign policy), the development of an international profile at the level of federated units often has a pragmatic explanation. Disenchantment with the federal government's foreign policy, in procedural or substantive terms, and/or awareness of the central government's inability to be effective alone in the promotion of subnational interests, lead to direct subnational involvement in international relations and, moreover, to policy and actor segmentation, thus segmenting foreign policy. In turn, such involvement forces the federal government to search for a co-ordination or supervision strategy in order to harmonize the roles: this may burden the resulting process with excessive bureaucratization or conflicting reactions which add to the crisis. On the other hand, such subnational activity undermines the notion of a foreign policy as an essential attribute of the sovereign state.

However, such policy and actor segmentation can be mainly reduced to segmentation of actors only, and thus lead to a rationalization process in foreign-policy-making, if the two types of government — federal and federated — can harmonize their external policies.

Indeed, the notion of rationalization has a place here, since actor segmentation can refer to a co-ordinated decentralization process in foreign policy, whereby the federal government accepts, joins forces with the federated unit, co-ordinates or monitors subnational foreign-policy-making, and manages to harmonize the various transgovernmental activities with its own policies. In this sense, decentralization could allow federated units:

1. to promote their interests internationally, but in accordance with the overall national interest;
2. to share the costs and to pool the forces and resources of foreign-policy-making with the federal government;
3. to look for complementarities.

Hence, decentralization could enhance unity and efficiency in external relations and become a remedy for the crisis of the nation-state in foreign policy. In an era of specialization, of need for cost efficiency, of limited public resources, and of international interdependence, the combined efforts of the two levels of government could constitute, under certain conditions, an improvement of a nation's foreign policy.

In other words, the élites' capacity to adapt and respond to actor segmentation, with a conflict-resolution mechanism, coherent machinery for the articulation and aggregation of interests, and a process of development of complementarities in foreign action, could transform the crisis into a process of rationalization, whereby actor segmentation does not become policy segmentation and a subnational paradiplomacy helps to rationalize the whole foreign-policy process.

We have to admit, however, that the rationalization dimension of this process has not always been explored or emphasized. This is so for various reasons: because the traditional concept of the sovereign state implies unity of the state's will; because of the uneasiness displayed by federal government with respect to sharing power or roles in international relations; because of the practical difficulties in harmonizing the 'many voices'; because of the inability of the federal government to adapt and respond to such segmentation and to decentralization imperatives; because of the ideological overtones which accompany, in some cases (e.g. in the Quebec–Ottawa conflict), actor segmentation; because of the development of structures and economic spaces (zones of regional international integration; world economy) or powerful transnational actors (multinational corporations), all larger than the nation-state, all of which, for some people, call for a centralized response in foreign policy.

Figs. 2.3 and 2.4 summarize this double process of co-operation and conflict, of segmentation and fragmentation, of crisis and rationalization.

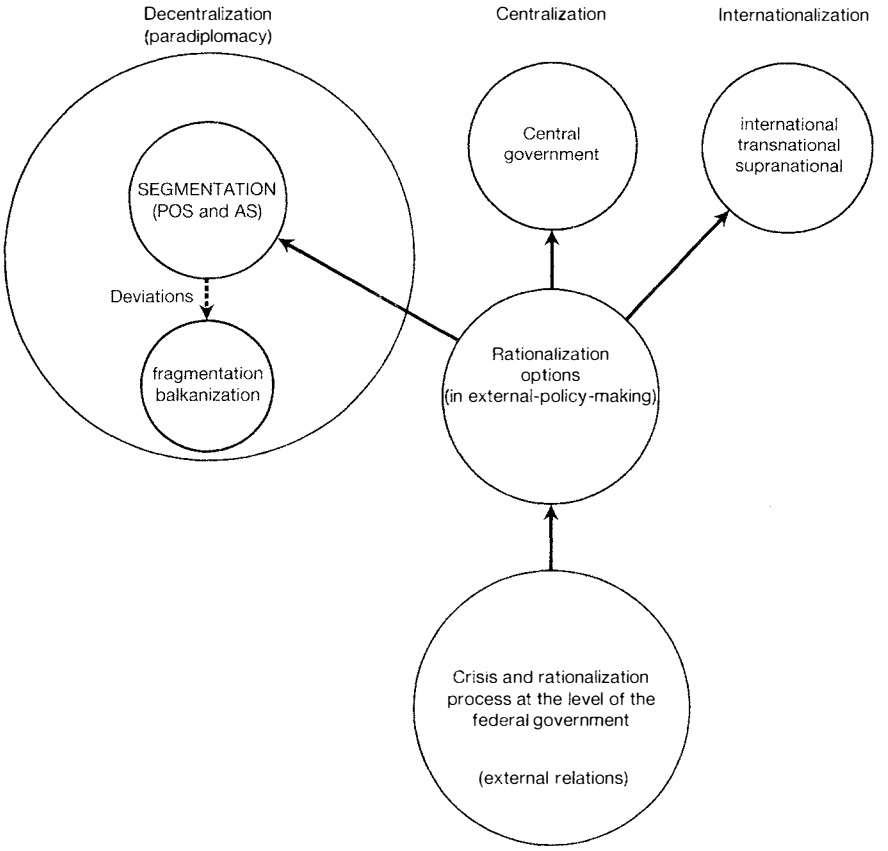


FIGURE 2.3 Paradiplomacy in a crisis, and the rationalization process

Our explanatory framework presents four characteristics, which should be considered in a cumulative fashion.[19]

1. The whole array of determinant factors is linked to the crisis–rationalization process in a federal state.
2. These factors are presented in typology form with domestic and external causes, the former being due to factors lying within the federated unit or attributed to the federal system, and the latter having global–international or regional–international origins.
3. Usually, these determinants are interrelated.

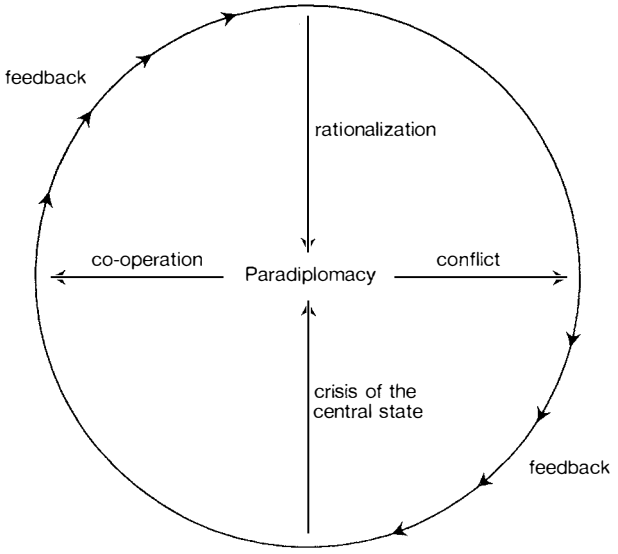


FIGURE 2.4 Paradiplomacy and the political process

4. Although the list of causes is not exhaustive, the enumerated factors are the cumulative expression of the main aspects of this causality based on a comparative perspective.[20] In the Canadian case, the entire spectrum of causes is present, whereas in other federal systems fewer of these causes will be encountered.

Fig. 2.5 depicts the causes of paradiplomatic activity.

Objective segmentation, the first of the *domestic* determinants, refers to geographic, cultural, linguistic, religious, political, and other characteristics distinguishing a federated unit from one or more of the others and, therefore, from the rest of the country. Such a segmentation can create conflicts of interest during the pursuit of a centralized foreign policy and can induce federated units' élites and their populations to believe in the need for direct and more autonomous external activity at this second level of government, allowing for consideration of the specificity, in situational and interest terms, of the federated unit.

Perceptual segmentation (electoralism) is usually related to

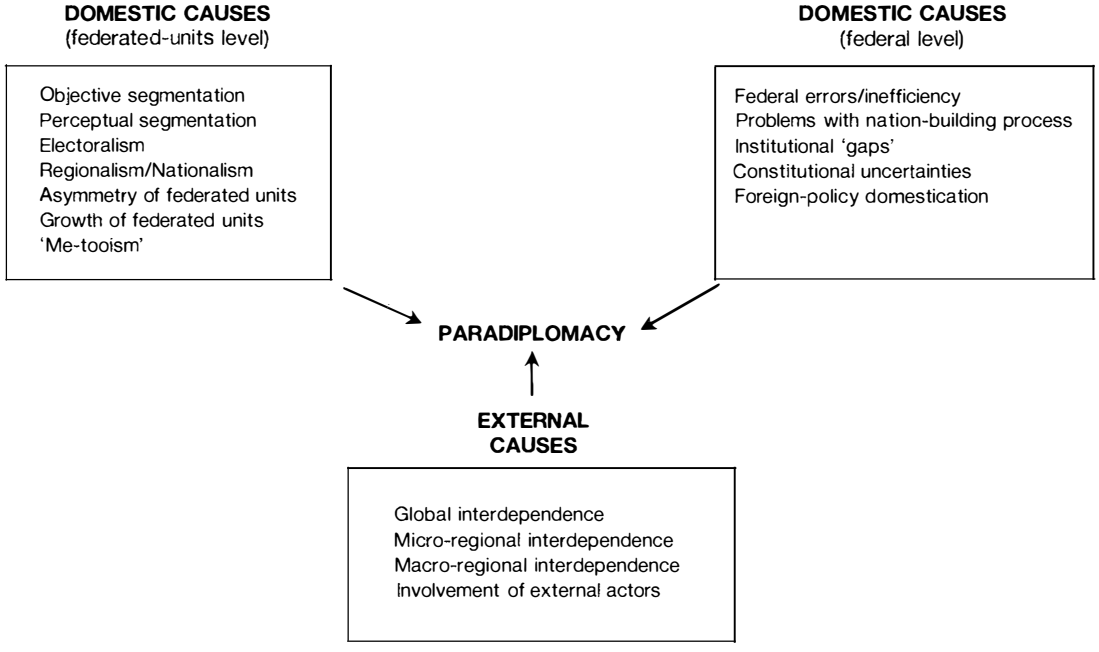


FIGURE 2.5 Determinants of paradiplomacy

objective segmentation, but it can also be the product of a *perception* of differences, without a great deal of basis in the reality of the system. The political pressures of the electorate are often expressions of these perceptions.

Objective and perceptual segmentation also contributes to *regionalism*, a 'we feeling' at the federated-unit level, as an ingredient of actor and policy segmentation in external relations. Indeed, federated units, due to such objective and/or perceptual segmentation, do not always feel well represented at the central government level. Thus they seek direct international involvement, better to serve their own interests. The ingredients of objective and perceptual segmentation can also contribute to *nationalism*, which in turn can lead to paradiplomacy.

Segmentation may be heightened in the case of *asymmetry of federated units*, some of which could see foreign policy as the product of dominant élites situated in one or more demographically economically, or administratively powerful federated units. In Canada, for example, the western provinces' resentment towards some of Canada's external economic initiatives and policies (e.g. their dislike of the National Energy Policy and its external dimensions) can be explained partly by the perception that such policies are made by the élites of Ontario or of central Canada (Ontario and Quebec), acting at the federal level.

The *growth of federated units* — institutions, budgets and functions[21] — encourages subnational élites to look for new roles, including roles in foreign policy. A 'competing élites' scheme is thus developed, with national and subnational élites occupying the foreign-policy field, the latter contributing to the 'externalization' of federated units.

A phenomenon of '*me-tooism*'[22] is also a stimulus for subnational paradiplomacy, some federated units following in the footsteps of others in developing international roles. A dynamic learning process leads to the adoption of paradiplomatic roles. For example, the Quebec paradiplomacy of the 1960s and early 1970s, involving direct foreign representation, certainly induced a 'me-tooism' among various other Canadian provinces and, to some extent, in the United States, among the states.

Federal errors and/or inefficiency[23] in the conduct of foreign relations — due, for example, to bureaucratization, insufficient expertise, limited resources, objective and perceptual segmentation,

etc.—is another ingredient of actor and policy segmentation. Federated units try, through their international involvement, to remedy the situation and to provide the system with a supportive or even substitutive paradiplomacy.

Problems with the 'nation-building process' could also lead to paradiplomacy, the adherence to the defence of a global national interest through a foreign-policy action being difficult and suggesting the need for subnational control of external relations. For example, Canada's systemic crisis in the 1960s and 1970s was also a crisis in foreign policy, given the Quebec–Ottawa conflict over international roles. The Belgian case, although to a lesser extent, is another example.

An *institutional 'gap'*, i.e. the absence of central federal institutions representing the federated units as such and having an important impact on foreign policy, could also explain federated units' paradiplomacy. For example, the absence, in Canada, of a senate such as the US one (or such as the West German Bundesrat) which has state representation and prerogatives in foreign policy, is a factor in the development of provincial paradiplomacy. This is especially so since the Canadian Parliament plays little role in foreign policy and government parties are not always (depending on the 'national situation' of the governing party) representative of all the regions of the country.

Constitutional uncertainties[24] in dividing competences in foreign policy could encourage federated units to seek foreign-policy roles. In Canada, Quebec recognized such constitutional uncertainties and managed to develop its constitutional position by asking for a foreign-policy role and by invoking the principle of the 'external extension of domestic competences'. For example, provincial jurisdiction in matters of education and culture suggested Quebec's international agreements of the 1960s. Moreover, in constitutional battles of this kind, federated units often tend to adopt the policy of the 'occupied field', thus exercising *de facto* foreign-policy roles in order to consolidate positions for a subsequent *de jure* confirmation of these roles.

Foreign-policy domestication, that is, the constant and substantial emphasis in foreign policy on 'low-politics' issues, motivated federated units which have constitutional competences and vested systemic interests to develop a foreign-policy role in order to protect their constitutional rights and to be able to respond to the

modern challenges of international life, including, increasingly, issues of 'low politics'.

In Canada the 1970 'White Paper' on foreign policy[25] emphasizes, in four of its six 'basic national aims', domestic issues and goals: economic growth, a harmonious natural environment, quality of life, and social justice. Thus, provincial actors were, indirectly, invited to enter the foreign-policy arena and deal with these issues of domestic relevance at the international level.

Let us now consider the *external* causes of paradiplomacy.

The growing internationalization of the economy and the *interdependence* links among advanced industrial societies have a double impact on the sovereign state. They contribute to a 'penetrated sovereignty', where national borders cannot always effectively protect subnational units from economic, cultural, and other 'low-politics' external influences such as structural unemployment. This leads to the establishment of direct relations between federated units and such foreign actors as multinational corporations. Moreover, the world economy, with its high mobility of capital, joint ventures, the across-the-border articulation of economic spaces, and various interdependent interactions, induces federated units to resort to paradiplomacy in order directly to promote their distinct interests, especially in cases where the federal government's inefficiency dictates such corrective (supportive or substitutive) action. On the other hand, the same world economy and interdependence could encourage federal governments (e.g. in the case of Australia *vis-à-vis* Japan, or of Canada *vis-à-vis* the United States) to initiate a centralization process in foreign policy in order to deal with the enlarged size of the actors in the international environment, thus generating the counter-reaction of the subnational units (federated in this case) wishing to protect subnational interests, jurisdictions, and roles.

Paradiplomacy can be the result of the influence and *involvement of external actors*. For example, de Gaulle's encouragement of more intense interactions between Quebec and France as well as the francophone countries contributed, to some extent, to the development by the province of a more pronounced international profile.

Factors of *regional interdependence* are also important external determinants of paradiplomatic activity. These factors take two principal forms. First, geographic and demographic proximity, environmental interdependence, cultural affinities, and economic

complementarity—*micro-regional factors*—lead to transregional or transborder international co-operation and paradiplomacy. The Canada–US 'regional continentalism' is a very relevant example of such interaction and causal relationship.[26] Second, the complementarities and interdependence mentioned in the micro-regional context also apply to *macro-regional* interactions, such as those occurring between Quebec and France.

CONCLUSIONS

It is appropriate to concentrate in these concluding remarks on a few considerations, recapitulating, emphasizing, and developing the 'hard-core' elements of this chapter.

This study focuses on the paradiplomacy of federated states in advanced industrial societies; that is, of a territorial segmentation phenomenon consisting of segmentation of actors and often of policies. Such paradiplomacy, instead of being a process of conflict, can be one of rationalization, whereby federal governments accept or even welcome the international role of federated units as complementary (co-ordinated, joint, or monitored) to their international endeavours.

Although the paradiplomacy studied here generally focuses on 'low-politics' issues, there are some cases in which actions have 'high-politics' overtones; for example, the aforementioned reaction of the states of New York and New Jersey to the shooting down of a KAL airliner. But even if the focus is on 'low politics', there remains the possibility of the *politicization* of such an action, which occurs when 'low-politics' issues have 'high-politics' consequences. The Quebec–France educational and cultural agreements of the 1960s, for example, created a political conflict between France and Canada, since the latter saw the agreement as part of France's 'high-politics' aims: de Gaulle's interference with the political process in Canada and his desire to use Quebec as a 'springboard' for his global foreign-policy objectives appeared to reflect such aims. This politicization process indicates that macro-regional paradiplomacy—as well, of course, as global paradiplomacy—are more likely to generate politicization in 'low-politics' areas, where micro-regional paradiplomacy normally would not.

Paradiplomacy does not always imply complete autonomy (in terms of channels and content) of foreign-policy action. The

notions of co-operative paradiplomacy were discussed above, as was the fact that actor segmentation is not always followed by policy segmentation. Furthermore, the appearance of elements of 'shrinkage' in the nation-state's means of financial intervention could mean, for our theme, a paradiplomacy more co-operative than independent and conflictual, with federal governments accepting a rationalization process of sharing roles, and federated units accepting the development of their paradiplomacy through more frequent use of the existing federal channels of foreign policy (see, for example, the West German case). Within this same perspective, one would expect to see more city paradiplomacy and transnational 'paradiplomacy' (at the level of the private sector), whereas in the 1960s and 1970s federated states' paradiplomacy was the dominant form of foreign-policy segmentation.

The respective components of conflict and of rationalization in this subnational activity of paradiplomacy depend on the nature of the federal system: the more integrated the system, the less conflictual becomes the paradiplomacy, and the more obvious is the rationalization process. One could compare the lower profile of paradiplomacy in the FRG with the more conflictual nature of paradiplomacy in Canada.[27]

After the 1960s, when domestic causes were predominant in cases such as the Canadian, and the early 1970s, when they remained important, in the second half of the 1970s and in the 1980s the causes engendered by global interdependence seem to have been a stronger stimulus for paradiplomacy. However, establishing a hierarchy among determinant causes is a difficult task, since the comparative framework of paradiplomacy attempts to generalize across very different situations: for example, in the Canadian case conflictual determinants for such paradiplomacy have been preeminent, whereas in the FRG the more co-operative ones have prevailed. The difficulty also has to do with change over time.

The internal interrelation among determinant causes is, at this stage, difficult to establish. It could be very interesting to know the exact relationships between causes such as objective segmentation and federal inefficiency, federal inefficiency and global interdependence, regional and global interdependence on the one hand, and objective and perceptual segmentation on the other, etc.

We should always avoid conceptual confusion between the determinant causes of paradiplomacy and the concept of conditions

favourable to it. Favourable conditions may include personality of the leaders, historical and cultural ingredients, socio-political climate, important geographic position and resources, supportive paradiplomacy of the federated unit's cities, and legislation promoting, for example, foreign investment.

As a final conclusion, we could formulate the following statement: the paradiplomacy of federated units in advanced industrial societies is here to stay for the foreseeable future; more and more it will take on the aspect of rationalization with less emphasis being placed on conflict. It will increasingly be a co-operative rather than a parallel paradiplomacy; but, although co-operative, it will continue to pose problems for federal governments' foreign policy in terms of harmonization and global coherence; it will make greater use of transnational channels (see Level V (A) in Fig. 2.2), in conjunction, however, with transgovernmental channels (including the cities' network of international relations). More and more it will be nourished by external causes, mainly by interdependence; more and more it will develop its macro-regional range.

NOTES

1. For this concept, see E. H. Fry, *The International Relations of Sub-national Governments: Coping with the 'Many Voices' Phenomenon of an Interdependent World* (Corfu, Round Table presentation, International Political Science Association, Sept. 1980).
2. Segmentation in foreign policy is more pronounced in such societies, where political and socio-economic pluralism introduces a wide-ranging spectrum of actors. However, there are some segmentation phenomena in other types of societies, such as the communist countries (here, however, foreign-policy segmentation often seems to be 'tactical', i.e. a paradiplomacy without real autonomy, e.g. in USSR, China, etc.).
3. In order to be able to situate the segmentation phenomenon in the foreign-policy-making of a modern federal state, it is important to have an understanding of the evolution of modern federalism. See D. J. Elazar, 'Federalism, Centralization and State Building in the Modern Epoch,' *Publius*, 12/3 (summer 1982), 1–9.
4. Quotation given by L. Beaudoin, 'Origines et développement du rôle international du Gouvernement du Québec', in P. Painchaud (ed.), *Le Canada et le Québec sur la scène internationale* (Quebec, 1977), 444 (my translation from the French).
5. See P. Soldatos, 'La Théorie de la politique étrangère et sa pertinence pour l'étude des relations extérieures des Communautés européennes', *Études internationales*' (special issue), 9/1 (1978), 7–42 and the references given to the specialized literature.
6. Ibid. I am here using both terms.
7. On such segmentation, referring to the Canadian case and emphasizing eco-

nomic variables, see T. Hockin *et al.*, *The Canadian Condominium: Domestic Issues and External Policy* (Toronto, 1972).

8. For the level of perceptual segmentation (related to a functional type of segmentation), see R. B. Byers *et al.*, 'The Canadian International Image Study', *International Journal*, 32/3 (1977), 605–71.
9. I. D. Duchacek, in his initial studies on segmentation and foreign policy (see, for example, 'The International Dimension of Subnational Self-Government', *Publius*, 14/4 (1984), 5–31), prefers the term 'microdiplomacy'.
10. See, e.g., ibid. 13–16.
11. See, on this issue, J. Kincaid, 'The American Governors in International Affairs', *Publius*, 14/4 (1984), 96.
12. I use the term 'regional', in the same way some use the term 'regional' for all international organizations which are not global.
13. In Canada, for example, the Department of External Affairs monitors provincial paradiplomacy.
14. On fragmentation, see P. Soldatos, 'Les Données fondamentales du devenir de la politique étrangère canadienne', *Études internationales* (special issue on Canadian foreign policy in the 1980s, ed. A. Donneur and P. Soldatos), 14/1 (1983), esp. pp. 6–12.
15. This emphasis is criticized by E. and L. Feldman, 'The Impact of Federalism on the Organization of Canadian Foreign Policy', *Publius*, 14/1 (1984), 36–9. See also, the literature on segmentation and foreign policy, ibid. n. 3 (an extensive literature on segmentation in Canada and the United States is presented).
16. Part of Fig. 2.2 (levels I and II) was suggested to me by E. H. Fry's and G. A. Raymond's figure, presented in their study, *Idaho's Foreign Relations: The Transgovernmental Linkages of an American State* (Boise State University Monograph Series; Boise, 1978), and reproduced in E. H. Fry, *The International Relations*, p. 2.
17. E. and L. Feldman, 'Impact of federalism', p. 34.
18. See, e.g., R. O. Keohane and J. S. Nye, 'Transgovernmental Relations and International Organizations', *World Politics*, 27 (Oct. 1974), 41.
19. This explanatory framework draws on my study 'Le phénomène de fragmentation dans l'élaboration de la politique étrangère d'un État fédéral: Le Cas particulier du Canada', in Mélanges P. Vegleris, *La Crise des institutions d l'etat* (Athens, 1988), 246–53.
20. Duchacek's work on segmentation focuses often on the causality issue. For an explanatory list of variables, see his study, 'International Dimension', pp. 13–18, where he insists on 'opposition to an extension of foreign policy monopoly', 'opposition to bigness and distance', 'me-tooism', 'separatism', 'interdependence', 'contiguity'.
21. On such growth related to the Quebec case, see P. Soldatos, 'Quebec Nationalism: Some levels of Socio-political Analysis', in W. Link and W. Feld (eds.), *The New Nationalism* (New York, 1978), esp. pp. 108–10.
22. Duchacek, 'International Dimension', p. 18, develops this determinant factor.
23. On federal inefficiencies in general within the Canadian system, see D. Smiley, 'Canada and the Quest for a National Policy', *Canadian Journal of Political Science*, 8/1 (1975), 40–62.
24. On the constitutional origins of segmentation in foreign policy, see, for the Quebec case, A. Jacomy-Millette, 'Aspects juridiques des activités internationales du Québec', in Painchaud (ed.), *Le Canada et le Québec*, pp. 515–44.
25. Department of External Affairs, *Une politique étrangère au service des Canadiens* (Ottawa, 1970); see also on the same issue, Br. Thordarson, *Trudeau and Foreign Policy* (Toronto, 1972).

26. See, e.g., L. Bissonnette, 'Orthodoxie fédéraliste et relations régionales transfrontières', *Études internationales*, 12/4 (1981), 635–55; I. Duchacek, 'Transborder Regionalism and Micro-diplomacy', paper presented at the University Consortium for Research on North America, Harvard University, Dec. 1983; M. Lubin, 'The Conference of the New England Governors and the Eastern Canadian Premiers', paper presented to the 26th Annual Conference of the Western Social Science Association, San Diego, June 1984; K. Norrie, 'Transfrontier Regionalism, Canadian Federalism and the West', paper presented at the University Consortium for Research on North America, Mar. 1984; G. F. Rutan, 'Legislative Interaction of a Canadian Province and an American State', *American Review of Canadian Studies*, 9/3 (autumn 1981); G. Stevenson, 'Canadian Regionalism in Continental Perspective', *Journal of Canadian Studies*, 2 (1980), esp. pp. 16–18; R. F. Swanson, *State–Canadian Interaction: A Study of Relations between US States and Canadian Provinces* (US Department of State, Washington, DC, 1974).
27. See, on this issue, H. J. Michelmann, 'Federalism and International Relations in Canada and the Federal Republic of Germany', *International Journal*, 41/3 (summer 1986), 539–71.

3
Constituent Diplomacy in Federal Polities and the Nation-state: Conflict and Co-operation

JOHN KINCAID

The growing number of international activities undertaken by the constituent governments (e.g. states, provinces, cantons, *Länder*, republics, municipalities, port authorities) of nation-states, especially federated nations, has raised concerns about the future of the nation-state. The most common concern is that 'diplomatic' activity by constituent governments will endanger national unity and international stability. As a recent analysis of economic development policies of US states concluded:

> In time, the aggressive new state policies are likely to create growing tensions among the states and conflicts with federal policies that will require countermeasures or other adjustment by the federal government. The states, for example, increasingly are active in international economic affairs, especially in their efforts to attract foreign investment and promote the export of state goods and services; such activities potentially impinge on federal responsibilities and American treaty obligations.[1]

The above analysis cites no instances of growing tensions, divisive conflicts, or violations of treaty obligations; yet, the author felt obliged to conclude that such developments are distinctly possible.

Conflicts are surely certain, if only because jurisdictional conflict is normal in federal polities. However, one would be hard put to find an instance where 'constituent diplomacy'[2] *per se* has posed a serious threat to a democratic federation. One might point to the aggressive diplomatic activities of Quebec, but those activities have not been the source of troubles between Quebec and Anglophone Canada; instead, they have been one of many manifestations of Quebec's bicommunal view of the Canadian federation.[3] Quebec's diplomacy is the product of long-standing grievances and de-

sires for autonomy. Suppressing Quebec's international activities might only exacerbate the discontent that initially gave rise to those activities. In the event that Canada were to unravel as a nation-state, the causes would lie not in the diplomatic activities of the provinces, but in historic domestic conflicts. Thus, in considering the implications of constituent diplomacy, one should not assume that such activity, in and of itself, threatens the nation-state. One must look instead at the forces that generate constituent diplomacy, and to the purposes of that diplomacy.

Implicit in the fear that constituent diplomacy threatens the nation-state is the assumption that sovereign nation-states ought not to be challenged in foreign policy by competition from their constituent governments. This in turn must rest on the assumption that nation-states are the only legitimate and competent representatives of the peoples who live within their territorial domains, and that national élites represent a unified national interest. The fear of constituent diplomacy also assumes that nation-states are the building blocks of world order and that constituent diplomacy can damage the delicate web of relations that makes up the international order. However, given the tyranny and carnage made possible by the armed power of the nation-state in this century, these assumptions require both normative and empirical examination.

Similarly, concerns about constituent diplomacy generally assume that conflict and competition are harmful. Yet, conflict and competition can be beneficial to political systems.[4] In democratic polities, non-violent conflict and competition are not only facts of political life, but also accepted principles of politics. In federal democracies, conflict and competition between governments are intrinsic elements of political life, along with co-operation.[5] Why, then, exempt foreign affairs from the normal competitive and co-operative dynamics that operate in a democratic federation?

The bipartisan principle that 'politics stops at the water's edge', which was enshrined rather briefly in US politics, may have been plausible when international forces could presumably be stopped at the water's edge, but, in an interdependent era of 'intermestic'[6] politics and 'perforated sovereignties',[7] national boundaries have lost much of their protective edge. Actually, the notion of hermetic sovereignty has always been more of a myth than a reality for most nation-states, and where a nation, such as the United States, has

been very nearly able to exercise such sovereignty, it has been able to do so for only a short time.

Rather than being captivated by the myth of hermetic and univocal sovereignty, one should examine the consequences of that myth. One consequence is that national governments have often used the myth to legitimate the suppression of political competition, not only in foreign affairs, but also in domestic affairs. Unless there is virtually unanimous consent to a nation-state's foreign policies, the notion that politics stops at the water's edge is anti-democratic. Likewise, unless a nation-state can defend its people and constituent governments against international forces, especially economic forces, that adversely affect them, the idea that politics stops at the water's edge can harm a nation. In some instances, interest groups and constituent governments can respond to external events in ways that benefit the nation. An entrepreneurial province, for example, can stimulate economic development having benefits for its nation, even when the national government is indifferent or incompetent.

The crucial concern, therefore, is not how constituent diplomacy can endanger a nation-state, but how the regulation or suppression of constituent diplomacy can endanger the political, cultural, economic, and democratic vitality of a nation-state as well as the self-governing capacities of constituent governments in a federated state. Normatively, what merits protection is not *the* nation-state, but a particular kind of nation-state. It is not accidental that the constituent governments most actively and openly engaged in world affairs are those of democratic, especially federal democratic, nations. Nation-states that prohibit or sharply restrict constituent diplomacy are more likely to have an absolutist character, and to outlaw or suppress internal political competition. If one asks, then, 'what are the costs to the nation-state of allowing constituent diplomacy?' one must also ask, 'what are the costs to the nation-state of not allowing constituent diplomacy?'

Yet the prevailing assumption continues to be that constituent diplomacy is a potentially dangerous anomaly in a world where the nation-state is thought finally to have triumphed over both colonialism and provincialism. Constituent diplomacy threatens to 'balkanize' what three centuries of nation-state development have doggedly sought to unify and universalize,[8] and thereby reverse an historical process that has brought order out of petty multiplicity.

Never mind that some of those 'balkans' are captive peoples trapped in nation-states not of their own choice or making; the nation-state is widely thought to be too important a modern achievement to risk the potentially anarchic costs of constituent diplomacy. Consequently, the bias in thinking about world affairs and in the very term 'international relations' is virtually all on the side of the nation-state.

MULTINATIONAL NATIONS AND INTERNATIONAL CARTELISM

The legitimation of the nation-state as the *de jure* mode of organizing independent civil societies in the modern era would certainly seem to preclude the possibility of subnational groups or governments conducting direct relations with foreign governments. Authority to conduct foreign relations is an intrinsic attribute of a national government. For purposes of international relations, the nation-state is held to be unitary. The consolidation of peoples and local units of governance into larger territorial governments has been widely believed, moreover, to be a salient characteristic of modernization, one representing, among other things, a victory of the general over the particular and of the cosmopolitan over the provincial. Nearly all peoples have voluntarily joined or been forcibly abducted into nation-states, and the law and language of inter*national* relations presuppose that nation-states are the legally competent actors in foreign affairs.

Even 'nation' no longer means what it still meant in 1919, namely, a people or nationality. Today, 'nation' is virtually synonymous with 'nation-state'. The creation of nation-states was motivated in part by the desire of 'nations' in Europe, such as the Poles, to possess a self-governing territorial state in order to protect local liberties and promote communal aspirations. The twentieth-century transformation of colonies into nation-states was motivated by similar aspirations.

In fact, though, nearly all nation-states are multinational.[9] If 'multinational nation' sounds oxymoronic, it is only because the triumph of the nation-state has derogated nationality to the status of ethnicity and attached the idea of nationality to the nation-state. Advocates of the nation-state have ordinarily insisted upon unity: no nations within the nation and no states within the state. Hence,

multinationalism is now regarded as ethnic diversity, and, where 'states' exist within a nation-state, they are understood to be 'subnational' governments. The term 'subnational' usually refers to lower tiers of a nation-state government, not to constituent nationality governments, or to co-ordinate governments possessing exclusive and concurrent powers on a co-equal constitutional basis with a national government.

In addition, many nation-states are little more than *de facto* empires accorded *de jure* status by the international community. They are empires in the sense that a nation-state government imposed its will on local 'nations' at some time in the past.[10] Few nation-states were established as a voluntary association of constituent 'nations' or local governments, and few are legitimized by open, democratic plebiscites. Unlike classic empires, however, when the power of the nation-state over 'captive nations' wanes, the 'nations' rarely gain territorial independence. Anarchy and war may dissolve the state as a legitimate and effective instrument of governance, but the nation and its territorial boundaries are likely to remain intact, in large part because international law and other nation-states have an interest in preserving the arrangement.[11]

When great nation-states possessed empires and powerful conventional military forces, they could dismember pariah states, partition states, and otherwise rearrange many borders. Today, with the anti-colonial proliferation of new nation-states and the development of nuclear weapons, the sanctity of the nation-state has gathered considerable legitimacy. Thus, for example, the armed conflict between the government of Nigeria and that of Biafra was commonly understood to be, not a war, but a civil war. Other nation-states may support one side of a civil war, but usually to help that side gain control of the nation-state, not to establish an independent nation-state. Yet Nigeria is an agglomeration of disparate ethnic, religious, and linguistic groups that only became a nation-state in 1960.[12] For more than half of its life as an independent nation, Nigeria has been ruled by military officers who have sought to centralize power to unite the nation.[13]

Except for a few relics from the past, there are, officially speaking, no more colonies or empires. Estonia, for example, is not commonly understood to be a colony of a Russian empire; it is said to be a constituent republic, a subnational government, of the USSR, possessing a constitutional right to secede from the USSR. Enorm-

ous levels of violence, oppression, and starvation have been tolerated in the name of nation-state preservation; yet, no matter how much violence was or is employed to consolidate control over national territory, a central government that makes good on its claim can ordinarily gain international recognition as a nation-state rather than condemnation as an empire.

In some cases, therefore, decolonization and wars of national liberation that created nation-states also resulted in the recolonization and splitting up of 'nations' by new national governments. The historic habitat of the Kurds, for example, is divided among Turkey, Iran, Iraq, and, to a smaller extent, the USSR and Syria. Except for South Africa and Israel, however, the world does not regularly label as pariahs those nation-states that subjugate, or allegedly subjugate, 'nations' within their borders but, instead, condemns those nations that encroach upon the territorial sovereignty of other nation-states. The Republic of Turkey denies the existence of the Kurds and bans their language, names, schools, music, organizations, publications, and so on; yet few words of international protest are uttered on behalf of the people whom Turkey insolently calls 'mountain Turks'. Advocates of the nation-state, wrote Lord Acton in 1862, do not necessarily 'sympathise with all separated or suppressed nationalities'.[14]

At the same time, many nation-states are sovereign in name only. They are 'satellites' of other nation-states, or are so financially or militarily dependent upon another nation-state as to be non-independent. Such dependency has been referred to as neo-colonialism, but the label sticks loosely. Such nation-states are members of the UN, and their dependency is supported by powers that maintain the fiction of independence so as not to be accused of imperialism.

If the nation-state is fraught with historic problems that make it difficult to separate fact from fiction and virtue from hypocrisy, the nation-state idea has been subject to many intellectual challenges, both from anarchists, democrats, and suppressed nationalities who have resisted the centralist and absolutist tendencies of nation-states, and from internationalists, or what are now perhaps more appropriately called globalists, who have sought to transcend the nation-state, if not abolish the nation-state outright.

For Lord Acton, for example, 'the theory of unity makes the nation a source of despotism and revolution'. In contrast, 'divided patriotism' arising from the 'co-existence of several nations under

the same [federated] State is a test, as well as the best security of [a state's] freedom' and 'also one of the chief instruments of civilisation'.[15] For many old-line internationalists, however, both the nation-state and the idea of 'nations' are barriers to the natural unity of humanity. Nationalism is a form of false consciousness and, thereby, an instrument of internal oppression and a motivation for war. For many globalists, the nation-state is archaic, anachronistic, artificial, aggressive, and antagonistic to peace and progress. In place of the divided world of nation-states, globalists pose images of 'spaceship earth' and a 'global village'.

Nevertheless, despite the problems of justice posed by the nation-state system, that system not only survives but has become more solidified since the First World War. Boundary disputes exist throughout the world, but, for all practical purposes, national borders as legal entities are nearly all anchored in concrete. The nation-state system might be said to survive because it is an efficient mode of political organization, one that promotes world peace and stability in the long run. However, it might also be said to survive because it suits the interests of nation-state élites. The notion that nation-states might be viewed as flexible modes of political organization able to expand, contract, or be subdivided to suit the needs of the times and voluntary preferences of people is virtually unthinkable. Instead, nation-state leaders seek to secure the unity and integrity of their domains through intranational coercion if necessary, as well as through international guarantees of sovereignty.

Historically, nation-states have attempted to control, at times absolutely, the movement of persons, goods, and services across their borders. Nation-states have especially sought to control the status and credentials of citizens who travel abroad. Some nation-states deny their citizens a free right of emigration. Even in the realm of economic transactions, the prevailing practice has been protectionism, and, in most nations, legitimate economic enterprises of any significance are owned wholly or partly by the nation-state or are thoroughly mired in the bureaucratic apparatus of the nation-state. Thus, at a minimum, one needs a licence to export goods or travel abroad.

National governments, moreover, regard foreign relations as a key central power. International relations is 'high politics' conducted by diplomats who often come from, or constitute, an élite class within the nation-state and even within the national govern-

ment. The foreign minister or secretary of state is ordinarily accorded a high status among government officials. Foreign affairs are usually viewed as being too important, too sensitive, and too complex to allow 'local yokels' to play a useful role. Even though many members of the international diplomatic corps do not display worldly sophistication, a person who is elevated to the status of diplomat is socially transformed into a cosmopolitan and, if not already affluent, is often transformed into a well-to-do cosmopolitan. Furthermore, given that most nation-states have 'nations' within their borders, national élites are hardly eager to have subnational élites of those 'nations' gain recognition from the international 'community'. Thus, whatever competition may exist, and exist legitimately, within other policy fields, in foreign affairs the seemingly instinctual reaction of national élites is to try to suppress competition and shield foreign-policy-making behind a veil of state secrecy. The nation, it is said, must speak with a single voice.

One might, therefore wonder whether the modern international system is really a cartel, a mutual protection society in which international law and norms serve not only to preserve the territorial integrity of nation-states, but also to protect monopolistic or oligopolistic power within nation-states and to restrict entry into the global arena. In many respects, the international 'community' must attempt to restrict entry and manipulate the 'price' of nationhood because new entrants heighten political, economic, and possibly military competition—not only within the world arena, but, more important, within the nation-state too. The self-interest of nation-state élites is to limit the transaction costs of both domestic and foreign affairs. The desire of national élites to limit intranational competition, secession, and transaction costs may well drive international cartelism as much or more than the desire to limit international conflict.

The rise of the nation-state in early modern Europe and in late modern Asia, Africa, and Latin America was associated, in most cases, with absolutism—with the desire of monarchs, dictators, charismatic leaders, and other partisans of nationalism to consolidate power against competing political, economic, and military forces. In the process, national élites tried to neutralize external threats, costs, and competition, preferably by non-military means when military strength was weak and when war would be ruinous. The development of international law and norms has been, in large

part, a self-interested *quid pro quo* process: 'if you do not interfere with my internal affairs, I will not interfere with your internal affairs'. To a great extent, international rules are maintained, to the degree they are, by balances of power. Increasingly, however, nation-state élites have sought to legitimize *quid pro quo* arrangements under colour of international law articulated by international organizations.

There may be good reason to support the growth of international law and organization as a noble effort to achieve global comity, but one price of such a development may be a legitimation of intranational tyranny and a rejection of the self-governance claims of 'captive nations'. Declarations of human rights notwithstanding, it is often absolutist nation-states that most want international organizations to guarantee not only the existence of the nation-state but also the existence of the ruling regime, and to regulate, restrict, or outlaw 'international' transactions and transmissions not officially sanctioned and controlled by the nation-state.

One consequence of the *quid pro quo* rule is that military dictators and political criminals have equal status with democratically elected officials and humane leaders in such international organizations as the UN. In the *realpolitiks* of world affairs, political criminality and humane leadership lie in the eye of the beholder, and the UN has no choice but to accept all member-nations and their leaders as equals. Consequently, enthusiasm for international law and 'community' should not blind us to the cartelistic potential of such a community and to the costs that may be imposed by that cartel on the citizens or subjects of many presently constituted nation-states — the majority of which are one-party states or no-party states ruled by dictators, monarchs, or cliques. Usually, the peoples who bear the greatest costs of international cartelism are the least well positioned to do something about it.

It is precisely the cartelistic potential of global 'community' that ought to raise warning flags along any path to global organization or world government. Proposals for world peace commonly envision an authoritative political organization above the nation-state. As one scholar wrote recently: 'When and whether a transition will be made from a system of states to an empire of the earth is the gravest question humanity confronts.'[16] Moving human political 'empire' up a notch, however, does not necessarily address the grievances of those subnational 'nations', peoples, or groups

that find themselves trapped several notches below nation-state 'empires'. Any global regime that fails to give the Armenians, Kurds, Tamils, Tibetans, Zulus, and numerous other such groups a place in the global sun is not likely to promote world peace, prosperity, or freedom.

Instead of, or in addition to, moving up a notch to promote global community, it may be necessary to move down several notches. In fact, rather than viewing political organization in hierarchical terms and thinking of global organization as a pyramid extending from an 'empire of the earth' on top to the nation-state below and finally to the village far below, it may be necessary, in an interdependent world, to think in horizontal terms of diversity and multiplicity—of matrix management rather than command-and-control management—in which global organizations and nation-state organizations serve useful functions but not traditionally sovereign, comprehensive functions. In an interdependent world where the prosperity of villages, to say nothing of the freedom of villagers, is increasingly shaped by global forces as well as by nation-state policies, it is necessary to give villages, so to speak, degrees of freedom to manœuvre in the global arena—with the assistance of other villages, regional organizations, nation-state organizations, and multinational and global organizations, both permanent and *ad hoc*.

These latter, area-wide organizations could be understood as performing assistance functions as much as, or even more than, they perform whatever governing or ruling functions that may be assigned to them. In this way, global community could be understood, not as a simple hierarchy, but as a complex matrix, one characterized by a considerable diversity and density of political, social, and economic organizations. Instead of imposing peace on the world by sitting a pyramidal 'empire' on top of the nation-state system, which is not likely to happen in any event (and perhaps only by conquest), world peace might better be promoted by unleashing the energies of 'subnational' entities through a variety of organizational channels. In other words, it may be necessary to think of more rather than less 'balkanization', not only for reasons of justice and equity, but also to break up, or at least to federalize, monopolistic arrangements in existing nation-states that rule over peoples who desire federated autonomy or national independence. The emergence of global organization from below, so to speak,

might more effectively promote community, prosperity, and freedom as well as peace.

CONSTITUENT DIPLOMACY IN FEDERAL POLITIES

Externally, federal polities have long posed problems for international relations because international law and organization are built upon unitary, univocal conceptions of the nation-state. With few exceptions, the law of nations has not recognized the constituent governments of federal polities for purposes of international affairs.[17] Yet federal polities do not conform to the classic model of the nation-state. There is always an element of dual sovereignty in federal polities, sometimes a very explicit element. The general government and the constituent governments are ordinarily co-ordinate governments, not superordinate and subordinate governments. Each co-ordinate government possesses exclusive and concurrent powers. A federal polity, therefore, is construed as a nation-state in the eyes of the world, but as a nation of 'states' in the eyes of its citizens. Hence, there is an ambiguity in federal polities about the status of constituent governments in world affairs and about the authority of the general government to act unilaterally in foreign affairs.[18]

Internally, then, federalism adds elements of complication and consultation to the conduct of foreign affairs by the general government that are not present in unitary nation-states. Many observers, however, have gone further to assert that a federal polity is necessarily a weak nation-state. Alexis de Tocqueville, for example, argued that US federalism flourished, in the final analysis, because the United States was separated from the strong centralized powers of Europe by the Atlantic Ocean. If the United States was to bump up against those powers, it would have to centralize its government in order to survive as a nation. Indeed, Americans have nationalized their federal system to greater degrees in response to both war and economic depression. 'A nation that divided its sovereignty when faced by the great military monarchies of Europe', wrote Tocqueville, 'would seem to me, by that single act, to be abdicating its power, and perhaps its existence and name.'[19]

James Bryce, writing in the early 1890s, held a more sanguine view of the baleful effects of federalism on US foreign policy, though, again, largely because of the isolation of the United States:

the principle of abstention from Old World complications has been so heartily and consistently adhered to that the capacities of the Federal system for the conduct of foreign affairs have been little tried; and the likelihood of any danger from abroad is so slender that it may be practically ignored. But when a question of external policy arises which interests only one part of the Union, the existence of States feeling themselves specially affected is apt to have a strong and probably an unfortunate influence. Only in this way can the American government be deemed likely to suffer in its foreign relations from its Federal character.[20]

There is, however, no *a priori* reason why a concentration of power in wartime cannot be followed by a deconcentration of power in peacetime, nor is there any necessary reason for a superpower to have centralized governance. Further, can it be said that federal polities, such as Australia, Austria, Canada, the FRG, Switzerland, the United States, and Yugoslavia, have more foreign-policy difficulties than unitary nation-states, or that their foreign-policy problems are due more, or equally, to federalism than to partisan conflict, élite incompetence, and other factors? Did federalism contribute to such disasters as Vietnam for the United States and Afghanistan for the USSR, or was it the hubris of national leaders presiding over a centralized foreign-policy apparatus considerably shielded, at first, from public view? Has US foreign policy improved with increased centralization? Has the erratic course of US foreign policy since Vietnam been due to 'provincial' state and local meddling, or to partisan conflict, congressional activism, executive incompetence, interest-group pressure, democratic elections, and so on?

Any baneful effects of state and local involvement must be weighed against beneficial effects. The export promotion activities of state and local governments, for example, have lightened the burdens of trade deficits for the US government. One should not exaggerate constituent obstructionism either. There is a tendency to focus attention on cases where constituent governments oppose national policies, especially liberal policies; yet, most foreign policies occasion little resistance from constituent governments, and often they elicit constituent support. Resistance is more likely to come from members of opposition parties, specific economic interests, and other non-governmental actors. Even when constituent governments oppose policies, they may be representing legitimate public interests that ought to have a voice in decision-making. Yet the

biases shaped by the ideology of nationalism hold that state or provincial influences on foreign policy are likely to be, as Lord Bryce put it, 'unfortunate'.

Principles of democracy legitimize partisan and interest-group involvement in foreign-policy-making, but there has been less willingness to extend those principles to constituent government involvement. Democratic pluralism is more acceptable than federal democratic pluralism, even though the elected officials of constituent governments may represent local or regional, and sometimes national, public sentiment more accurately than the elected leaders of opposition parties and the unelected leaders of interest groups to whom democratic pluralism accords a policy role. The chairman of a corporation can criticize foreign policy, but a governor or mayor who does so may be criticized, at least until recently, for overstepping the bounds of propriety and his or her authority and competence.

The idea that a federal democracy should act like a unitary democracy in foreign affairs, however, can have a powerful nationalizing and perhaps anti-democratic influence on a federal polity. Principles of unitary Jacobin democracy may come to predominate in foreign affairs, and then challenge the principles of federal democracy that govern domestic affairs.[21] Until recently, perhaps, it was possible to muddle through with a mix of these principles operating in the political system, and, in the case of the United States, to accept a twentieth-century eclipse of federal democracy by principles of Jacobin democracy. However, rising global interdependence, economic distress, pressures for internal decentralization, the resurgence of constituent governments, and the very democratization of foreign-policy-making in the contemporary era are forcing a contest between these principles. Just as citizens are no longer willing to leave foreign-policy-making to a relatively closed 'establishment', so too are constituent governments less willing to give the general government a free hand in foreign affairs. The contest may become especially acute in the United States because it is the only federal democracy that is also a superpower. In addition, attempts to use constitutionally assigned foreign-affairs powers to expand general government powers have become a matter of concern in several democratic federations.

Indeed, being located in a world of mostly unitary nation-states, and being subject to the socio-economic and intellectual pressures

for centralization and nationalization characteristic of the modern era, most federations have assigned substantial, if not exclusive or plenary, authority to the general government to conduct foreign relations and defend the nation. The delegation of such authority has been deemed essential for the proper functioning of a federal policy in world affairs. This delegation is ordinarily spelt out in a constitution that allocates powers between the general and constituent governments. Powers of international significance include the authority to:

declare war
build and maintain armed forces
conduct relations with foreign nations and international organizations
appoint and receive diplomatic and consular officials
conclude, ratify, and implement treaties
assure that treaty law is supreme over any federal or constituent laws that conflict with it
regulate commerce with foreign nations
control entry and exit across national borders
acquire or cede territory.[22]

Mere recitation of this list leads one almost naturally to conclude that these powers should be assigned substantially, if not completely, to the general government. Even if this conclusion is accepted, however, such an assignment of powers does not necessarily close out state and local governments because they remain the co-ordinate governments of the federation and the constituent components of the general government. As such, they are likely to possess certain concurrent and supplementary powers as well as an intergovernmental ability to influence the general government's exercise of executive powers.

The constitutional allocation of powers, moreover, does not necessarily correspond closely to the exercise of powers. The federal constitutions of Switzerland and the USSR, for instance, permit relations of certain kinds between constituent governments and foreign governments. In the USSR, though, the union republics were not, until recently perhaps, permitted to exercise this prerogative. Some other federal constitutions, such as that of the United States, appear to rule out direct state involvement in foreign affairs; yet states engage in international activities. Consequently,

constitutional provisions do not give a clear picture of actual practices, although they often have an important bearing on constituent governments or on the general government.[23]

Surely, in allocating powers, no sane electorate would give each of the governors of the fifty US states independent authority to launch nuclear missles or declare war on a foreign nation, though voters in some states might, if allowed, give their governor veto authority over the use of nuclear weapons located in their state. Nuclear war is terrible enough to entertain the idea of allowing constituent governments to opt out of the general government's war policy, though the nature of nuclear war would render such authority meaningless. Short of such extremes, however, lie many avenues for constituent governments to play direct and indirect roles in foreign affairs. Even with respect to nuclear weapons, assigning authority over those weapons to the executive head of the general government leaves one uneasy and elicits a desire to install checks to prevent the chief of state from acting irrationally. Governors and mayors as well as the representatives of the constituent governments in Congress can help to shape nuclear-weapons policy. One cannot assume, moreover, that governors and mayors are less informed or less astute about these matters than national officials. Such developments as gubernatorial resistance to President Ronald Reagan's plans for urban-population evacuations at the onset of nuclear war raise questions as to whether national officials are more sensible than state officials.

No matter how foreign-affairs powers are allocated constitutionally, the conduct of foreign affairs in a federal polity is likely to be affected by constituent government lobbying whenever the constituent governments otherwise possess independent and coordinate powers, enjoy a measurable degree of autonomous self-government, share in the make-up of the general government, and feel directly affected by foreign affairs. This is not to say that constitutions are unimportant. Constitutional allocations of foreign-affairs powers vary among federal polities, serving to give constituent governments more or less formal authority and, thereby, legitimacy to participate in foreign-policy-making. Nevertheless, when the world impinges directly on constituent governments or when one or more of those governments perceives a need to assert its identity or authority, constituent governments are likely to develop an interest in foreign affairs.

SECTORIAL CO-ORDINATION AND SOFT LAW

Inevitably, however, the proliferation of an activity among state and local governments, especially one that bears upon seemingly exclusive national powers and seems to increase interjurisdictional competition, leads to calls for national co-ordination and regulation. The desire to 'rationalize' policy processes on a national scale is deeply rooted in modern public administration, but it is premature and probably unwise to seek some 'rational' co-ordination and regulation of state and local activities in foreign affairs because those activities are too new, too innovative, too diverse, and too dynamic. To some extent, state and local governments do not want to be co-ordinated from above because they see themselves as operating in a competitive environment and they value autonomy.

The United States is a nation of fifty states and 83,166 local governments. Even if it were desirable, the idea that a national body could co-ordinate the diverse foreign-affairs activities of these governments is beyond comprehension. In a smaller federal polity, with a smaller number of constituent governments, it may be possible to consider such a mechanism. In the United States, what is likely to develop, and is developing, is not super-co-ordination but sectorial co-ordination, in which a variety of mechanisms intended to meet the needs of particular governments and particular sectors of government and society perform co-ordinating functions within those sectors. Most of these mechanisms are voluntary associations of state and local governments and officials; professional associations of federal, state, and local officials; and inter-agency and intergovernmental bodies.

Co-ordination and co-operation occur in very localized areas as well as in the nation as a whole. Local governments in a metropolitan area and neighbouring states may co-ordinate certain foreign activities. Among the oldest such mechanisms are multi-state port authorities. Co-ordination occurs among larger regions, such as the South, where the Southern Growth Policies Board, among other associations, performs co-ordinative functions. Nationwide, a large number of associations, such as the National Association of State Development Agencies, the Multistate Tax Commission, and Sister Cities International, disseminate information and encourage varying degrees of co-ordination.

Diverse interests and objectives also require different co-

ordinating mechanisms. State agricultural officials may co-operate on foreign-trade issues that concern them. State banking officials may co-operate on other issues. Thus, officials in sectors of state and local governments establish relations with their counterparts in other states. Likewise, sectorial connections to federal agencies have been established in a manner similar to what has been called 'picket fence federalism'.[24] State and local officials establish different ties for different international purposes to the US departments of Agriculture, Commerce, Labor, and State.

It should be noted that these large US agencies often have difficulty co-ordinating their own internal activities. Consequently, it is not likely that any formal institution would be able to co-ordinate across all four agencies, plus other relevant agencies. In addition, congressional committees, which oversee these agencies, have their own diverse agendas, and members of Congress feel free to intervene on behalf of the international interests of their states and local governments. Federal courts also have input on matters of foreign affairs.

Similarly, attempts to develop general intergovernmental co-ordination between states and the national government falter in the face of 83,217 governments, the separation of powers, the multiplicity of executive agencies and congressional committees, and the nation's comparatively non-centralized two-party system. A formal process of regular consultation between states and the general government on treaty-making, for example, is probably impossible. Too many actors, beginning with the President and the Senate, have a stake in treaty-making. Thus, even if an overall national mechanism were established to co-ordinate constituent diplomacy and national policy, that mechanism would be plagued with problems of internal co-ordination.

Governmentally, the most appropriate locus of general co-ordination is probably state government. Because states can exercise authority over local governments that the general government cannot exercise over states, and because states exercise independent taxing and regulatory authority, states are potentially in the best position to assemble diverse sectorial activities into a reasonably coherent package beneficial to their citizens. If state banking officials promote foreign policies detrimental to state agricultural interests, then the governor or legislature will have to resolve the issue.

Similar arguments can be made about the wisdom of national regulation of constituent diplomacy. To a great extent, the general government already regulates and limits state and local activities relevant to foreign affairs. Some of this regulation, especially in the field of trade, is regarded by state and local officials as too restrictive and anachronistic. Considerable intergovernmental lobbying in recent years has been devoted to regulatory reform and relief. As suggested earlier, moreover, heightened regulation of constituent diplomacy by the general government poses dangers to both federalism and democracy. The practical consequences of regulation also need to be taken into account. If the general government, for example, insisted on reviewing every agreement between a state and a foreign government, then the general government would have to establish a very large bureaucracy or states would have to wait in line, perhaps for years, to obtain a review.

The appropriate model of regulation, therefore, may be that of 'soft law', a concept that emerged in international commerce to accommodate the rapid changes occurring in the global economy.[25] Whereas 'hard law' involves formal treaties and binding agreements between governments, 'soft law' involves voluntary agreements and codes of conduct of a more informal nature. 'Soft law' developed because 'hard law' is often rigid and inappropriate for new circumstances. Lengthy negotiations are often required to achieve 'hard law', and sometimes political conflict and nation-state posturing make it impossible to conclude 'hard-law' agreements. Yet commerce must go on. Without 'soft law', therefore, world commerce would be constricted by rules frozen in time by ageing 'hard law'.

Similarly, constituent diplomacy is a new development that is challenging the capacities of 'hard law', both international and domestic. Thus, rather than attempting to regulate state agreements with foreign governments, for example, by 'hard law', it is possible to develop 'soft-law' rules of the game. 'Hard law' can be brought into play when states blatantly violate the code of conduct. 'Soft law' is additionally appropriate in a federal system because of the dangers to federalism and democracy of 'hard-law' regulation of constituent diplomacy. Negotiations over 'hard law' in this field are likely to force zero-sum solutions to certain issues of intergovernmental authority that are better fudged by the general and constituent governments. Forcing certain issues into a 'hard-law'

framework may only intensify intergovernmental conflict, and, given that foreign affairs touch the delicate question of sovereignty in federal polities, both the general and constituent governments have much to lose in such overt conflict. Once in place, moreover, 'hard' national law tends to become more, not less, detailed and complex.

Actually, 'soft law' is not new to federal polities. Because of the impossibility of drawing sharp, permanent lines between general and constituent government authority, governments make federalism work through a variety of 'soft-law' processes. There must be 'hard law', including the 'hardest', namely, the constitution, and 'soft law' ought not to subvert the rule of law, but surrounding the core of 'hard law' are various penumbras of 'soft-law' possibilities.

'Soft law' can also be appropriate for relations among constituent governments in the field of foreign affairs, as already reflected in voluntary modes of co-ordination and co-operation. The Council of American States in Europe, for example, has developed a code of conduct governing interstate competition. As free-market economists will note, moreover, the softest law of all having the hardest consequences is the 'unseen hand' of the market-place. One does not have to be a free-enterprise purist to recognize that competition is itself a co-ordinative and regulatory mechanism.

CONCLUSION

So long as the citizens of constituent governments support a national union, then constituent diplomacy is likely to yield economic and political benefits for the nation and its regions. Further, because of the desire for union, constituent governments are likely to exercise self-restraint and respect the powers allocated to the general government. The principal danger to national unity stems from constituent governments that represent distinct 'nations' that desire to withdraw from the union or constituent governments that otherwise wish to obtain significant autonomy at the expense of union powers. In such cases, however, constituent diplomacy is a reflection, not a cause, of domestic conflict, though such diplomacy will aggravate conflict and may also strengthen the hands of constituent governments that receive aid and comfort from abroad. The solution lies not in the suppression of constituent diplomacy, but in a resolution of the underlying causes of disunity. Otherwise,

where a federal union is voluntarily strong and amicable, it is unlikely that foreign powers will be able to drive a wedge into the heart of the union, opening a deep cleavage between constituent governments and the general government.

Short of the extreme, constituent diplomacy does open the field of foreign affairs to intergovernmental conflict and competition. However, it also opens opportunities for intergovernmental co-operation and co-ordination. The patterns of conflict and co-operation that emerge from constituent diplomacy are not likely to be *sui generis*; instead, they are likely to parallel patterns of conflict and co-operation in other policy fields. Constituent diplomacy does raise new issues, but not necessarily more divisive issues than those present in other policy fields. It is the initial novelty of the issues that may spark unusual conflict where a general government has long been accustomed to exercising monopolistic foreign-policy powers.

More important, constituent diplomacy offers many potential benefits. Most obvious, and increasingly necessary, are economic benefits. Constituent governments must fend for themselves to an ever greater extent in the new global economy because the nation-state is not fully able or always willing to fend for them. Constituent diplomacy and intergovernmental lobbying on foreign affairs can also enhance equity among regions. Additional benefits lie in the innovations that stem from constituent diplomacy: improved cross-cultural communication and co-operation, enhanced public understanding of world affairs, and reduced burdens on the general government. Constituent governments may also reduce international conflict by, for example, resolving housekeeping matters along national borders which, left unattended, could blossom into serious international conflict or otherwise divert nation-state attention from more vital issues.

Most important are the benefits for democracy and federalism. Constituent diplomacy enhances the participation not only of state and local officials but also of citizens in national-policy-making. Citizens can participate more directly, give voice to their concerns, and let off steam through constituent governmental mechanisms. Constituent diplomacy thus contributes to the democratization of national political processes by adding new voices to foreign-policy-making. These voices, which often represent general public interests, can challenge the narrower interests that presently influence policy-

making. As such, constituent diplomacy can strengthen federalism as well by enhancing constituent representation in national councils, decentralizing power, and improving the capabilities of constituent governments. Indeed, constituent diplomacy virtually requires that a federal democracy lives up to its principles and that a unitary nation-state becomes more democratic and/or federal.

It is the democratic and federalist implications of constituent diplomacy that pose the greatest challenge, not so much to the nation-state *per se*, but to the classic unitary, univocal conception of the nation-state and, thereby, the international order built upon that conception. Constituent diplomacy, coupled with the global activities of non-governmental constituents—such as people-to-people organizations, businesses, and labour unions—does not require abolition of the nation-state, but a redefinition of the nature and role of the nation-state and a recognition of the fact that the cartelistic international arena is a pluralistic interorganizational arena.

NOTES

1. R. Scott Fosler (ed.), *The New Economic Roles of American States* (New York, 1988), 328.
2. There is no settled terminology describing the international activities of constituent or 'subnational' governments. The term 'constituent diplomacy' is intended to be a neutral descriptor, one that avoids the implication that the activities of constituent governments are necessarily inferior, ancillary, or supplemental to the 'high politics' of nation-state diplomacy. What is 'high' or 'low' politics depends on one's perspective. A province that enters the global arena to secure capital investments and industrial facilities that may rescue it from economic oblivion is, from the provincial perspective, engaged in 'high politics'. Such terms as micro-diplomacy and paradiplomacy that imply that constituent diplomacy is inferior to nation-state diplomacy exhibit a nation-state bias and necessarily assume that every nation-state is a legitimate and competent representative of the interests of the people who inhabit its territory. Many nationality groups and governments within nation-states would object to such characterizations of their efforts to gain international recognition of their autonomy claims.
3. See, e.g., D. Latouche, 'Problems of Constitutional Design in Canada: Quebec and the Issue of Bicommunalism', *Publius*, 18 (spring 1988), 131–46.
4. For one of the earliest systematic analyses, see L. A. Coser, *The Functions of Social Conflict* (Glencoe, Ill., 1956).
5. See, e.g., A. Hamilton, J. Madison, and J. Jay, in J. E. Cooke (ed.), *The Federalist* (Middletown, Conn., 1961); D. J. Elazar, R. B. Carroll, E. L. Levine, and D. St Angelo (eds.), *Cooperation and Conflict: Readings in American Federalism* (Itasca, Ill., 1969), and A. Breton, 'Supplementary Statement', *Report of the Royal Commission on the Economic Union and Development*

Prospects for Canada (Ottawa: Minister of Supply and Services, 1985), iii. 486–526.

6. B. Manning, 'The Congress, the Executive and Intermestic Affairs: Three Proposals', *Foreign Affairs*, 55 (Jan. 1977), 306–24.
7. See I. D. Duchacek, Ch. 1 in this volume.
8. G. Weigel, 'Calhoun's Heirs, or the Balkanization of American Foreign Policy', *American Purpose*, 1 (July–Aug. 1987), 41–3.
9. Cf. I. D. Duchacek, *The Territorial Dimension of Politics Within, Among, and Across Nations* (Boulder, Colorado, 1986).
10. Cf. S. N. Eisenstadt, *The Political Systems of Empires* (New York, 1963).
11. Lebanon may prove to be an exception to the rule; yet Lebanon still exists as a nation-state entity, however disembowelled.
12. See, e.g., J. A. A. Ayoade, 'Ethnic Management in the 1979 Nigerian Constitution', *Publius*, 16 (summer 1986), 73–90.
13. See also J. I. Elaigwu, 'Nigerian Federalism under Civilian and Military Regimes', *Publius*, 18 (winter 1988), 173–88.
14. *The Selected Writings of Lord Acton: Essays in the History of Liberty*, ed. J. Rufus Fears (Indianapolis, 1985), i. 462.
15. Ibid. 425.
16. P. Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (New York, 1988).
17. See I. Bernier, *International Legal Aspects of Federalism* (Hamden, Conn., 1973).
18. See also I. D. Duchacek (ed.), 'Federated States and International Relations', *Publius*, 14 (autumn 1984).
19. A. de Tocqueville, *Democracy in America*, ed. J. P. Mayer (Garden City, NY, 1969), 170.
20. J. Bryce, *The American Commonwealth* (New York, 1907), i. 343.
21. See the distinction between Jacobin and federal democracy in D. J. Elazar, *Exploring Federalism* (Tuscaloosa, Al., 1987).
22. Cf. L. B. Sohn and P. Shafer, 'Foreign Affairs', in R. R. Bowie and C. J. Friedrich (eds.), *Studies in Federalism* (Boston, 1954), 236–95.
23. See also A. B. Akinyemi, 'Federalism and Foreign Policy', in A. B. Akinyemi, P. D. Cole, and W. Ofonagoro (eds.), *Readings on Federalism* (Lagos, 1979), 36–43.
24. T. Sanford, *Storm over the States* (New York, 1967), 80.
25. R. J. Waldmann, *Regulating International Business through Codes of Conduct* (Washington, DC, 1980), and J. M. Kline, *International Codes and Multinational Business* (Westport, Conn., 1985).

4
Australia

JOHN RAVENHILL

> Considerable speculation has been already indulged in by constitutional writers as to the meaning and possible consequences of this grant of power over external affairs. It may hereafter prove to be a great constitutional battleground.
>
> (J. Quick and R. R. Garran, *The Annotated Constitution of the Australian Commonwealth* (Sydney, 1901), 631)

> It is in the field of international relations that Australia's federal system is likely to be most embarrassing and costly.
>
> (E. G. Whitlam, 'The Cost of Federalism', in A. Patience and J. Scott (eds.), *Australian Federalism: Future Tense* (Melbourne, 1983), 46)

> the divisions in Australian culture seem to be economic and religious with hardly any geographical base. . . . One wonders indeed why they bother with federalism in Australia.
>
> (W. H. Riker, *Federalism* (Boston, 1964), 113)

As an island continent whose closest neighbour, Papua New Guinea, was its Trust Territory until 1975, Australia has been largely immune from the forces that have led subnational units in other federated states to engage in what Duchacek has termed 'transborder regionalism'.[1] Furthermore, Australia's cultural and racial isolation—captured in the characterization by its longest-serving Prime Minister, Sir Robert Menzies, as a country 'washed

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on our western and northern shores by potentially hostile seas'[2] — has ensured that the principal effect of regional transnational influences on Australia for most of its existence was to generate fear.

The conflict that Quick and Garran predicted would occur over the external-relations power flared immediately following Federation, but then lay dormant for virtually half a century. Two factors explain this. The first is the late establishment of an independent role for Australia in international affairs.[3] The second is the unwillingness of the Coalition (Liberal and National Country Party) governments during their long, uninterrupted tenure of national office (1949–72) to utilize the external-affairs power to mount a legal challenge to prevailing conceptions of states' rights. Over the last twenty-five years, however, the proliferation of international treaties to which the Commonwealth (federal) government has wished to adhere has greatly increased the scope for the use of the external-affairs power. Coupled with the blurring of the distinction between 'domestic' and 'international' issues, this has generated new sources of conflict between the Commonwealth and state governments, adding to the perennial disputes over revenue-sharing.

The growth of global interdependence enmeshed Australia in a new network of relationships in which the states played an increasingly active role. The 'resources boom' has been particularly important. Except for oil and natural gas, resource exploitation has been entirely dependent on overseas markets, in large part financed by overseas investment, and reliant to a considerable degree on overseas partners for securing access to markets. A marked change in the pattern of Australia's external trade resulted. Japan's share of Australian exports rose from 17 per cent in 1960 to 27 per cent in 1970, peaked at 33 per cent in 1975/6 and has subsequently hovered around 27 per cent. Britain, in 1960 the largest single market, by the 1980s accounted for only 4 per cent of total exports.[4] Changing patterns of trade were an important factor behind moves by the states to establish new overseas representation.

The resources boom affected not only the pattern of external relations but also the internal economic balance between the six states. Until the 1960s Australia's economy was dominated by the populous south-eastern states of New South Wales and Victoria, home to the majority of Australia's manufacturing industry. Although Victoria, by virtue of the oil and gas discoveries in the

Bass Strait, became the largest revenue-earner among the states from minerals production, the resources boom generated a major shift in the internal balance of the Australian economy towards the peripheral states of Queensland and Western Australia, and to a lesser extent towards the sparsely populated Northern Territory (administered by the Commonwealth until it gained self-governing status—but not statehood—in 1978). Minerals exports generated differential dependence between the states on the Japanese market: Queensland and Western Australia, which together supply over half of the country's exports to Japan, rely on Japan for over 35 per cent of their exports. By the mid-1970s Queensland had become the principal source of Australian exports, with Western Australia rivalling New South Wales in second place. This evolution of the economy exacerbated strains within the federation, particularly over such issues as policies towards foreign investment.

The minerals boom coincided with and reinforced the growth of economic nationalism in Australia. Official concern over the level of foreign ownership of Australian industry was first voiced in the 1965 *Report of the Committee of Economic Enquiry* (Vernon Committee), and was reflected in action taken by Coalition governments to block foreign takeover of two uranium companies in 1970, and to introduce controls over foreign investment in 1972. Not surprisingly, the new economic nationalism won few sympathizers in the resource-rich peripheral states, where little difference was perceived between Sydney and Melbourne on the one hand, and other centres of 'foreign' capital. Commonwealth concerns for the orderly exploitation of resources in the interests of the country as a whole appeared destined to clash with state desires for immediate, rapid, development—regardless of which party was in office in Canberra. Conflict came to the fore in 1970 over the attempt by the Liberal Party Prime Minister, John Gorton, to legislate for Commonwealth control of offshore minerals—a move that generated such resistance from the states that it was widely asserted to have played a major role in his being ousted from leadership by his parliamentary colleagues. The accession of a Labor government in 1972, the first for twenty-three years, brought to power a party committed to economic nationalism, an activist role for Australia in foreign affairs, and leaders with centralist inclinations who displayed very little concern for the sensitivities of the states.

Labor's platform, together with the imperious and confrontational style of its leadership, would produce unprecedented tensions between Commonwealth and state governments, particularly over resource development. It is in this sector that the federal system has had its most important consequences for Australia's external economic relations; these issues will be examined in the fourth part of the chapter. The other principal areas of conflict between Commonwealth and state governments in the external-relations field have been state representation overseas, and the country's participation in international treaties. Before these are discussed, the constitutional provisions relating to state participation in external affairs are briefly reviewed.

CONSTITUTIONAL PROVISIONS

Australia's Constitution was consciously fashioned after that of the United States, this model being preferred to what was perceived as an excessively centralist Canadian counterpart. Accordingly, the Constitution grants specific legislative powers to the Commonwealth government, many of which, however, are held concurrently with the states. All residual powers lie with the states. So enamoured of the US model were Australia's Founding Fathers that early drafts of the Constitution contained the phrase 'External Affairs and Treaties', and provided for High Court jurisdiction over matters arising from treaties. Both provisions were contrary to British and Imperial law and custom. At the time of Federation, treaty-making power was still vested exclusively in the Imperial government, while, unlike in the United States, treaties were not regarded as being self-executing but were instead implemented only through the enactment of municipal law. One error having been realized, the final Draft Bill of the Constitution in 1898 dropped the reference to treaties, mentioning only external affairs. Provisions regarding High Court jurisdiction over matters arising from treaties were, however, incorporated in Section 75 (i) of the Constitution, leading one commentator to suggest that, on this matter, 'the Founding Fathers were not very sure of what they were doing'.[5]

Together with the absence of a bill of rights, it is the vesting of executive power in the Crown that is the principal feature distinguishing the Australian from the US Constitution. In recent years, both the High Court and legal commentators have regarded the

general executive power laid down in Section 61 of the Constitution as providing the basis for Commonwealth activities in the field of external affairs.[6] Previously, most of the discussion had focused on Section 51 (xxix) of the Constitution, which empowers the Commonwealth Parliament to 'make laws for the peace, order, and good government of the Commonwealth with respect to... External affairs.'[7] Section 51, however, does not grant the Commonwealth exclusive competence in the fields specified. This indeterminacy facilitated claims by the states that they have a right to exercise concurrent powers in external affairs. The external-affairs power has proved to be as controversial as Quick and Garran suggested, but largely as a consequence of matters they did not foresee: its attempted use by the Commonwealth to legislate on issues on which it would otherwise have no constitutional competence.

The International Competence of the States

According to the doyen of Australia's authorities on constitutional law, the six colonies 'had in 1900 the beginnings of an external affairs power',[8] a view shared by several other commentators. In support, these writers point to the negotiation, beginning in 1874, by the colonies of postal agreements with foreign countries, and the resolution, carried at the 1894 Colonial Conference, that the Australian and New Zealand colonies would enjoy the same privilege as Canada in being permitted to negotiate their own commercial treaties with foreign countries. By the time of Federation, however, the Australian colonies had negotiated no bilateral agreements other than the postal conventions.[9] In recent years these very limited arrangements have come to be viewed by most commentators as *sui generis* and not evidence of any grant to the colonies of the executive's treaty-making powers.

Whatever the views of legal authorities, the states in the newly formed Federation had no doubt that they were entitled to play a role in external affairs. This was illustrated most clearly in the year following Federation by the celebrated *Vondel* case. The Government of the Netherlands had complained to the British government that the South Australian authorities, contrary to their obligations under the Anglo–Netherlands Convention of 1856, had failed to assist the Dutch consul to deal with seamen who had deserted from a Dutch ship. Joseph Chamberlain, then British Colonial Secretary, wrote for information on this matter to the Commonwealth govern-

ment, which subsequently contacted the South Australian authorities. The South Australian government responded with a telegraph to Chamberlain stating that the 'constitutional means of obtaining information on the matter' was through the Governor of South Australia, and denying that the Commonwealth had any competence in the matter.

In a subsequent submission to the Colonial Secretary, the South Australian government argued that the external-affairs power was concurrent; that the dispute involved only state officials; that, while the Commonwealth had power to legislate with respect to consuls, it had not done so; and therefore that it was appropriate in this and similar instances for the Imperial government to communicate directly with South Australia. The argument's implication was that the Commonwealth would acquire competence only when it was empowered to legislate in a field *and* actually enacted the necessary legislation. The Commonwealth, meanwhile, backed its claim to be the sole channel of communication with Britain by reference to the executive powers granted in Section 61 of the Constitution.

Chamberlain's response sided decisively with the Commonwealth:

> So far as other communities of the Empire or foreign nations are concerned, the people of Australia form one political community for which the Government of the Commonwealth alone can speak. For everything affecting external affairs or communities which takes place within its boundaries, that Government is responsible. The distribution of powers between the Federal and State authorities is a matter of purely internal concern of which no external country or community can take any cognizance. It is to the Commonwealth and to the Commonwealth alone that, through the Imperial Government, they must look for remedy or relief for any action affecting them done within the bounds of the Commonwealth whether it is an act of a private individual, of a State Official or of a State Government. The Commonwealth is, through H.M.G., just as responsible for any action of South Australia affecting an external community as the U.S.A. are for the actions of Louisiana or any other State of the Union.[10]

Chamberlain's decision that the Commonwealth government was responsible to the international community for all actions within Australia and was the proper channel for communication for any matter relating to international treaties was reiterated by succeeding colonial secretaries in *Benjamin*'s and *Weigall*'s cases.[11] The states, however, continued to press that they should be allowed

to communicate directly with the Imperial government, and asserted their right to attend the Colonial Conference of 1907. Again, their claims were rebuffed by the British government. A significant consequence was the exclusion of the states from a voice in the subsequent Imperial conferences that were preparatory to the drafting of the Statute of Westminster, and thus from the process by which Australia acquired an independent international personality.

Although the Constitution nowhere provides that the Commonwealth has exclusive competency in external affairs, the High Court has consistently asserted that only the Commonwealth can speak for Australia in international affairs, and has denied that the states have international personality. In large part, judgment has been based on Section 61 of the Constitution, which is perceived as vesting the prerogative powers of the Crown in the Commonwealth government. No similar transfer to the states occurred. While in principle the Commonwealth could delegate these powers to the states, it has not chosen to do so.[12] The right to conduct foreign relations is thus part of the executive power and not subject to prior legislative approval or concurrence. This was stated clearly by G. E. Barwick, Chief Justice of the High Court, in a 1975 judgment: 'The Crown is the appropriate repository of international rights and obligations. In right of the Commonwealth the Crown represents Australia internationally. Its conduct in that connection is determined by the advice of the Executive Council.'[13]

As early as 1923 the High Court had asserted that it was a 'fallacy' to treat a state of Australia either as, or as analogous to, a 'sovereign State'.[14] In 1936 Chief Justice Latham asserted that 'other countries deal with Australia and not with the States of the Commonwealth and this practice follows the evident intention of the Constitution'.[15] The lack of competence of the states in external affairs has been reiterated by the High Court in several cases over the last decade. Again, the argument was stated forcefully by Chief Justice Barwick:

> whilst the power with respect to external affairs is not expressed to be a power exclusively vested in the Commonwealth, it must necessarily of its nature be so as to international relations and affairs. Only the Commonwealth has international status. The colonies never were and the States are not international persons.[16]

Justice Murphy, consistently one of the most centralist of the High Court justices, was even more forthright: 'The States have no international personality, no capacity to negotiate or enter into treaties, no power to exchange or send representatives to other international persons and no right to deal with other countries, through agents or otherwise.'[17]

This sweeping denial of any foreign-affairs role has not been accepted by the states. The Queensland government, the most fervent defender of states' rights, has gone furthest in asserting its competence to participate in international treaties. In 1974 (during the tenure of the Whitlam Labor government in Canberra) it appointed a Treaties Commission to advise it *inter alia* on the benefit to Queensland of existing international treaties and conventions, and on Queensland's participation in such arrangements. In its first report the Commission argued that the devolution of executive power in the field of foreign relations was not exclusive to the Commonwealth government, that Queensland had acquired a separate legal personality prior to Federation, and that Australian states had the competency to enter into legally binding intergovernmental agreements. Any distinction between these, if governed by international law, and a treaty would, the Commission asserted, be a 'formality'.[18] Queensland has not tested its powers in this matter: following the dismissal of the Whitlam government in 1975, the federal Coalition government proclaimed a new era of 'co-operative federalism' (discussed later in this chapter), in which states were to be consulted before the Commonwealth entered into any treaty arrangements.

Other Australian states appear to have accepted that they lack an international personality, but nevertheless have asserted their right to enter into intergovernmental arrangements in the commercial fields, this being justified by reference to their constitutional responsibility for their own welfare. Some legal authorities have accepted that the states do have competency to conclude such international commercial agreements, but deny that they are governed by international law. They also point out that, whatever the claims of a state to competency in international affairs, they are of little consequence unless recognized by the international community of states. Such recognition has not been forthcoming. Meanwhile, the Commonwealth has reaffirmed that it is responsible to the inter-

national community for any breach of international obligations committed by the states.[19]

The External-affairs Power

Although the power to conclude treaties is part of the executive prerogative in Australia, not subject to legislative approval, treaties have no effect until legislation translates them into municipal law. Section 51 (xxix) of the Constitution gives the Commonwealth Parliament the power to legislate on 'external affairs'. Initially, this section was perceived to have a very limited scope: Quick and Garran suggested that it was applicable only to the external representation of the Commonwealth by accredited agents, the negotiations of commercial treaties, and the extradition of fugitive offenders.[20] Another early commentator asserted that 'there is practically no dissent from this view that the powers reserved to the States are beyond the scope of the treaty-making authority'.[21] The lack of specificity of Section 51 (xxix), however, offers ample scope for judicial exegesis. Here the High Court has generally been prepared to follow Justice O'Connor's dictum that 'the Court should ...always lean to the broader interpretations' of federal power.[22] Unlike the experience in Canada, the judicial interpretation of the external-affairs power has been exclusively the work of the Australian High Court; for Section 74 of the Constitution established the federal High Court as the final court of appeal on the most important constitutional issues.

Debate on the external-affairs power has centred on three issues in determining whether the Commonwealth has competence to legislate for the domestic implementation of treaties to which Australia has become a party. First, the definition of 'external'—in particular, whether the subject-matter of the treaty has to be 'external' to Australia, and/or genuine international concern with the subject, have to be proved; second, whether the treaty imposes legal obligations with which Australia must conform; third (an issue which has become of increasing concern with the ever-widening scope of international conventions), whether there are 'reserved' areas of legislative competence for the states under the Constitution and whether judgment is to be determined on the basis of its implications for the division of powers within the federation.

The first major test of the external-affairs power before the High Court came in 1936 in *R.* v. *Burgess*; *Ex parte Henry*. The case

concerned the Commonwealth's competence to legislate on internal air navigation (a matter constitutionally within the power of the states) by virtue of the obligations it incurred through its participation in the 1919 Paris Convention on Aerial Navigation. The Court upheld the Commonwealth's competence to legislate to implement the terms of the Convention, thereby establishing Section 51 (xxix) as an independent head of legislative power, but struck down part of the government's legislation on the grounds that it was beyond what was strictly necessary to give effect to the provisions of the Convention. The Court ruled that the external-affairs power did not enable the Commonwealth to make laws 'with respect to' a treaty but for 'carrying out and giving effect to' its provisions. It was agreed, however, that the Commonwealth's competence was not limited to the obligations imposed by treaties, but that it also acquired rights through its participation in these agreements.

The Court decreed that the external-affairs power was available only where the Commonwealth had entered into an agreement *bona fide* rather than as a means of attracting legislative power. It also recognized that the external-affairs power could not be used to legislate in disregard of overriding constitutional prohibitions.[23] One justice went further in asserting that Section 51 (xxix) was also qualified by prohibitions 'implied' in the Constitution. This assertion was taken up in later cases by those judges who wished to limit the scope of the external-affairs power.

The Court was divided on the matter of whether the power to legislate to implement a treaty was limited by its subject-matter. A narrow interpretation was given by Justice Dixon:

> it seems an extreme view that merely because the Executive Government undertakes with some other country that the conduct of persons in Australia shall be regulated in a particular way, the legislature thereby obtains a power to enact that regulation although it relates to a matter of internal concern which, apart from the obligation undertaken by the Executive, could not be considered as a matter of external affairs.

Chief Justice Latham, in contrast, presented an early example of theorizing on the consequences of international interdependence:

> Modern invention has almost abolished the effects of distance in time and space which enabled most States to be indifferent to what happened elsewhere. Today all people are neighbours, whether they like it or not, and the

endeavour to discover means of living together upon practicable terms — or at least to minimize quarrels — has greatly increased the number of subjects to be dealt with, in some measure, by international action... It is, in my opinion, impossible to say *a priori* that any subject is necessarily such that it could never properly be dealt with by international agreement.[24]

Justices Evatt and McTiernan argued that a treaty's subject-matter placed no limitations on the use of the external-affairs power and asserted that this might be utilized to implement some of the conventions of the ILO, which Australia had signed but had yet to ratify. This, however, was not a view that was popular with the Liberal–National Party coalition that governed Australia in the years 1949–72, especially with its longest-serving leader, Sir Robert Menzies, who had been a noted constitutional lawyer before his entry into federal politics.[25]

A further test of the external-affairs power was to await the return of a Labor government in Canberra. On its election in 1972 the Whitlam Labor government signalled that it intended to make greater use of Section 51 (xxix) of the Constitution to implement international treaty obligations. The 1973 Seas and Submerged Lands Act (which gave the Commonwealth control over the continental shelf and territorial sea) was upheld by the High Court as giving effect to the 1958 Convention on the Territorial Sea and the Contiguous Zone. Since the Court held that the Act operated entirely in respect of areas outside state territorial boundaries, its judgment had no bearing on Commonwealth intrusion on the states' legislative competence. The Whitlam government was dismissed from office before any significant test occurred of the external-affairs power in regard to 'domestic' matters. But in 1982 the High Court delivered a landmark judgment arising from the Racial Discrimination Act of 1975, legislation introduced by the Whitlam government to give effect to Australia's obligations under the Convention on the Elimination of All Forms of Racial Discrimination, to which Australia had become a party in the previous year.

The case, *Koowarta* v. *Bjelke-Petersen*, concerned an action under the Racial Discrimination Act brought by an aboriginal, Koowarta, against the Premier of Queensland and its Minister for Lands after the Queensland government denied an aboriginal group access to freehold land. The Queensland government argued that the 1975 Racial Discrimination Act was invalid, since the Con-

stitution made no explicit mention of racial discrimination, which therefore fell within the reserved powers of the states. No treaty obligation, it asserted, could alter the division of powers within Australia.

The central issue in *Koowarta* thus was whether the external-affairs power was limited according to the subject-matter of the treaty. For the Chief Justice and two others in the minority, the external-affairs power extended only to treaties involving relationships with other countries or with persons or things outside Australia. According to the Chief Justice, the Racial Discrimination Act dealt with matters that were entirely domestic: 'an act done within Australia by one Australian to or in relation to another and taking effect only within Australia'. He held, therefore, that obligations undertaken in respect of the International Convention on the Elimination of All Forms of Racial Discrimination lacked the character of an external affair. For three other justices, the fact that a treaty had been entered into was sufficient to meet the requirement of 'international concern'. The fourth member of the majority, Justice Stephen, expressed a more qualified view, asserting that it was not sufficient that a Commonwealth law give effect to a treaty obligation but that this obligation itself be a matter of 'international concern'. In this particular case, he deemed that racial discrimination satisfied this requirement.

Although the validity of the legislation was upheld, the opinion of Justice Stephen supported that of the dissentients in holding that the external-affairs power was limited by the subject-matter of the international treaty. By implication, this judgment suggested that the continued existence of federalism necessitated that some legislative powers be reserved to the states and thus placed beyond the reach of the Commonwealth. This view was to be overturned by a reconstituted High Court in the following year.

In the *Franklin Dam* case, the Government of Tasmania challenged the legitimacy of two pieces of Commonwealth legislation justified as carrying into effect the provisions of the Convention for the Protection of the World Cultural and Natural Heritage adopted by the General Conferences of Unesco on 16 November 1972, and ratified by Australia on 22 August 1974. The intention of the legislation was to prohibit the construction of a dam on the Gordon-below-Franklin River in south-western Tasmania. Without recourse to its treaty obligations, the Commonwealth lacked specific con-

stitutional powers over the environment. Four members of the Court upheld the validity of a sufficient part of the legislation to prohibit the construction of the dam; the minority declared all of the legislation invalid.

Again the debate centred on the nature of an 'external' affair. Speaking once more for the minority, Chief Justice Gibbs asserted that:

> The protection of the environment and the cultural heritage has been of increasing interest in recent times, but it cannot be said to have become such a burning international issue that a failure by one nation to take protective measures is likely adversely to affect its relations with other nations, unless of course damage or pollution extends beyond the borders. If one nation allows its own natural heritage (and no other) to be damaged, it is not in the least probable that other nations will act similarly in reprisal, or that the peace and security of the world will be disturbed—in this respect, damage to the heritage stands in clear contrast to such practices as racial discrimination...[26]

The justices in the majority rejected this narrow interpretation of a matter of 'international concern'. They held that the external-affairs power enabled the Commonwealth to legislate for the implementation of any treaty obligation, regardless of subject-matter. A separate requirement of 'international concern' was not necessary. The external-affairs power was available once an agreement was signed, 'whatever the subject-matter of the agreement may be'.[27] The only qualifications to the power allowed by the majority were that the Commonwealth must enter into a treaty in good faith rather than undertaking an international obligation with the specific purpose of increasing its domestic power (yet acknowledged that this qualification would be very difficult to establish); that there must be 'reasonable proportionality' between the legislation and the objectives of the international treaty which it was intended to implement; and that legislation must be consistent with explicit constitutional prohibitions.

These recent decisions have demonstrated the prescience of the comment made by Justice Higgins in 1921 that 'it is difficult to see what limits (if any) can be placed on the power to legislate as to external affairs. There are none expressed.'[28] As the minority in the High Court have asserted, the expansive interpretation of the external-affairs power has opened the way for a major change in

the distribution of powers within the federation. The Chief Justice argued:

> The external affairs power differs from the other powers conferred by s. 51 in its capacity for almost unlimited expansion. . .there is almost no aspect of life which under modern conditions may not be the subject of an international agreement, and therefore the possible subject of Commonwealth legislative power. Whether Australia enters into any particular international agreement is entirely a matter for decision by the Executive. The division of powers between the Commonwealth and the States which the Constitution effects could be rendered quite meaningless if the Federal Government could, by entering into treaties with foreign governments on matters of domestic concern, enlarge the legislative powers of the Parliament so that they embraced literally all fields of activity.[29]

The High Court majority appear to have discounted the principle set forth by a former Chief Justice that 'no single power should be construed in such a way as to give the Commonwealth Parliament a universal power of legislation which would render absurd the assignment of particular carefully defined powers to that Parliament'.[30] They have clearly asserted that there are no areas in which the states have exclusive legislative competence; the sole guarantees to the states are a right to continued existence, freedom from discriminatory Commonwealth legislation, and the maintenance of their capacity to function. Justice Mason, a member of the majority, asserted for instance that 'there must be substantial interference with the States' capacity to govern' in order for a law to be held invalid.[31]

In embracing an expensive interpretation of the external-affairs power, the High Court majority have asserted that this is necessary for Australia to be an effective international actor. In *Koowarta*, for instance, Justice Mason argued that, if use of the external-affairs power disturbed the balance of powers established by the Constitution, this was justifiable as 'essential to Australia's participation in world affairs'. Similarly, Justice Murphy warned repeatedly that, without an adequate external-affairs power, 'Australia would be an international cripple unable to participate fully in the emerging world order'.[32] Critics, however, have pointed out that other federal states, most notably Canada, have not become 'international cripples' as a result of constitutional limitations on the powers of the federal government to legislate to implement treaty

obligations. In response, those favouring an expansive interpretation of the external-affairs power pointed to Australia's poor record in ratifying treaties where the consent of the states has been deemed necessary.

Federal Clauses and the Implementation of International Treaties

For most of the period since Federation, a principal repercussion of the federal system on Australia's international relations was the inability of Australia to ratify treaties to which the Commonwealth government had become a signatory. This problem arose from a perceived need for the states to legislate to implement obligations arising from international conventions which involved matters regarded as being within their exclusive competence. By 1982, for instance, Australia had ratified only forty-three of 158 ILO treaties.[33] States had prevaricated when requested to legislate. There was a widespread perception that the Commonwealth governments under Coalition control had used the states as a convenient excuse for failing to ratify conventions for which they had little enthusiasm. As early as 1936 two High Court justices had argued that the Commonwealth should use its external-affairs power to legislate for implementation of its ILO commitments.[34] Content with the veto exercised by the states, however, the Commonwealth government for a long period refrained from testing its powers under Section 51 (xxix) of the Constitution.

Another consequence of the perceived need to safeguard states' rights in treaty-making was the attempt by Australian delegations to insert federal clauses into international treaties. This practice was formalized at the Premiers' Conference in October 1977, when new procedures were announced for consultation with the states on international treaties as part of the Fraser Administration's commitment to a new co-operative federalism. The Commonwealth stated that 'Federal clauses will be sought to be included in treaties in appropriate cases.' The government reaffirmed, however, that 'the Commonwealth will not become a party to a treaty containing a federal clause until the laws of all states conform with the mandatory provisions of the treaty.' Territorial-units clauses, such as those utilized by Canada, which enable treaties to be implemented only in specified territorial units of a federal state, were regarded as insufficient to protect the position of the Australian states.

As a result, Australia found itself isolated in international negotiations. Its position was characterized by a senior member of the Attorney-General's Department as on occasions having strained relations even with other federal countries, including Canada. The principal reason was that Australia was unable to point to any 'insurmountable constitutional difficulties' to justify the type of federal clause that it sought; rather, Australia 'sought federal clauses as part of a domestic campaign to restrict federal power in areas of traditional state concern'.[35] One of the worst examples of the consequences of that new policy was the manner of Australia's ratification of the International Covenant on Civil and Political Rights in August 1980, fourteen years after it was adopted by the UN and four years after it came into force. Besides inserting a general reservation referring to Australia's position as a federal state—a clause that one critic described as 'an interpretative declaration of no precise international legal effect'—Australia made reservations and declarations to fully one-third of the Covenant's human rights provisions relating *inter alia* to freedom of thought, conscience, and religion; the right to non-discriminatory treatment; and the right to universal and equal suffrage. Triggs concluded that, 'in comparison with the reservations made by other countries, Australia's reservations are broadly stated, vague and unclear'.[36]

In 1982, apparently in response to the difficulties that had arisen from the 1977 agreement, the Commonwealth adopted new procedures in which it retreated from its previous commitment and agreed only 'to consider' seeking federal clauses on a case-by-case basis in treaties involving matters subject to state law but not those traditionally governed by Commonwealth laws. Furthermore, in deciding whether to pursue a federal clause, the Commonwealth stated that 'account needs to be taken of experience in negotiating such clauses and consideration needs to be given to the risks of reopening forms that have previously been secured'. For the first time, Australia also considered employing 'territorial-units' clauses on a case-by-case basis.[37] Before these new procedures were tested in practice, a Labor government opposed to federal clauses was elected at the March 1983 federal election, and the High Court issued its judgments in the *Koowarta* and *Franklin Dam* cases, judgments that were to obviate, from a constitutional if not a political perspective, the need to seek federal clauses.[38]

THE MANAGEMENT OF FEDERAL–STATE RELATIONS IN EXTERNAL AFFAIRS

Co-ordination between the Commonwealth and the states in matters of external affairs is not well developed. The states themselves do not maintain offices in Canberra and there is no equivalent to the powerful US Council of State Governments. In 1975 the Premiers of the four non-Labor states signed an Interstate Co-operation Agreement which established a Council of States. This, however, was perceived primarily as an anti-Labor move: after the removal of the Labor government in Canberra and the election of a state Labor government in New South Wales, the Council of States collapsed in 1977.[39] No permanent states' secretariat has been created to service the Premiers' Conference (where the state Premiers meet at least once per year with the Prime Minister and senior Commonwealth politicians). A special Premiers' Conference was called at the suggestion of the Myer Committee to discuss relations with Japan, but at other meetings external affairs are rarely high on an agenda dominated by the issue of the quantity and distribution of Commonwealth grants to the states.[40]

At first sight the Department of Foreign Affairs, which maintains branches (with a total staff of over two hundred officers) in all state capitals, might appear well placed to play a leading role in co-ordinating Commonwealth and states' policies towards external relations. Its sizeable representation in the states, however, is primarily a repercussion of its responsibility since 1975 for issuing passports. Although a senior Foreign Affairs Officer is appointed to each state office to act as liaison with state governments, the results have not been regarded as particularly satisfactory. Part of the problem lies in the division of responsibilities within the Canberra bureaucracy. By the time of Foreign Affairs' relatively late date of establishment, primary responsibility for key functional areas of foreign policy was already vested in other Departments such as Trade, the Treasury, and Immigration. These departments (or their successors) have their own consultative committees with state governments and tend jealously to guard such contacts:

> The result is a highly fragmented mode of consultation between the policy-making centre and the regions on issues affecting external relations and a lack of communication between the DFA and groups within the community whose interests are increasingly affected by international

events. In turn, this means that the DFA is limited in its ability to perform the function of balancing the competing claims of such groups and projecting a foreign policy whose elements reflect that balance.[41]

Agreement was reached at the special Premiers' Conference on relations with Japan in 1978 that an annual meeting should take place between senior state and Commonwealth public servants to discuss policy towards Japan. This, however, is the only regular meeting devoted exclusively to an aspect of external affairs. Other contact occurs through such bodies as the Advisory Council on Intergovernmental Relations (established following the April 1976 Premiers' Conference, which approved a charter declaring the purpose of the Council to be to 'bring together representatives of the Federal, State and local governments and private citizens...to give continuing attention to inter-government problems'), the Australian Minerals and Energy Council, the Marine and Parks Council of Australia, the Council of Labour Ministers, the Standing Committee of Attorneys-General, and the Council of Nature Conservation Ministers. Hocking concludes, however, that a lack of resources devoted to relations with state governments, reflected in the absence of any bureau within the Department of Foreign Affairs in Canberra charged with this responsibility, has limited the effectiveness of the Department's efforts to co-ordinate policy with state governments.[42]

Other attempts at policy co-ordination include the practice of inviting state representatives as part of Australian delegations to international conferences. This is a long-established practice in Australia, dating to the years immediately after the Second World War when officials from the states' Departments of Labour were invited to attend ILO meetings. In recent years invitations to states' officials have become more frequent: State representatives participated, for example, in Australian delegations to the UN Conference on the Law of the Sea, the International Sugar Conference, the Conference on Trade in Endangered Species of Wildlife, and the Human Rights Commission. In 1977, as part of its policy of 'co-operative federalism', the Fraser government announced that states would be consulted at an early stage when the Commonwealth was contemplating participation in an international treaty, and that state representatives would be included in delegations to international conferences which dealt with subjects within the legislative responsibility of the states.

Consultation and participation by the states in delegations in the past did not, of course, always produce a unified Australian voice.[43] Some dissatisfaction with the behaviour of state delegates is evident in the revised 'Principles and Procedures for Commonwealth–State Consultation on Treaties', adopted by the Premiers' Conference of June 1982. Here the Commonwealth government pledged to continue to include one or more state representatives in delegations to international conferences in appropriate cases, but asserted that 'the purpose is not to share in the making of policy decisions or to speak for Australia, but to ensure that the States know what is going on and are always in a position to put a point of view to the Commonwealth'.[44] The Queensland government has complained that the usefulness of including state representatives in international delegations is limited, since these representatives are merely advisers to the delegation rather than full members; it also noted that some state delegates had reported reactions from their Commonwealth counterparts 'ranging from non-co-operation to active hostility'.[45]

The principal method used by the Commonwealth to inform the states of international treaties is the circulation of a Schedule of Treaties by the Department of Prime Minister and Cabinet. The Tasmanian government has voiced several criticisms of this procedure. First, because the Schedule is issued only quarterly, it frequently does not provide timely information to the states. Second, it fails to cover a number of non-treaty items, such as the recommendations of international agencies, which not only are of interest to the states but also could attract the use of the external-affairs power. Finally, the state government complained, 'the preparation and circulation of the document appears to be considered a relatively low priority task by Commonwealth officials'.[46]

On assuming office in March 1983, the Hawke Labor government undertook to review the principles and procedures for Commonwealth–state consultation that had been adopted at the previous year's Premiers' Conference. In a subsequent letter to the Premiers, the Prime Minister noted that the Principles and Procedures in their existing form would be endorsed 'subject to their operation not being allowed to result in unreasonable delays in the negotiating, joining, or implementing of treaties by Australia . . .'.[47] The new government would not, however, continue the practice of instructing Australian delegations to seek the inclusion of federal

clauses in international treaties: the letter asserted that 'Instructing an Australian delegation to press for a federal clause only diverts its resources from more important tasks.' The Prime Minister noted that the government had no objection, however, to Australia's 'making unilaterally a short "federal statement" on signing or ratifying certain appropriate treaties, provided that such a statement clearly does not affect Australia's obligations as a party'.[48]

The government also repudiated the undertaking by its predecessor that Commonwealth treaty-implementing legislation would be passed in certain areas only in default of effective action by the states. Together with the High Court decisions in the *Koowarta* and *Tasmanian Dam* cases, the Prime Minister's letter generated considerable concern in some states regarding the extent to which state interests would be taken into account prior to the negotiation and implementation of international conventions and treaties. This has been particularly true of Queensland and Tasmania, the two losers in the Court decisions and, for most of the 1980s, the only two states not governed by the Labor Party. Tasmania has proposed that a constitutional amendment be adopted 'as a matter of urgent necessity' to limit the scope of the external-affairs power. It has also proposed the establishment of a formal mechanism for treaty consultations between the Commonwealth and the states along the lines of the Permanent Treaty Commission created by the Lindau Convention in 1957 in the FRG. The Standing Committee on External Affairs of the Australian Constitutional Convention endorsed this latter suggestion, but the government has not acted upon it.

THE STATES' INTERNATIONAL ACTIVITIES

Historical Development

The overseas representation of the states had its origins in the separation of the other colonies from New South Wales and their acquisition of responsible government in the middle of the nineteenth century.[49] For most of the remainder of the century, relations with Britain were of greater significance than those with the other antipodean settlements, the 'tyranny of distance' precluding extensive overland communications between the colonies. The colonies appointed agents-general in London to promote and safeguard

their interests. Initially their activities were primarily in the commercial field—the purchase and insurance of cargoes, the attraction of capital and immigrants to the colonies—but they gradually assumed wider responsibilities in representing their own colony in discussions with the Imperial government. The development of this latter role led one commentator to assert that, prior to Federation, the agents-general 'had acquired much of the importance and prestige of diplomatic representation'.[50]

With the coming of Federation, it was predicted, the agents-general would be deprived of their most important functions. Writing in 1901, Quick and Garran noted:

> The Federal Parliament will not have power to abolish the separate Agencies-General of each colony, but it will be able to create a new department similar to that of the High Commissioner for Canada, and to authorize the appointment of a High Commissioner for Australia, who would, in time, necessarily absorb and perform all the important work... now done by the several Agents-General. The latter would be denuded of their prestige and most of their duties, and there would be no necessity or justification for the continuance of the old system. The Agent-General's office for each State, if not quite abolished, could be converted into that of a 'General Agent'—a term so repugnant to the sensibilities of some of its past occupants.[51]

The first Australian High Commissioner to Britain was appointed in 1909. Not surprisingly, however, the states did not share Quick's and Garran's perception of the obsolescence of their London representatives. For the first quarter-century after Federation, the agents-general played an important role in raising loans for the states in the London money market. In 1927, however, after problems had arisen from the states' competing for overseas loans, and some states had encountered debt-servicing difficulties, the Commonwealth and states concluded a Financial Agreement under which the Commonwealth agreed to contribute towards the interest payments on the public debt of the states and towards its amortization. Enacted by the Commonwealth Parliament in the following year, the Agreement was incorporated as Section 105A of the Constitution after approval at a referendum. In return for the Commonwealth contributing towards their debts, the states agreed to the creation of a Loan Council, which was given sole responsibility for raising overseas finance. Having removed one of the most important economic functions of the agents-general, the Common-

wealth suggested in the early 1930s that, as an economy measure, the states' offices be closed. The states opposed the proposal; during this period the agents-general were acquiring a new importance and justification by virtue of constitutional developments.

The states were excluded from the negotiations leading to the Statute of Westminster and expressed concern that their constitutional position would be adversely affected by its adoption. In deference to state interests, the Statute contained a special section (Section 9) relating only to Australia. This provided that nothing in the Statute authorized the Commonwealth Parliament to make laws on matters within the authority of the states, nor required the agreement of the Commonwealth to any law made by the UK Parliament on subjects over which the states had jurisdiction. The Colonial Laws Validity Act of 1865, which restricted the powers of the states to legislate a repeal or modification of Imperial laws, continued to apply. These Imperial statutes included the Judicial Committee Acts of 1833 and 1844, which prevented states from abolishing appeals from their supreme courts to the Judicial Committee of the Privy Council. The states also maintained the right to petition the Crown directly on subjects within state jurisdiction. The terms of the Statute of Westminster thus preserved existing relations between the Imperial authorities and the states, and provided a formal justification for the states' representatives in London.[52]

Although occasionally justified by reference to the maintenance of their link with the Crown, the principal activities of the agents-general have been in the commercial field. The New South Wales Government, for instance, described the role of its overseas offices as the following: the promotion of trade and industrial development and the attraction of investment to New South Wales; promotion of tourism; transaction of government business on behalf of departments and instrumentalities; provision of a service to official government and private business visitors and missions; engineering inspections on behalf of government and semi-government authorities in the United Kingdom and Europe; research on behalf of government authorities.[53] As the Imperial connection became less important, particularly in the commercial field, so the agents-general were expected to represent state interests in other European countries as well as in the United Kingdom. States also began to establish representation outside Europe: the first, the New South

Wales Centre in New York, was opened in 1958. The growing importance of Japan to the Australian economy was reflected in the opening of states offices in Tokyo: New South Wales and Western Australia led the way by establishing representation in 1968.

The states have argued that the functions carried out by their offices are simply too important to be left to the Commonwealth, which they do not trust to pursue their particular interests with the same vigour. There is also a realization that, in seeking foreign markets and sources of investment, they are competing not only with foreign countries but also with other states. After interviewing representatives of the states based in Tokyo, the Japan Secretariat (a Commonwealth government research and administrative unit attached to the Department of Foreign Affairs and Trade) noted: 'Some of the State Offices were unapologetic about their need to overlap some areas of Embassy work and to compete with other States. They saw this as a valid and important function.'[54] State rivalry was captured in the exhortation of the former Queensland Premier, Sir Joh Bjelke-Petersen, on the opening of the state office in Tokyo: 'Come to Queensland, not to Australia.'[55]

A complete list of current state representation overseas is provided in Table 4.1. In comparison with some of the Canadian provinces, the overseas activities of Australian states are relatively modest, and for most states have been cut back in recent years. There are substantial differences between the states: New South Wales, Victoria, and Western Australia have the largest budgets for overseas representation, all spending over $2.5 million in 1988/9. Tasmania, by contrast, now has no overseas representation other than its tourism offices; it closed its London office in the early 1980s for economy reasons. The expansion of state activities overseas during the 1970s can be attributed to a number of factors, such as the changing direction of Australia's trade, and a bandwagon effect in which states feared the consequences of failure to follow the lead of potential competitors among their neighbours. In the 1980s, however, cost constraints led several states to close overseas offices or reduce their staffing. New South Wales terminated its New York representation in the early 1980s; both New South Wales and South Australia closed their Los Angeles offices at the end of 1988. All of the states except Western Australia reduced the number of employees of their London offices from 1985/6 to 1988/9; in this period New South Wales and Queensland halved the size

of their London representation. The Greiner Liberal–National Party government in New South Wales has announced its intention to sell the building housing its London office. Its Overseas Trade Authority, which had five staff members based in Sydney, was abolished. The states' only representation in the Middle East, Queensland's office in Bahrain, was closed in 1987. Victoria alone is planning to expand its overseas representation by opening an office in China.

TABLE 4.1. Overseas representation of Australian states, 1988/9

State	Office location	Number of employees	Budget ($A 000)
New South Wales	London	16	1,588
	Los Angeles*	7	445
	Tokyo	8	671
Queensland	London	10	1,065
	Tokyo	5	834
	Los Angeles	6	574
South Australia†	London	9	594
	Los Angeles	2	
Tasmania‡	—	—	—
Victoria§	London	15	
	Frankfurt	5	3,106
	Los Angeles	5	
	Tokyo	6	
Western Australia	London	20	1,974
	Tokyo	5	870

Source: Information provided by the state governments

* The Los Angeles office was closed in December 1988.

† The Los Angeles office was opened in 1986 and closed in December 1988. South Australia also has agents appointed to represent its interests in Bangkok, Hong Kong, Singapore, and Tokyo. They are employees of local subsidiaries of Australian companies, who are paid a retainer (whose size the government will not disclose).

‡ Tasmania maintains no overseas trade representatives but has one officer from its Department of Tourism located in three overseas cities: Tokyo, Los Angeles, and Auckland. The total budget for these officers in 1985/6 was $360,445. Tasmania also employs a trade consultant on a casual basis in Tokyo.

§ Victoria plans to open an office in China in 1990.

Sister-state Relationships

Table 4.2 lists the sister-state relationships established by Australian states. The most common pattern is to have one relationship with a Chinese province and one with a Japanese prefecture (or, in the case of New South Wales, with a city administration, the Tokyo Metropolitan Government). State officials commented that they viewed the relationships as a 'window' on the whole country rather than binding the parties to deal exclusively with a particular province or prefecture. The stated objectives of the relationships were the promotion of commercial and cultural relations; typical activities were exchanges in the sporting, cultural, and educational fields.

Representatives of the Premier's Departments of Queensland and Western Australia placed greater emphasis on the commercial activites than their counterparts in other states (the Western Australian relationship with Japan, for instance, had developed from the iron-ore trade). A representative of one of the other state governments complained that, while efforts had been made by the Australian partner to enhance the commercial dimension, a Japanese sister-state had been unwilling to move beyond the cultural domain. Others commented that the Chinese provinces were reluctant to invest resources in the relationship; consequently they were active only spasmodically.

TABLE 4.2. Sister-state relationships

Australian state	Overseas state/province
New South Wales	Guangdon province (China)
	Tokyo Metropolitan Government
Queensland	Shanghai province (China)
	Saitama prefecture (Japan)
South Australia	Shandong province (China)
Tasmania	Fujian province (China)
Victoria	Jiangsu province (China)
	Aichi prefecture (Japan)
Western Australia	Zhejiang province (China)
	Hyogo prefecture (Japan)

Source: Information supplied by the states' Premier's Departments

Foreign Aid from the States

All of the states provide overseas aid in one form or another. None of them, however, keeps any central register of the activities of its individual departments in this field. This lack of a central register and the relatively small sums involved suggest that the provision of aid is not perceived as a significant means for establishing an overseas profile for the state. Indeed, a number of the aid activities appear to be aimed primarily at satisfying domestic ethnic constituencies (for example, a $10,000 grant from the Victorian government to earthquake victims in Greece in 1986).

Many states give money to international non-government associations such as Freedom from Hunger and the Red Cross, or make donations to special funds such as the Adelaide Lord Mayor's Appeal for Victims of the Italian Earthquake. Other state activities in this field include the secondment of personnel to the Commonwealth government's aid agency, the Australian Development Assistance Bureau, or to international organizations such as the FAO. Some state departments provide technical assistance and facilitate transfer of technology, e.g. the New South Wales State Rail Authority to Thailand, its Department of Main Roads to Shanghai, and its Agriculture Department to Pakistan and China. In general, however, this area of activity does not appear to be one to which the states give very high priority, nor one from which they have attempted to gain a significant profile as an overseas actor independent of the Commonwealth government.[56]

The States and the Treaty Power

To judge by the response of the state Premier's Departments, the debate as to whether Australian states have the right to negotiate international treaties appears to have generated far more interest among academic constitutional lawyers than in the states themselves. None of the representatives of Premier's Departments contacted was even aware of the various treaties from the colonial period that are still in force for the various states.

Exactly what constitutes an international treaty remains a grey area in international law. Certainly the states are able to enter into government-to-government agreements in the commercial field. Both South Australia and Western Australia, for example, have agreements with Libya to provide assistance in dry-land-farming

techniques. According to the Premier's Department of South Australia, the state Department of Agriculture originally wanted a separate company to be responsible for the agreement with Libya, but the Libyan negotiators insisted on a government-to-government agreement. These agreements fall short of being a treaty in the conventional usage of the term, however, since they were made subject to Libyan rather than international law and any dispute arising from the agreement was to be referred to the competent Libyan courts.[57] A representative of the Western Australian government stated that its agreements with Libya, which have been inactive since 1983, and similar commercial agreements were regarded as memorandums of understanding and were not perceived to have treaty status.

While the International Law Commission in its report to the UN General Assembly in 1974 allowed that component states in federations may have the competence to enter into international treaties, this was subject to recognition of their international personality. As noted earlier in this chapter, the Australian High Court has consistently denied that the states have an independent international personality; none of the states has yet attempted to confront this constitutional interpretation directly by attempting to negotiate a treaty with an overseas country. The responses of the states' Premier's Departments to our questions demonstrated that the conclusion of treaties is not an issue that is high on their political agendas. None is actively seeking to negotiate treaties nor currently asserting its right to enter into such arrangements. Of far greater concern to them is the Commonwealth's use of the external-affairs power to legislate to implement international treaties in subject areas in which it would otherwise lack competence.

The States and High Politics

For the most part, the transnational activities of the states have been confined to commercial matters. Occasionally, however, they have ventured into matters of diplomacy and defence, thereby causing some embarrassment to the Commonwealth government. In recent years most of these actions have originated in Queensland, Australia's 'Deep North', which was governed by the idiosyncratic conservative populist administration of Sir Joh Bjelke-Petersen from 1968 to 1987. Bjelke-Petersen delighted in Canberra-baiting, particularly when the federal government was under Labor Party control. His outspoken comments on Australia's international

affairs appear to have been undertaken primarily for domestic political purposes rather than with the intention of promoting any particular state interest or with the hope of achieving anything of substance in foreign policy.

Bjelke-Petersen, at various times, praised the South African government, announced his intention to curtail the importation of New Zealand chocolates in retaliation for the Lange government's ban on nuclear warships, criticized the Hawke Labor government's handling of the Australian economy through a press release issued in Tokyo, and conducted his own form of resources diplomacy when he threatened to refuse coal leases to Japanese companies unless Japan increased its imports of Queensland beef. The latter move cast a shadow over the lengthy negotiations that the Commonwealth had undertaken with Japan to establish a treaty of friendship and co-operation. The Queensland government also obstructed the negotiation of the Torres Strait Treaty with Papua New Guinea, thereby straining relations with that country in the period leading up to its independence.[58]

On occasions, pronouncements by some of the other states have also conflicted with Commonwealth policy. In 1982 the Victorian Labor government announced its intention to ban nuclear warships from entering the states' ports, a move that drew sharp criticism from the United States and was repudiated by both the Fraser Commonwealth government and its Labor Party successor. During the Whitlam period, the Liberal state administration in New South Wales refused to co-operate with the Commonwealth's efforts to close the Rhodesian Information Office in Sydney. Domestic policies pursued by the states have also caused international embarrassment to the Commonwealth, particularly the treatment of aborigines, which regularly features in the US State Department's annual reports on human rights.

In general, however, the inconvenience caused to the Commonwealth government by state intervention in matters of diplomacy and defence has been relatively inconsequential. The major exception was the ability of the Queensland government to block the conclusion of the Torres Strait Treaty. Elsewhere, the sometimes embarrassing pronouncements of state leaders have probably had no more effect than those made by outspoken critics of governments' foreign policy elsewhere, for example, Jesse Helms in the United States, and Enoch Powell in Britain. To believe the contrary is to assume that foreign governments do not have the wit to distin-

guish between the comment of state premiers and the official policy of the Commonwealth government.

Other State Paradiplomatic Activities

Like their counterparts in other federal political systems, Australian state premiers frequently travel to represent their state overseas. They certainly regard this as essential to the maintenance of the international profile of their states and to the establishment of relations with leading political figures in overseas markets. The public, however, has become increasingly cynical about the frequent travel of some state premiers and their ministers. How effective or necessary these visits are is difficult to judge, in that it is often not possible to discern what the situation would have been in their absence. Overseas visits are often the time when sales agreements are announced (or re-announced) and contracts signed; for example, the supply of Queensland coal to a thermal power station in Turkey was agreed to at talks between Turkish Prime Minister Ozal and Sir Joh Bjelke-Petersen in January 1987. The Queensland Premier justified this visit by stating that 'there are 52 million people in Turkey, and they know and trust me.'[59]

In the 1980s some states, especially those under the control of Labor governments, began to follow their Canadian counterparts in pursuing new forms of entrepreneurial activity that had the potential to conflict with Commonwealth policy. Most notably, the Burke Labor government established a Western Australian Development Corporation, whose objectives included fostering an increase in local equity holdings in resource developments, and an EXIM corporation, a trading company whose objective was the promotion of Western Australian exports.[60] 'Western Australia Incorporated', as some of its critics labelled it, fell into disrepute following financial scandals in 1988 involving transactions of dubious propriety with the failed Rothwells Merchant Bank. In similar manner, the Victorian Economic Development Corporation collapsed, with considerable loss to the public purse.

THE STATES, THE RESOURCES BOOM, AND TRANSNATIONAL ACTORS

Australia's dependence on overseas investment and export markets has ensured that the relations of states with transnational actors

within their borders, rather than the activities of the states overseas, have been the principal source of disputes between the Commonwealth and the states. Commonwealth governments over the last two decades, particularly when the Labor Party held office, have attempted to conduct a coherent countrywide policy of international resource diplomacy. In particular, the objective has been to ensure that Australia receives an equitable price for its minerals exports. The Commonwealth, often displaying doubts over the negotiating expertise of the states, has expressed concern that the direct contact between state governments and foreign resource developers may serve to undermine this policy.

The conflict has centred on how the exploitation of the country's resources might best be carried out and who should gain. Until the late 1960s all levels of government held a 'developmental' orientation: in the rush to exploit the country's mineral wealth, little concern was given to the nature of the bargain being struck with foreign partners. As noted in the introduction to this chapter, apprehension over the possible negative consequences of foreign ownership began to emerge in Canberra in the mid-1960s. In the minerals field, the Commonwealth became increasingly concerned that the states' enthusiasm for rapid development would not produce the optimum arrangements from the perspective of Australia as a whole.

A frequently expressed apprehension was that the Japanese private sector, as a relatively unified sector in investment and purchasing, would be able to exploit the divisions between Commonwealth and states, and between the states themselves, to gain foreign-investment concessions and avoid taxation of mineral rents. By minimizing the taxation of resource rents, it was alleged, certain companies (in some of which a shareholding was held by the Japanese purchasers of the minerals) could offer a lower price to overseas buyers, thereby undercutting the prices enjoyed by all Australian suppliers. Japanese companies, furthermore, were suspected of deliberately creating over-capacity in minerals production, thereby generating over-supply, lower prices, and thus (given the aggregate importance of minerals earnings in exports) a deterioration in Australia's terms of trade.

States, particularly those at the 'periphery' of the Federation, had less concern about the role of foreign capital. As Bolton commented on Western Australia: 'In a relatively under-developed community

with a fear of remaining undeveloped for all time it was constantly tempting to seek outside capital from any quarter and to offer generous initial terms so that investors might be tempted to stay.'[61] Transnational companies alone were perceived to possess the necessary finance, technology, and trading links to ensure rapid development of resource projects. Controls over foreign direct investment thus could only serve to slow development. Great faith was expressed in the multiplier effects of minerals exploitation: any attempt to tax resource rents was perceived as a potential deterrent to investment and thereby a threat to the creation of employment opportunities. Little attention was paid to the social costs of minerals development; the needs of development simply had priority over all other interests.[62]

As a consequence, state preoccupation with development potentially conflicted not only with the Commonwealth's desire to maximize the national benefits from resource exploitation, but also with other domestic and foreign-policy objectives. The push to develop uranium-mining, for example, clashed with the anti-nuclear sentiments of Commonwealth Labor governments. State neglect of aboriginal land rights caused embarrassment for the Commonwealth in the international arena, for example, when the Western Australian government enforced and partly financed drilling on contested land at Noonkanbah. Similarly, the Commonwealth was embarrassed in international forums by the lack of concern of some states over the environmental consequences of resource exploitation—Queensland even, at one stage, contemplated drilling for oil on the Great Barrier Reef.

Until the last quarter of the nineteenth century the colonies followed the British common-law practice of regarding minerals as part of the land in which they naturally occur and thus subject to control by the respective landowners. Subsequently, however, they reserved all minerals from Crown grants of land (and over the last two decades in some cases have expropriated the minerals held privately by virtue of earlier land grants).[63] The Constitution left minerals ownership in the hands of the states; this enables them to determine the terms under which minerals exploration and exploitation take place. In addition, Section 91 of the Constitution provides a justification for state subsidization of minerals exports: it qualifies the exclusive power of the Commonwealth to grant bounties on the production or export of goods by permitting the

states unilaterally to grant bounties for the mining of metal (but not coal).

The desire of the states to maximize their rate of economic growth, coupled with the perception that they compete not only with overseas countries but sometimes also with each other for foreign investment and markets, led, many observers believe, to a failure to tax effectively the economic rents arising from minerals development. Writing in the mid-1970s, for instance, Stevenson noted that the minerals royalties levied by most Australian states 'until recently were so low as to be merely token payments'.[64] Before 1970 none of the states collected royalties that amounted to even 5 per cent of the value of minerals output.

Although the states' performance in taxing minerals rents was poor prior to the mid-1970s, it has improved since then. Some idea of the potential revenue lost can be gauged from the ability of the Queensland government in 1974 to increase most minerals royalties tenfold.[65] Where states have attempted to tax rents, they have often done so in an indirect manner (e.g. through excess rail freight charges) to avoid having their share of Commonwealth grants reduced.[66] States have also preferred flat-rate charges to those that vary with economic conditions to ensure that royalty receipts make a relatively stable contribution to government revenues. The obvious weakness of this method is that it may undertax in times of high profitability, while threatening the continued workings of minerals deposits at times of low prices and profitability. Some states, particularly Queensland and New South Wales, do appear, however, to have progressed along a learning curve in the taxation of mineral rents. Having attracted mining investment, these state governments have been able to drive harder bargains with companies that have large sums invested in immovable assets.

Another area in which competition between the states was widely perceived to have led to economic inefficiency was their efforts, during the second abortive resources boom in the late 1970s, to attract overseas finance for the construction of aluminium smelters. As one commentator noted, the states have offered such 'ludicrously attractive' terms to encourage investments that the projects may lead to net costs rather than benefits for state finances. States have charged electricity tariffs for smelters that have ranged from one-third to one-half of the rates paid by domestic consumers.[67] Various studies have suggested that the smelters are enjoying

enormous subsidies: a Victorian Treasury report estimated that subsidized installation charges for the transmission lines for the Alcoa smelter alone would cost $15–20 million per year; others have suggested that it receives an annual subsidy of $34–150 million, depending on the discount rate employed. Similar estimates have been put forward by other studies for the smelters in New South Wales and Tasmania.[68] To meet the anticipated power needs of the smelters, state electricity authorities embarked on massive expansion plans, necessitating significant increases in their borrowing programmes. These have contributed to problems in another area in which state promotion of development has clashed with Commonwealth priorities: the country's increasing debt burden.

Over the years, the states have consistently sought means of circumventing the limits placed on their borrowing by the Loan Council and the 1936 'Gentlemen's Agreement', and have pressured the Commonwealth to relax controls in order that they might be able to finance their development needs. States have exploited various loopholes to avoid Loan Council control, such as the exemptions made for 'smaller' authorities and borrowing for infrastructure provision. They have also utilized other methods of financing to circumvent Commonwealth regulation. Among the most popular have been suppliers' credits (usually provided only by foreign companies: their use therefore inevitably undermines the competitiveness of local industry), and leveraged leasing arrangements—under which private companies have shared the benefits accruing to the tax-exempt public authorities at the expense of revenue for the Commonwealth.

From 1980/1 to 1983/4 borrowings outside Loan Council approval increased from 10 per cent to 63 per cent of the total. Many of these activities contributed to the rapid increases in Australia's overseas debt. Non-conventional overseas borrowings by the states and their authorities rose from $97.3 million in 1978/9 to $912 million in 1982/3; total state overseas borrowings rose from $240 million in 1978/9 to $1,960 million in 1984/5. Not only was there an absolute increase, but the proportion of all state borrowings undertaken overseas rose from 13 per cent to 24 per cent in the same period. By the latter years, state authorities had accumulated over $9.5 billion in overseas debts.[69]

This has been an area, however, in which the Commonwealth

has the power to act decisively, a reflection of its effective control over the Loan Council. In 1985 it decided that the 'Gentlemen's Agreement' would be terminated and a 'Global Approach' adopted; this places an overall ceiling on all conventional and non-conventional borrowings by the states and their instrumentalities, of which a specified percentage (22 per cent in 1985) could be borrowed overseas. For the time being, at least, Commonwealth concern over the size of both the public-sector borrowing requirement and the country's overseas debt has held sway over the states' pressure for development finance.

In other domains the Commonwealth has also attempted to use the powers available to it to construct a unified policy towards foreign investment and minerals exploitation, not always with success. One of the most powerful instruments it has available is its exclusive control over exports. This was used from 1938 to 1960 to ban the export of iron ore (in order to conserve for local manufacturing what were then believed to be limited domestic deposits). In 1973 the Whitlam government began to use its export licensing power to attempt to ensure that contracts for minerals exports were written at acceptable price levels. This practice continued under the Fraser Coalition government: in 1978 new guidelines were issued for steaming-coal contracts which limited fixed-price contracts to a twelve-month period and asserted that longer-term arrangements were expected to include price-review mechanisms. In 1980 the Commonwealth Department of Trade and Resources asserted that, while exporting companies would normally be responsible for negotiating prices, the government would intervene where such action was necessary in the national interest.[70]

The Commonwealth has also used its export-licensing power to prevent developments perceived as conflicting with other domestic and foreign-policy goals. By granting export licences to only three uranium mines, the Hawke government in effect precluded the development of uranium-mining in Queensland and Western Australia.[71] Other projects have been denied export licences on the grounds that they will have a negative impact on the environment. The best-known case involved sand-mining on Fraser Island, off the Queensland coast, the world's largest sand island. After a US–Australian consortium was granted a lease by the Queensland government and operations began, the Commonwealth government denied the project an export licence, thereby rendering it unprofit-

able to continue operations. The consortium subsequently sued the Commonwealth government; a sizeable out-of-court settlement was eventually reached.[72] This episode again demonstrates the incoherence in policy-making and consequent costs that arise from the divided jurisdiction over minerals development.

An attempt to force states to increase their taxation of resource rents has been made through the Commonwealth Grants Commission. This independent statutory authority, established in 1933, is charged with advising the government on applications for special financial assistance by the states. In 1981 the Grants Commission adopted a new revenue-sharing formula which emphasized for the first time the capacity of a state to raise revenues, even if these were not actually collected. As a consequence, the Western Australian share of grants was cut by approximately $160 million. The new policy was perceived as having forced both the Western Australian government and that in Queensland to increase their royalty charges on minerals.[73] The Commonwealth government has also moved to tax some minerals rents directly through, for example, the imposition of excises on coking coal and petroleum exports.

In other areas, the Commonwealth government has found that its attempts to co-ordinate policy towards transnational actors, and to play an increased role itself in minerals exploitation, have been frustrated by the states. The attempt by the Whitlam government to create a Petroleum and Minerals Authority through which the Commonwealth would acquire a stake in the equity of minerals ventures was blocked by the Senate.[74] The states can also block in the Loan Council any Commonwealth attempt to raise money to acquire shares in mineral ventures. Their ownership of minerals enables them to refuse exploration and production titles to Commonwealth bodies. Other powers can also be mobilized to prevent the Commonwealth from playing a direct role in minerals production; for example, at one stage the New South Wales government threatened to refuse to link a proposed Commonwealth-owned coal loader to the state rail system.

Section 92 of the Constitution for many years proved to be a major barrier to Commonwealth attempts to co-ordinate the export of Australian products. This controversial article, 'which in reality expresses a political slogan rather than a legal precept',[75] provides that 'trade, commerce and intercourse among the States ... shall be absolutely free'. The importance of this provision,

which *inter alia* was used to strike down Commonwealth nationalization of the banking system, was significant in that it prevented the Commonwealth from controlling the marketing of products, unless concurrent state legislation supported that passed by the Commonwealth Parliament. In May 1988, however, after the Commonwealth and the states joined forces to request a review of Section 92, the High Court agreed unanimously on a narrow interpretation of this article, namely, that its intent was solely to prevent the introduction of protectionist barriers to interstate trade.[76]

The various powers relating to the production and export of minerals are distributed between the Commonwealth and the states in such a way that co-operation between the various levels of government is necessary if any coherent policy is to be implemented. Although the Whitlam Labor government won a famous constitutional victory when the High Court upheld the validity of the Seas and Submerged Lands Act of 1973, which established the Commonwealth control over offshore minerals, its successor found that it was more practical to negotiate a co-operative agreement for an offshore minerals regime with the states, since Commonwealth sovereignty over the territorial sea did not exclude state legislative power over some activities (e.g. fishing). The regime, taking advantage of Section 51 (xxxviii) of the Constitution, which permits the Commonwealth with the agreement of the states to exercise any power that could otherwise be exercised only by the UK Parliament, vested title in the seabed within territorial water in the states, and created eighteen offshore areas to be governed by newly created joint authorities comprised of the relevant federal and state ministers.[77]

Opposition from the states caused the Hawke Labor government to retreat from two proposals that would have had a major impact on the minerals regime. The first was a resource-rent tax, initially aimed at offshore petroleum production, which the Commonwealth hoped would introduce a uniform and more rational system of taxation of minerals rents. The government also abandoned its proposals for a uniform system of aboriginal land rights. The major reason was the opposition of the states, particularly the Labor government of Western Australia, to provisions that would have granted aboriginal groups a veto power over mining on their lands.

Only limited progress has thus been made in fashioning a more coherent minerals regime over the last fifteen years. The absence of

any uniform system of taxation, coupled with the states' ability to subsidize production through differential freight and power tariffs, provides the states with instruments to use in attempting to secure investment and markets, often competing with their neighbours in the process. A similar competition occurs in promoting manufacturing industry, the national market effectively being fragmented by various state preferential purchasing schemes.[78]

Former Prime Minister Gough Whitlam asserted that

> state governments of both political complexions have put parochial interests before national interests. The divisions between and shortsightedness of the states have led to an aggressive competition between the states to determine which can offer the greatest benefits to multi-national resource corporations.[79]

While some would perceive Whitlam's typically acerbic comments as extreme, there is little doubt that overseas investors and consumers have been able to exploit to their own advantage the competition between the states for investment and markets.

CONCLUSION

Despite its relative isolation, Australia has not remained immune from the forces that have given rise to the domestication of international politics over the last twenty years. Their particular impact on the Australian economy, especially through the resources boom, has often been perceived as strengthening centrifugal tendencies within the country. This trend has cast further doubt on the accuracy of the statement by Riker quoted at the beginning of this chapter. Yet it is easy to exaggerate the strength of centrifugal trends.[80] Although there are distinctive regional political cultures, Australia lacks the cultural pluralism of Canada. Separatism has not been a serious issue since the 1930s, when Western Australia threatened to secede from the Commonwealth. While some developments in the economic sphere have tended to strengthen the role of the states, the evolution of the Constitution through legislative action and judicial interpretation has had the opposite effect. Of greatest importance to the balance of Commonwealth–state powers were the judgments of the High Court in the *Koowarta* and *Franklin Dam* cases. Besides removing the need for the Commonwealth to seek federal clauses in international treaties, or, indeed, the co-operation of the states in introducing the necessary legislation

before ratification can take place, the judgments permit the Commonwealth to extend its legislative competence in almost any field by entering into international treaties.

The increased involvement of the states in transnational activities has contributed to the incoherence that Keohane and Nye perceive as one of the consequences of the growth of complex interdependence, and has made the making and execution of foreign policy more time-consuming and costly. The effects of transnationalism, however, like those of federalism itself,[81] have been characterized by some as trivial. Undoubtedly, many of the transnational activities of the states, such as their sister-state relations, are of little consequence in that they have a minor impact on the country's foreign relations and/or are supportive of Commonwealth policy (e.g. participation by the states in foreign-assistance programmes). Other state activities are more important in that they have produced outcomes in Australia's international relations that otherwise would not have occurred.

The costs and benefits to the states and to the country as a whole of the overseas offices of the states are impossible to assess with any accuracy; this applies even more to the frequent visits overseas of state premiers and other senior state officials which are widely regarded with scepticism by the Australian public. Certainly, Commonwealth departments and politicians, particularly Labor Party members, have perceived the states' overseas offices as a waste of resources and as having the potential to confuse foreign governments' perception of Australian policy.

The impact of Australia's federal system on foreign policy has been examined most thoroughly with respect to relations with Japan. The Myer Committee, which had been established as a result of dissatisfaction with the existing co-ordination of policy-making towards Japan, reported in 1977 that federalism had two interrelated effects on Australia's relations with Japan:

> First, it reinforces Japan's impression of Australia as a country lacking cohesion and broad consensus on national direction, particularly in basic policy areas such as foreign investment, mineral and energy resource development and industrial growth. Secondly, the Japanese are placed in a position of being able to derive advantage from playing one state off against another or the states against the Commonwealth.[82]

Besides the activities of the state offices overseas, another potential (and frequently overlooked) source of confusion in external

actors' perceptions of Australian attitudes on foreign-policy issues derives from the presence of foreign consulates in the state capitals. In the Japanese case, the four consulates (in Sydney, Melbourne, Brisbane, and Perth) are able to report directly to Tokyo rather than through the embassy in Canberra. Consequently, there is always the danger that the information being sent to Tokyo does not represent the views of the Commonwealth government. Similarly, many of the large Japanese trading companies maintain offices in the states but none has representation in the national capital.

This Japanese presence within Australia suggests that the fears expressed about Japanese confusion regarding the workings of the federal system in Australia are exaggerated. As the Japan Secretariat concluded:

> The trading companies with whom the Secretariat had conversations in Tokyo indicated that industrial action in Australia was a far more important problem for Japanese traders and investors than the complex nature of the federal system.
>
> The above would tend to bear out the view that it is not Japanese ignorance of Australia's federal system that confuses or damages Australia's trading interests with that country. On the contrary, many Japanese commercial and government interests have a good knowledge of the system, and the range of conflicts within the Federal system... could allow greater opportunities for that knowledge to be used to Japanese advantage.[83]

In that the major Japanese trading companies have their own offices and intelligence-gathering networks in Australia (and frequently participate in joint ventures with smaller companies), the role of state offices in Tokyo may be less important than their governments have claimed. Indeed, they may well produce as much trade diversion as trade creation. They thereby contribute to problems in the area where federalism arguably has its most serious impact on foreign relations: the inability of the Commonwealth government to fashion an effective national strategy for negotiating with foreign investors and purchasers of Australia's minerals exports. For trading partners that have less effective representation within Australia, state offices overseas might play a more important role in fostering commercial contacts. To date, however, only Victoria proposes to establish representation in China, which the Commonwealth government, at least, perceives as a significant future economic partner.

By the late 1980s states were winding down the instrumentalities

established to play a direct role in the promotion of local industry,[84] and also, in some cases, their overseas offices. Two factors have been at work here. The first is the policy of market deregulation that has been promoted by the Hawke Labor government since 1983 and which has opposed any action by the states that would erect further barriers to national market liberalization. The second is the adverse financial climate that the states have faced in recent years, in part because the Commonwealth has perceived its grants to the states as an easy target in its efforts to cut central government expenditure. The era of increasing state representation overseas appears to be over, at least until the Australian economy enters a more robust phase.

The Deputy Prime Minister of the Hawke Labor government, Lionel Bowen, asserted that 'the States which have offices in Tokyo . . . do us a disservice, as they compete with one another,' and suggested that they should be merged with Commonwealth foreign affairs and trade offices.[85] But, although recent High Court rulings (discussed earlier in this chapter) have suggested that the Commonwealth government would have the power to abolish states' overseas offices if it so wished, the potential political costs have to date dissuaded the Commonwealth from pursuing such action. There appears to have been an acceptance of the Myer Committee's comments that difficulties between the states and the Commonwealth 'cannot be resolved by reference to the Constitution or resort to law'. Rather, the Committee continued, a practical solution would have to be sought in co-operation fostered by close and continuing consultation between the various parties.[86] Despite this reluctant acceptance of the state presence overseas, consultation does not appear to have been given high priority by the Commonwealth's Department of Foreign Affairs and Trade: its 1986 review of Australia's overseas representation, which runs to several hundred pages, makes not a single reference to the states' overseas representation. Nor is need to liaise with the states identified in the lists of the responsibilities of the Commonwealth's overseas missions.

Pragmatic considerations—especially fear of adverse electoral consequences—can also be expected to determine the Commonwealth's utilization of the external-affairs power to legislate in areas in which it would otherwise lack competence. Use of the external-affairs power to erode the traditional balance between Commonwealth and state jurisdiction has potential political costs

for the party in power in Canberra. For not only can a backlash be expected in a future Commonwealth election, but the state branch of that party can also be expected to be adversely affected (the three major parties—Labor, Liberal, and National—dominate state as well as Commonwealth politics). Such was the reaction in Tasmania against the Commonwealth (Labor) government and the Labor Party in general following the *Franklin Dam* decision that the Hawke government has been very cautious in its pursuit of environmental issues elsewhere.

By abandoning its proposed resource-rent tax, and uniform land rights legislation for aboriginal groups, the Hawke government has demonstrated its unwillingness to confront the states on issues that would cost it votes. Labor control of four of the six state governments for most of the 1980s may account in part for this more co-operative approach. The present Commonwealth government has shown greater concern for the survival of Labor administration in state parliaments than did the Whitlam government, whose resources diplomacy was blamed for the defeat of the Tonkin Labor administration in the 1974 Western Australian election. Although the recent High Court decisions may appear to have fundamentally changed the balance of power between the Commonwealth and the states, use of the external-affairs power to override state governments will inevitably be subject to a pragmatic political calculus.

NOTES

1. I. D. Duchacek, 'The International Dimension of Subnational Self-Government', *Publius*, 14/4 (autumn 1984), 5–31.
2. Sir R. Menzies, *The Measures of the Years* (London, 1970), 94.
3. According to one authority, Australia 'appeared comparatively half-hearted' in its efforts to attain independent competence in foreign relations (H. B. Connell, 'International Agreements and the Australian Treaty Power', *Australian Yearbook of International Law 1968–1969* (Sydney, 1971), 86). Australia did not adopt the Statute of Westminster until 1942 (retrospectively to the outbreak of war with Germany in 1939). A separate Department of External Affairs was not created until 1935; Australia enjoyed no overseas diplomatic representation outside London until 1940.
4. S. Harris, 'Resources, Development and the International System', in B. Head (ed.), *The Politics of Development in Australia* (Sydney, 1986), 80.
5. Sir Z. Cowen, *Federal Jurisdiction in Australia* (Melbourne, 1959), 27, quoted in M. H. M. Kidwai, 'External Affairs Power and the Constitutions of British Dominions', *University of Queensland Law Journal*, 9/2 (Dec. 1976), 185.
6. 'The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends

to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.'

7. Other sources of Commonwealth legislative power on external affairs are Section 51 (i) trade and commerce with other countries; 51 (x) fisheries in Australian waters beyond territorial limits; 51 (xxx) relations with islands of the Pacific. Other Sections that do not expressly refer to external affairs but necessarily extend Commonwealth authority in these fields include 51 (iii) bounties on the export of goods; 51 (vi) defence; 51 (ix) quarantine; 51 (xix) naturalization and aliens; 51 (xx) foreign corporations; 51 (xxvii) immigration and emigration; and 51 (xxviii) influx of criminals (C. Howard, 'The External Affairs Power of the Commonwealth', *Melbourne University Law Journal*, 8 (June 1972), 194). The growth of Commonwealth powers, discussed later in this chapter, has come about primarily because the High Court has professed an inability to distinguish external from internal matters.
8. G. Sawer, 'Australian Constitutional Law in Relation to International Relations and International Law', in D. P. O'Connell (ed.), *International Law in Australia* (Sydney, 1965), 37.
9. In the 1880s Britain had developed the practice of not automatically applying commercial treaties to the colonies, but of allowing them to adhere independently to such arrangements. Between then and Federation, one or more of the Australian colonies adhered or acceded to eighteen commercial treaties negotiated between Britain and foreign countries, four of which are still in force today. D. P. O'Connell and J. Crawford, 'The Evolution of Australia's International Personality', in K. W. Ryan (ed.), *International Law in Australia* (2nd edn., Sydney, 1984), 1–34, at pp. 4–17.
10. Cd. 1587 (1903) p. 14. In the 1900 debate leading to the passage of the Australia Constitution Bill, Chamberlain had previously asserted that 'everything which has to do with the exterior relations of the six colonies concerned will be a matter for the Commonwealth and not for the individual Governments' (G. Greenwood and C. Grimshaw (eds.), *Documents on Australian International Affairs* (Melbourne, 1977) p. 6).
11. For discussion, see L. Zines, 'The Growth of Australian Nationhood and its Effect on the Powers of the Commonwealth', in Zines (ed.), *Commentaries on the Australian Constitution* (Sydney, 1977), 16–20.
12. Ibid. 37.
13. *New South Wales* v. *Commonwealth* (1975) 8 *A.L.R.* 1, 9, quoted in H. Burmester, 'The Australian States and Participation in the Foreign Policy Process', *Federal Law Review*, 9 (June 1978), 262.
14. Quoted in O'Connell and Crawford, 'The Evolution of Australia's International Personality', p. 32.
15. *R.* v. *Burgess: ex parte Henry* (1936) 55 C.L.R. 808, 845.
16. *New South Wales* v. *Commonwealth* (1975) 8 A.L.P. 1, 16.
17. Ibid. 119, quoted in Burmester, 'The Australian States', p. 262.
18. Queensland, *First Report of the Treaties Commission*, annexed to *Proceedings of the Australian Constitutional Convention*, ii. *Standing Committee Reports* (Brisbane, 29 July–1 Aug. 1986), 218.
19. In, e.g., the debate on the Report of the International Law Commission in the UN General Assembly in 1974 (ibid. 272).
20. J. Quick and R. R. Garran, *The Annotated Constitution of the Australian Commonwealth* (Sydney, 1901), 631–7.
21. H. W. Stokes, *The Foreign Relations of the Federal State* (Baltimore, 1931), 121.
22. Quoted in P. H. Lane, 'The Federal Parliament's External Affairs Power: The

Tasmanian Dam Case', Appendix E to *Proceedings of the Australian Constitutional Convention*, p. 62.

23. C. J. Latham, *R.* v. *Burgess: ex parte Henry* (1936) 55 C.L.R. 608, 641. Among the constitutional prohibitions referred to by the Court were the prohibition of the establishment of religion, the right to trial by jury, and the 'absolute freedom' of trade within the Commonwealth.
24. C. J. Latham, ibid. 640: quote from Justice Dixon in ibid. 669.
25. For the former Prime Minister's views on this matter, see Sir R. Menzies, *Central Power in the Australian Commonwealth* (London, 1967).
26. *Commonwealth* v. *Tasmania* (1983) 57 Aust. L.J.R. 450, 476, quoted in A. Byrnes and H. Charlesworth, 'Federalism and the International Legal Order: Recent Developments in Australia', *American Journal of International Law*, 79/3 (July 1985), 635 n. 66. For further discussion of the implications of the cases, see G. Sawer, 'The External Affairs Power', *Federal Law Review*, 14 (1983/4), 199–207, and M. Crommelin, 'Comment on the External Affairs Power', ibid. 208–18.
27. J. Deane, in *Commonwealth* v. *Tasmania*, p. 544.
28. *Roche* v. *Kronheimer* (1921) 29 C.L.R. 339, quoted in Connell, 'International Agreements and the Australian Treaty Power', p. 90.
29. C. J. Gibbs, in *Commonwealth* v. *Tasmania*, pp. 668–9.
30. C. J. Latham, *Bank of N.S.W.* v. *Commonwealth* (1948), quoted by Chief Justice Gibbs in *Koowarta* v. *Bjelke-Petersen*, *Australian Law Review*, 39 (1981), p. 438.
31. J. Mason, in *Commonwealth* v. *Tasmania*, p. 703.
32. J. Murphy, in ibid. p. 473: quoted from Justice Mason from *Koowarta* v. *Bjelke-Petersen*, p. 463.
33. N. D. Campbell, 'Australian Treaty Practice and Procedure', in Ryan (ed.), *International Law in Australia*, p. 58 n. 31.
34. Howard, 'The External Affairs Power of the Commonwealth', p. 204 n. 33.
35. H. Burmester, 'Federal Clauses: An Australian Perspective', *International and Comparative Law Quarterly*, 34/3 (July 1985), 536.
36. G. Triggs, 'Australian reservations and declarations with respect to the International Covenant on Civil and Political Rights', *Australian Law Journal*, 55/9 (Sept. 1981), 700; see also Triggs, 'Australia's Ratification of the International Covenant on Civil and Political Rights: Endorsement or Repudiation?', *International and Comparative Law Quarterly*, 31/2 (Apr. 1982), 278–306. All except three of the reservations and declarations were withdrawn by the Hawke government in 1984.
37. Burmester, 'Federal Clauses', pp. 530, 534.
38. A majority of judges in the *Franklin Dam* case asserted that federal clauses based on the principle that legislative competence on certain issues was reserved for component units of a federated system were not apposite to the Australian Constitution.
39. J. Warhurst, *Central Agencies, Intergovernmental Managers, and Australian Federal–State Relations* (Centre for Research on Federal Financial Relations, Australian National University, Occasional Paper No. 29; Canberra, 1983), 10. The Northern Territory established an office in Canberra following the granting of self-governing status in 1978. Although initially staffed by a senior civil servant, it was subsequently managed by a private lobbying firm (ibid. 13).
40. On the evolution of the Premiers' Conference, see G. C. Sharman, *The Premiers' Conference: An Essay in Federal State Interaction* (Department of Political Science, Research School of Social Sciences, Australian National University, Occasional Paper No. 13; Canberra, 1977). Publication of the proceedings of

the Premiers' Conferences was, unfortunately, terminated in 1974.

41. B. Hocking, 'Pluralism and Foreign Policy: The States and the Management of Australia's External Relations', *Yearbook of World Affairs* (London, 1984), 146.
42. Ibid. 151. An official view of the co-ordination of foreign policy between Commonwealth and state governments is presented by P. Bassett, 'The Australian Federal System and Foreign Policy', *Australian Foreign Affairs Record*, 55/4 (Apr. 1984), 322–4.
43. See, for example, G. C. Sharman, 'The Australian States and External Affairs: An Exploratory Note', *Australian Outlook*, 27/3 (Dec. 1973), 309 n. 9. Sharman's article was the pioneering examination of the transnational activities of Australian states.
44. 'Principles and Procedures for Commonwealth–State Consultation on Treaties – Adopted at Premiers' Conference June 1982', para. B (ii), appended to *Proceedings of the Australian Constitutional Convention*, p. 256.
45. 'Responses of State Governments – Queensland', Appendix N to ibid. 241.
46. 'Responses of State Governments – Tasmania', ibid. 251.
47. 'Letter from Prime Minister to Premiers', ibid. 257.
48. Ibid. The following examples of a federal statement were appended to the Prime Minister's letter;

    > Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Commonwealth and the constituent States.
    >
    > The implementation of the treaty throughout Australia will be effected by the Commonwealth, State and Territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise.

49. From the time of its first settlement in the 1830s, South Australia was administratively independent of New South Wales. Tasmania, Western Australia, Victoria, and Queensland were initially administered by New South Wales; separation occurred in 1825, 1829, 1842, and 1859 respectively. Unlike the other colonies, Western Australia did not achieve responsible government until 1890.
50. Sharman, 'The Australian States and External Affairs', p. 310.
51. Quick and Garran, *The Annotated Constitution*, p. 633. They recalled that Sir Archibald Mickie, one time agent-general for Victoria, 'was mortified to find that some people in England were under the impression that an Agent-General was the head of a general commercial agency of a most enlarged description. On one occasion, it is said, he ordered the words "Agent-General" to be inscribed in gold letters on his office blinds. The painter substituted the words "General Agent" believing that that was the correct and intended phrase' (ibid.).
52. The incomplete 'patriation' of the Australian constitution was utilized at times to frustrate the centralizing ambitions of Commonwealth politicians, particularly during the Whitlam period. Whitlam complained that 'Under the present system Britain can be brought into Australian controversies whenever state governments believe that they can use their colonial status to frustrate their own national government'. His government's legislation to abolish appeals from state courts to the Privy Council was blocked in the Senate; if enacted, it may well have been invalidated by the Courts (E. G. Whitlam, 'The Cost of Federalism', in A. Patience and J. Scott (eds.), *Australian Federalism: Future Tense* (Melbourne, 1983), 46).

    This particular form of transgovernmental action to frustrate the Commonwealth government is no longer available to the states. Under the Australian Act

1986, the links between the states and the UK were ended. The High Court of Australia was made the final court of appeal for Australian courts on all matters; the Colonial Laws Validity Act and the power of the UK Parliament to enact legislation for Australian states were abolished. Agreement on a joint approach to the UK to remove the constitutional consequences of the states' not being party to the Statute of Westminster was reached at the 1982 Premiers' Conference (during the Fraser Administration). In a decision in December 1986, the High Court declared that all Australian courts should no longer regard decisions of the House of Lords or the English Court of Appeal as in any way binding on them.

53. New South Wales Premier's Department, *Annual Report* (1980), 15.
54. Japan Secretariat, 'The Commonwealth–State Relationship: Its Relevance to Australia's Relations with Japan' (Research Paper CCR J/25/81, Oct. 1981), 20.
55. Hocking, 'Pluralism and Foreign Policy', p. 137.
56. Data on the overseas development assistance of Australian states is collected for submission to the OECD's Development Assistance Committee by the Australian Development Assistance Bureau. Data for the 1985/6 financial year show a total of A$5,156,328 in aid from the states. Of this New South Wales provided $4,086,480; Queensland $365,650; South Australia $273,147; Tasmania $208,000; Victoria $158,500; and Western Australia $64,551. These data are clearly incomplete, however, reflecting the failure of the states to keep any central register of their overseas aid activities. Data for Victoria, for instance, are only for the state's contributions to charitable appeals; those from Western Australia refer only to medical training; those from New South Wales and Tasmania reflect educational contributions only; while the figure for Queensland is comprised exclusively of primary industry training provided to a diverse group of countries including Nigeria, Zimbabwe, Mexico, Brazil, Kuwait, and Bangladesh. It would clearly appear to be in the interests of the states to establish a more effective system for record-keeping of their aid contributions. (Data supplied in personal communication from Mr W. Zmudzki, Director of the Statistical Analysis and Reporting Section of the Australian Development Assistance Bureau.)
57. I. A. Shearer, 'Supplementary Memorandum', 'Actes du Colloque Les États fédéraux dans les relations internationales', *Revue belge de droit international*, 1 (1983), 38.
58. The Treaty was intended, *inter alia*, to establish maritime boundaries and settle the issue of sovereignty over certain islands in the Torres Strait. In response to fears of growing French and German influence in the region, the Colony of Queensland extended its boundaries in the 1870s to islands within a few hundred metres of the Papua New Guinea mainland. Under Section 123 of the Commonwealth Constitution the boundaries of a state cannot be altered without the approval of its parliament and electors. Queensland thus had the constitutional power to block the negotiations. For details of the Treaty, eventually signed in December 1978, see H. Burmester, 'The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement', *American Journal of International Law*, 76/2 (Apr. 1982), 321–49; K. W. Ryan and M. W. D. White, 'The Torres Strait Treaty', *Australian Year Book of International Law*, 7 (1981), 87–113; and H. Collins, 'Federalism and Australia's External Relations', *Australian Outlook*, 39/2 (Aug. 1985), 123–6.
59. Quoted in *The Australian*, 26 Jan. 1987.
60. E. J. Harman, 'Government and Business in Western Australia, 1983–5: Legal and Political Aspects of the New Hybrid Enterprises', *Australian Journal of Public Administration*, 45/3 (1986), 247–62. See also B. Head, 'Western

Australia: The Pursuit of Growth', in Head (ed.), *The Politics of Development in Australia*, pp. 180–1.

61. G. C. Bolton, 'From Cinderella to Charles Court: The Making of a State of Excitement', in E. J. Harman and B. W. Heads (eds.), *State, Capital and Resources in the North and West of Australia* (Nedlands, 1981), 27.
62. E. J. Harman, 'Ideology and Mineral Development in Western Australia 1960–80', in ibid. 167.
63. M. Crommelin, 'The Mineral Exploration and Production Regime within the Federal System', in P. Drysdale and H. Shibata (eds.), *Federalism and Resource Development* (Sydney, 1985), 90.
64. G. Stevenson, *Mineral Resources and Australian Federalism* (Centre for Research on Federal Financial Relations, Australian National University, Research Monograph No. 17; Canberra, 1977), 18.
65. S. Harris, 'State and Federal Objectives and Policies for the Use and Development of Resources', in Drysdale and Shibata (eds.), *Federalism and Resource Development*, pp. 80–1.
66. A series of High Court decisions has given the Commonwealth exclusive control over income, sales, and company taxes; the Constitution allowed it only to impose customs and excise duties. There is, consequently, an enormous imbalance in Australia between the considerable expenditure responsibilities of the states (most physical and social infrastructure) and their very limited money-raising powers. State revenues (primarily payroll taxes, stamp duties, motor vehicle registration fees, property, liquor and gambling taxes) account for between one-third and one-half of their expenditure. Under the 1927 Financial Agreement, and the 1936 'Gentlemen's Agreement', the Loan Council determines the size and terms of the public-sector borrowing programme. States are thereby limited in the loans they may raise and must rely to a considerable extent on general and specific purpose grants from the Commonwealth. Any significant increase in state revenue from taxation would threaten its share in these grants: from the states' perspective it is rational to disguise minerals taxation through such devices as high freight and port charges, and allow the relevant state bodies to utilize this revenue to subsidize services elsewhere. This also allows states to circumvent Commonwealth restrictions on the raising of funds for infrastructure projects.

    Queensland has enjoyed the most success in utilizing freight charges as a means of capturing minerals rents. Galligan estimated that by the mid-1980s Queensland was collecting upwards of $300 million 'profits' on coal freight charges (B. Galligan, 'Queensland Railways and Export Coal', *Australian Journal of Public Administration*, 46 (1987), 77–101). For details of state and Commonwealth fiscal arrangements and taxing of minerals, see R. Mathews, 'Federal–State Fiscal Arrangements in Australia', K. Willett, 'Mining Taxation Issues in the Australian Federal System', and F. Perkins, 'Financing and Charging for Infrastructure', in Drysdale and Shibata (eds.), *Federalism and Resource Development*, chs. 3, 6, and 9, respectively; and B. Galligan, A. Kellow, and C. O'Faircheallaigh, 'Minerals and Energy Policy', in Galligan (ed.), *Comparative State Policies* (Melbourne, 1988), 218–48.
67. P. D. Groenewegen, 'The Fiscal Crisis of Australian Federalism', in Patience and Head (eds.), *Australian Federalism*, pp. 145, 209–10 n. 25.
68. Perkins, 'Financing and Charging for Infrastructure', p. 172. See also B. Galligan, 'Federalism and Resource Development in Australia and Canada', *Australian Quarterly* 54/3 (spring 1982), 240; and Galligan, 'Victoria: The Political Economy of a Liberal State', in Head (ed.), *The Politics of Development in Australia*, pp. 127–9. Following a loss of interest by the major developer,

Alcoa, after the world price of aluminium fell in the early 1980s, the Victorian government was forced to take a 35% share in the Portland project to ensure its completion, and committed itself to electricity subsidies if the world price of aluminium fell below a specified level. This, it has been estimated, will cost the Victorian government an additional $200 million between 1986 and 1989. (*Australian Financial Review* (9 September 1986)).

69. Calculated from data in *1985–86 Budget Paper No. 7* (Canberra, 1985), Table 111, p. 162.
70. 'The Australian Government has found that there is a need for this reserve power, particularly when situations of domestic and international overcapacity exist; and when Australian producers are in the position of dealing with single or co-ordinated monopoly buying techniques which distort normal markets and depress the prices received for Australia's resources' (quoted in M. R. Davison, 'Conflicts in Commonwealth–State Controls – Export Controls in the Mining Industry – An Update of Developments Since January 1 1979', *Australian Mining and Petroleum Law Journal*, 2/1 (1980), 107).
71. This reflected a compromise reached between the left wing of the Labor party which wanted a total ban on exports, and the party leadership (B. Head, 'Economic Development in State and Federal Politics', in Head (ed.), *The Politics of Development in Australia*, p. 43.
72. For details see P. J. O'Keefe, 'Australia and International Commercial Law', in Ryan (ed.), *International Law in Australia*, pp. 343–4.
73. E. J. Harman and B. W. Head, 'Introduction: State, Capital and Resources', in Harman and Head (eds.), *State, Capital and Resources*, pp. 15–16.
74. Although the Senate was intended to be a states' house, with equal representation for the six states, many commentators argue that it has never effectively functioned as such, since those elected are usually members of the major national parties and subject to party discipline. The more centralist-inclined Labor party has seldom held a majority in the Senate. While action in the upper house to block interventionist legislation by Labor governments may be perceived to be safeguarding states' rights, it may well have its origin in party political disputes in which the position held by the Coalition parties coincides with that of the states.
75. R. D. Lumb and K. W. Ryan, *The Constitution of the Commonwealth of Australia Annotated* (2nd edn.; Sydney, 1977), 304.
76. One consequence of the Court's decision is to allow the Commonwealth to make use of Section 51 (i) of the Constitution, which empowers it to make laws with respect to trade and commerce among the states. Little use had been made of this provision previously because of the apparent conflict with the free trade provisions of Section 92.
77. For details see R. D. Lumb, 'Australian Coastal Jurisdiction', in Ryan (ed.), *International Law in Australia*, pp. 370–87; and Crommelin, 'The Mineral Exploration and Production Regime', pp. 98–104.
78. See J. Warhurst, 'Industry Assistance Issues: State and Federal Governments', in Head (ed.), *The Politics of Development in Australia*, pp. 56–71.
79. Whitlam, 'The Cost of Federalism', p. 47.
80. B. W. Head, 'Australian Resource Development and the National Fragmentation Thesis', *Australian and New Zealand Journal of Sociology*, 20/3 (Nov. 1984), 306–31.
81. W. H. Riker, 'The Triviality of Federalism', *Politics*, 5/2 (Nov. 1970), 239–44.
82. Report of the Ad Hoc Working Committee on Australia–Japan Relations, *Australia–Japan Relations* (Canberra, 1978), 110.
83. 'The Commonwealth–State Relationship', p. 22.

84. State governments retain, however, numerous instruments for promoting local industry. See J. Warhurst, J. Stewart, and B. Head, 'The Promotion of Industry', in Galligan (ed.), *Comparative State Policies*, pp. 197–217.
85. Quoted in J. Warhurst and G. O'Loghlin, 'Federal–State Issues in External Economic Relations', in Drysdale and Shibata (eds.), *Federalism and Resource Development*, p. 198.
86. *Australia–Japan Relations*, p. 161.

5
Austria

ANTON PELINKA

The Republic of Austria, founded in 1918 and reproclaimed a sovereign state in 1945, is a federal state. It consists of nine *Länder* (provinces) which share the legislative and executive powers with the central government. When one compares the jurisdictional domains of the two levels of government as established by the Constitution of 1920 (which remains the legal foundation of the constitutional system in Austria), one observes a relatively high degree of centralization; that is, a significant preponderance of central, federal power *vis-à-vis* the provinces, in contrast to other federal systems in Western Europe, and, particularly, in the United States, Canada, and Australia.

HISTORICAL BACKGROUND

The dominant position of the political centre in Vienna, especially in the field of foreign policy, is an old tradition in the political history of Austria. While the imperial constitution of 1867 transferred many powers to the two then-established segments of the Habsburg Empire, Austria and Hungary, the conduct of international relations remained within the exclusive jurisdiction of the central authority—the 'dual monarchy' in Vienna. The then-existing Austrian provinces had no direct influence on the conduct of international relations. The ethnic fragmentation of the Austro-Hungarian Empire, however, resulted in the indirect influence of provincial politics on imperial foreign policy. For example, the behaviour of the diets in the provinces of Tyrol and Bosnia towards Italian and Serbian ethnic groups had an impact on the Empire's relations with Italy and Serbia respectively.

The Constitution of republican Austria, adopted by the Constitutional Assembly in 1920, followed the tradition of the foreign-policy monopoly exercised by imperial Vienna. Article 10 of the

Federal Constitution grants the authority to conduct international relations exclusively to the executive and legislative branches of the federal government. The legislative branch is bicameral, consisting of the Nationalrat (a national council) and the Bundesrat (a federal council). Each of the provinces has its own Landtag (legislative parliament), which enacts appropriate laws in its respective jurisdictional domain. In each, the executive branch is headed by a governor. On the national level, the executive power of the federal union is exercised by the federal President (a ceremonial head), the federal Chancellor (prime minister), and a Council of Ministers responsible to the Parliament, more or less according to the Westminster principle. The judiciary power is exercised solely by the central government, which nominates all judges, even those of the courts of lowest instance, choosing from among professionally trained judicial lawyers. Unlike in the United States, there are no provincial judicial systems.[1]

According to Austria's Federal Constitution, the powers that are not explicitly assigned to the federation belong to the provinces. The jurisdiction domain that is explicitly assigned to the federal centre is, however, very extensive; it endows the Austrian system with a clear centralist flavour, even though the provinces have their own history as political units, dating back long before the foundation of the federal republic. One exception among the present nine provinces is Burgenland, which up to 1921 was a province of the Hungarian segment of the Habsburg Empire. As for provinces in Austria proper (i.e. as it existed before the First World War), two changes which took place after the foundation of the federal republic should be noted: the provinces of Vorarlberg, bordering on the FRG, Switzerland and Liechtenstein, separated from the province of Tyrol; likewise Vienna separated from Lower Austria to become a city-province of its own.

The long history of the Austrian provinces as self-administering territorial communities — a primary reason for the federal structure of the Austrian Republic — has caused various challenges to the preponderance of power in Vienna. In the field of international relations, the provinces have recently questioned the foreign-policy monopoly as interpreted and exercised by the federal centre. In 1976 a common platform, adopted by the provinces, specified: 'In matters of their individual spheres of jurisdiction the provinces ought to have the possibility of signing treaties with neighbouring

countries with the approval of the Federal Government.'[2] This claim challenged a fundamental determinant of the conduct of foreign policy: the central government's treaty-making power, shared by the national executive and the Nationalrat (which is empowered to ratify treaties). The provincial challenge to the federal treaty-making monopoly, and thus to traditional international law, has, however, so far remained in vain.

Nevertheless, it should be noted that the Austrian provinces have in fact engaged in some trans-sovereign, paradiplomatic activity abroad. Without any explicit grant of authority from the Constitution, yet not violating any of its provisions, the provinces have appeared on the international scene as co-actors, especially on the following two levels:

1. The Austrian provinces have become part of the process supporting European transborder regionalisms. Regional working groups, consisting of various subnational units of neighbouring nation-states, have been joined by Austrian provinces.[3] More about these transborder frameworks will be said below.
2. The fate and interests of ethnic minorities in those Austrian provinces that are contiguous with Italy and Yugoslavia have catapulted provinces directly and indirectly on to the international scene. This is especially so in the case of the province of Tyrol, concerned with the German-speaking ethnic group in the neighbouring Italian region of South Tyrol. The province of Carinthia, as it deals with the interests of its Slovene-speaking minority in the south, necessarily affects Austria's relations with neighbouring Yugoslavia. The latter may consider itself entitled to promote and protect Slovene interests not only within Yogoslavia itself—Slovenia is one of the six People's Republics of federal Yugoslavia—but also across the Austrian border.

The tendency of Austrian provinces to engage in informal trans-sovereign activities reflects both history and contemporary internal problems. When in 1918, in the wake of the First World War (which found the Austro-Hungarian Empire on the side of the defeated powers), the Austrian political parties founded the republic, they initially tended to view the federation as a provisional solution. The basic goal of the Austrian Provisional National

Council was a democratically legitimated *Anschluss*; that is, incorporation into a democratic German republic.[4] Austria as an empire linked with the Habsburg dynasty had been destroyed by ethnonational conflict within, and ultimately by defeat in the First World War. The German-speaking remainder of the Empire was regarded by many Austrians as incapable of survival. The idea of an *Anschluss* with a democratic German republic thus reflected a lack of self-confidence among Austrians of the day.

In 1919 the Peace Treaty of Saint-Germain—a part of the victorious Allies' restructuring of Europe—put an end to the idea of an Austrian–German *Anschluss*. Nevertheless, spontaneous plebiscites were held in which three Austrian provinces, deeming Austria unviable, asked to be detached from it: the province of Vorarlberg wanted to join Switzerland, while the provinces of Tyrol and Salzburg asked for their incorporation into Germany. These plebiscites had no political effect.

Two decades later, in March 1938, all of Austria was forcibly annexed by Nazi Germany.[5] When the experience of annexation ended with the defeat of the Nazi Reich seven years later, all nine provinces favoured, on the basis of a broad consensus, a renewal of Austrian independence as a federal republic. The former secessionist tendencies of Vorarlberg, Tyrol, and Salzburg did not reappear after the Second World War. Yet, additional interprovincial disharmony arose as a result of long-term conservative or socialist (social-democratic) dominance of various provinces. While the provinces of Lower Austria, Upper Austria, Salzburg, Tyrol, Vorarlberg, and Styria traditionally have been dominated by the conservative Christian Democratic People's Party, Vienna, Carinthia, and (since 1964) Burgenland have voted the Austrian Socialist Party into power.

Party rivalries have had a specific effect on the international orientations of the various provinces: those dominated by the party which, on the national level, was in opposition have tended to play up their provincial distinctness and thereby distance themselves from the federal centre in the field of international relations as well. This tendency of the provinces to exploit the conflicts between the national government and its opposition has been in evidence only since 1966—the year when consociational rule by a Grand Coalition between the Christian Democrats and the Socialists ended, to be replaced by opposition-government interplay at the national centre.

The latter situation clearly encouraged various forms of provincial self-assertion. At the beginning of 1987 the Grand Coalition was re-established, terminating, for the time being, the opposition–government interplay between the People's Party and the Austrian Socialist Party.

In evaluating the different degrees of provincial transborder activity, geopolitical factors must also be weighed. Eastern Austrian provinces, contiguous with Yugoslavia, were inhibited in their transborder aspirations by the necessarily limited elbow room which their Yugoslav counterparts, Slovenia and Croatia, enjoyed under their country's one-party system up to 1990. On the other hand, western Austrian provinces, bordering on the FRG, federal Switzerland, Liechtenstein, and regionalized Italy, have much greater opportunity to develop their paradiplomatic relations. This is why informal trans-sovereign links are a predominantly western Austrian phenomenon.

SUBNATIONAL FOREIGN POLICY WITHIN EUROPEAN REGIONALISM

Frameworks for transborder co-operation represent an essential step in the development of European regionalism. A perceived need for co-operative approaches to issues relevant to the Alpine region has spawned three transborder working groups.[6] These are:

1. The Arbeitsgemeinschaft Alpenländer (Arge Alp), which consists of the Austrian provinces of Salzburg, Tyrol, and Vorarlberg; the Italian region of Lombardy and the autonomous provinces of Trentino and Bolzano–South Tyrol; the Swiss cantons of Graubünden (Grisons), St Gallen (Saint Gall), and Tiano (Tessin); and the Alpine Court of the German *Land* of Bavaria.
2. The Arbeitsgemeinschaft Alpen-Adria (Arge Alpen-Adria), composed of the Austrian provinces of Carinthia, Styria, Burgenland, Salzburg, and Upper Austria; the Yugoslav republics of Croatia and Slovenia; Hungarian districts Györ-Sopron, Vas, Somogy, and Falor; Italian regions Venetia and Friuli–Venezia–Giulia; as well as Trentino and Bolzano–South Tyrol.
3. The Arbeitsgemeinschaft Westalpen (Arge Westalpen), formed by Swiss cantons Valais (Wallis), Vaud (Waadt), Geneva

(Genf), and Grisons (Graubünden); Italian regions Liguria, Piedmont, and Aosta Valley; and French regions Provence–Alpes–Côte d'Azur and Rhône-Alpes.

The Arge Alp, one of the two working groups in which Austrian provinces participate directly, has turned out to be quite an active transborder institution. The Arge Alpen-Adria working group, on the other hand, has so far remained relatively less productive, due in part to the communist nature of the Yugoslavian and Hungarian political systems, but due also to the socio-political situation of the Slovene-speaking ethnic group living in Austrian Carinthia — a source of various tensions between Yugoslavia and Austria.[7] The recent dramatic changes in Hungary and Yugoslavia may stimulate the activity of the Arge Alpen-Adria.

The Arge Alp was founded in 1972 in Tyrol. From its membership one might deduce that its territory includes twenty million people, but in reality the planning area contains only four million people, since the major urban areas of Bavaria and Lombardy do not belong to the central (i.e. Alpine) region of the Arge Alp.[8] When the group was founded, its agenda was defined to include: regular meetings of subnational governmental representatives; elaboration of joint recommendations to the subnational governments and parliaments of the transborder region; and preparatory meetings of civil servants for the governmental representatives' meetings.[9] The Arge Alp has neither a bureaucracy nor a decision-making body of its own; its 'house-keeping' operations are being administered by the Tyrolian provincial government. A conference of provincial governors takes place once annually, its location alternating among the member-regions according to alphabetical order. The costs incidental to special commissions and other activities of the Arge Alp are shared according to a specific ratio of distribution; on the Austrian side, Tyrol contributes 14 per cent, Salzburg 11 per cent, and Vorarlberg 7 per cent of the total expenditure. The commissions set up by civil servants and experts concentrate on such concerns as traffic affairs, agriculture and rural planning, cultural affairs, health services and family policy, and economic issues of mutual interest.

The development and practice of Arge Alp are closely related to the political orientation of the participating regional members. Except for Lombardy, all member-regions have traditionally been dominated by conservative or Christian Democratic parties. Thus,

since its inception, the Arge Alp has represented a conservative regional counterbalance whenever the socialists or social-democrats have been in charge of central governments in Vienna and Bonn. The relatively homogeneous political orientation of the three Austrian member-provinces does much to explain the relative activity of Arge Alp versus the relative inactivity of Arge Alpen-Adria, in which Hungarian districts as well as Croatia and Slovenia—two Yugoslavian republics dominated for decades, until 1990, by their respective communist parties—are members. To this explanation, one should add the previously mentioned problems of the Slovene-speaking ethnic group in Austrian Carinthia, which will be analysed more fully later in this study.

The existence and performance of the Arge Alp have had important consequences, especially for the role of the Austrian central government abroad. Three of these may be identified. First, the regionalism of the Arge Alp displays a conservative orientation in contrast with the social-democratic underpinnings of Austrian centralism.

Second, the Arge Alp introduces into the country a Western European orientation, in spite of neutral Austria's formal non-participation in the process of European integration.[10] As a permanently neutral state, Austria is not yet a member of the EC. However, the participation of Austrian provinces in the Arge Alp together with the cantons of equally neutral Switzerland (also not a member of the EC) places both countries in a co-operative association with subnational units of Italy and the FRG—each a member of both NATO and the EC. Austria's active role in Arge Alp might therefore be interpreted as 'subliminal' participation (i.e. on a subnational level) in the integrative efforts of Western Europe.

Third, the Arge Alp serves the common interests of the Austrian Tyrol and the Italian South Tyrol. The frontier dividing the historical province of Tyrol (an issue which shall be addressed more fully later) has been opened for transborder co-operation in cultural and journalistic fields at least. To a large extent, the development of Arge Alp has been shaped by the 'axes' between Innsbruck in Austrian Tyrol and Bolzano in Italian South Tyrol. Thus Arge Alp has become another European example of multiple perforation of sovereign boundaries. (The fact that both Switzerland and Austria are simultaneously linked with the EC by a free-trade agreement provides yet another example.)

Informally, trans-sovereign regional contacts have also helped to

create an atmosphere of open discussion which seriously affects even those groups which were not initially committed to transborder regionalism. For example, the socialists and social democrats of the Alpine region have deemed it useful to unite in their Working Group of Democratic Socialists of the Alpine Region (*Arbeitsgemeinschaft demokratischer Sozialisten im Alpenraum*), acting as an indirect counterweight to the conservative domination of the region's working groups.[11]

In discussions concerning European co-operative regionalisms, one may hear various pragmatic and theoretical arguments in favour of transborder ventures: for example, that they provide for a better division of labour, improved development, and greater equalization between well and less developed regions.[12] No doubt, West European transborder regionalisms, including the Arge Alp, also represent a decentralist tendency in Europe.

The Arge Alp may also be seen as a model for other provincial inputs into the making of Austrian foreign policy. The Austrian provinces that participate in the Arge Alp report regularly to the federal government about meetings and other activities within the group's framework. The official report (*Außenpolitischer Bericht*), published annually by the Austrian Foreign Ministry, lists all these provincial activities, thus demonstrating that the Arge Alp does not compete with but instead supplements the making of Austrian foreign policy. The existence and performance of Arge Alp and Arge Alpen–Adria have also served as examples for other regional activities. The province of Vorarlberg, the only Austrian participant, has become a member of the International Conference on Lake Constance (*Internationale Bodenseekonferenz*), whose members also include two West German *Länder*—Baden-Württemberg and Bavaria—and three Swiss cantons—St Gallen (Saint-Gall), Thurgau (Thurgovie), and Schaffhausen (Schaffhouse). In addition, Vienna, Lower Austria, and Upper Austria have initiated the Forum of Danube Countries (*Gesprächsforum Donauländer*) to develop co-operation with all regions bordering on the Danube.

In all these cases, however, the paradiplomatic endeavours of Austrian provinces have not been formally endorsed by the federal government. Despite their various inputs directed at Vienna from below, provincial governments do not participate formally in the actual shaping of Austrian foreign policy. But, because the provincial and federal levels of government are linked through the two major political parties, subnational foreign policy tends to become

an issue or bargaining point in inter-party politics. So long as the foreign-policy consensus between the Socialists and the Christian Democrats remains as strong as it has been since 1945, there seems to be no danger that a common Austrian foreign policy might be significantly disrupted by the provinces.

Two cases of ethnic fragmentation—in the Italian South Tyrol and in Austrian Carinthia—have projected two Austrian provinces on to the international scene. Both cases link Austria's past as a multinational empire with its present situation as a small, not fully homogeneous republic. No other ethnic question in Austria brings provincial governments indirectly and informally into the process of foreign-policy making. The two other ethnic problems in Austria, those of the Croatians and Hungarians in Burgenland, have not created international tensions and have not called for provincial input, for these problems have only a limited significance in the framework of Austrian domestic politics.

SUBSTATE INVOLVEMENT IN FOREIGN POLICY—TYROL

After the First World War, the Peace Treaty of Saint-Germain in 1919 divided the historical province of Tyrol between Austria and Italy. This was the period when the Wilsonian rhetoric of national self-determination was current, especially at the Versailles Peace Conference. The fact that Tyrol was divided in favour of then-allied Italy violated, however, the right of self-determination of the German-speaking population in South Tyrol, and brought about the so-called 'South Tyrol problem'.[13] This problem was aggravated when democracy in Italy was replaced with fascism, the passionate nationalism of which resulted in oppression of the German-speaking South Tyrolians. Subsequently, however, during the short period of the Nazi occupation of South Tyrol (September 1943 to April 1945), the oppression was redirected against the Italians and, in line with the Nazis' racist policies, against the Jews. Following the Second World War, Austria, and especially its province of Tyrol, hoped for the revision of the 1919 border and for reunification of German-speaking Tyrolians. The victorious Allies, however, favouring post-fascist Italy, did not authorize any revision of the Italian–Austrian boundary.

In 1946, at the Paris Peace Conference dealing with Nazi allies and satellites, Italy gave a promise to concede to South Tyrol an

autonomous status within the Italian national state. This arrangement became a trigger for subsequent foreign-policy inputs on the part of the province of Tyrol. Since 1946 Austrian delegations to international conferences at which the South Tyrol issue was to be on the agenda have always contained representatives of the provincial government of Tyrol. At the Paris Conference of 1946 there was also a South Tyrolian delegation to represent the viewpoint of the German-speaking population in South Tyrol.[14] In short, neither the Austrian nor the Italian policies can be fully understood without taking into account both the presence and the inputs of Austrian Tyrol and Italian South Tyrol–Bolzano.

The Italian promise of autonomous status for South Tyrol, as communicated at the Paris Conference, was subsequently interpreted by the Italian government as a commitment to create an autonomous territory which would, however, also include Trentino, an area whose population is predominantly Italian-speaking. The Italian majority could thus interpret the autonomy question without paying too much attention to the wishes of the German-speaking South Tyrolians. Such an interpretation was not accepted by Austria; in 1960, following several attempts to persuade Rome to change its policy, Austria referred the matter to the UN. The Austrian delegation included the representatives of both the Austrian central and the Tyrolian provincial governments. Clearly, the hope was that such a joint delegation would attract international attention to the South Tyrol question. Under international pressure, Italy started direct negotiations with Austria, whose delegations in these and all subsequent negotiations included Tyrolian representatives. Thus, while such talks normally would have been bilateral, these were, in fact, quadrilateral. While the direct negotiations primarily involved Rome and Vienna, representatives of the province of Tyrol and of the province of South Tyrol–Bolzano were also secondary, indirect participants. The official positions of the Austrian federal government were co-ordinated with the interests and goals of the Tyrolian and South Tyrolian governments, without whose approval no solution could have been found. While negotiations went on, the diplomatic and paradiplomatic processes were complicated by terrorism and bombing incidents in which Italians in Austria as well as Austrians and South Tyrolians in Italy took part.

In 1969 a solution was finally found in the Italian grant of ex-

tensive cultural, political, and economic autonomy to the province of Bolzano. The approval by the provincial government of Tyrol and its governor enabled Austria to sign the *Paket* (agreement) with Italy. While the treaty divided the Nationalrat in Vienna, its approval by all but one of the Christian Democratic People's Party representatives of Tyrol led to its political legitimation. There could have been no *Paket* without this overwhelming provincial consent. The approval of Italian South Tyrol was equally crucial; and in 1969 a party convention of the South Tyrolian People's Party — which represents about 90 per cent of the German-speaking voters — decided in favour of the *Paket* by bare majority.[15] The consent of both North Tyrol and the German-speaking South Tyrol ensured that Vienna and Rome would sign the treaty. The prompt consent of the South Tyrolian People's Party then made possible the subsequent agreement on a 'calendar of operations'.[16] This being the first step for the foreign ministers of Austria and Italy, further steps, as determined by the calendar, followed. The implementation of the calendar of operations was indirectly supported by the Tyrolian provincial government. In order to ensure that the Vienna government was consistent in its dealings with Rome, the provincial governments of both Tyrol and Italian South Tyrol acted as lobbies in regular meetings with the Austrian Chancellor or Foreign Minister. By 1970 the Austrian federal government, then led by the Socialist party, saw to it that their South Tyrol policy was co-ordinated with the provincial government of Tyrol, thus precluding any domestic controversies about the South Tyrol question.

In addition to its pressure activities within Austria, the province of Tyrol took advantage of the autonomous status of Italian South Tyrol to promote its interests by direct trans-sovereign action. Two striking examples are: first, the joint sessions of the Tyrolian and South Tyrolian parliaments; and, second, the *Accordino* (a 'mini-agreement' of sorts), dealing with the specific, mostly economic needs of the two provinces. Once a year a joint session of the two parliaments takes place, alternating between the capital of Austrian Tyrol, Innsbruck, and the capital of Italian Tyrol, Bolzano. These joint sessions do not engage in legislation or oversight of the executive; rather, their goal is to help foster an appropriate transborder political atmosphere. The two parliaments have also established a joint Standing Commission (*Interregionale Landtagskommission*). The Commission consists of the speakers of the two parliaments,

five members from each parliament, and representatives of the provincial executives, responsible for the agenda to be discussed at the joint sessions.[17] This arrangement, established without any formal change in the Austrian Constitution, is a unique case of institutionalized transborder co-operation, anchored in the joint sessions of the two subnational diets and their joint, subnational, yet trans-sovereign Standing Commission.

The *Accordino*, signed in 1949, which was intended to facilitate economic relations between contiguous regions of Austria and Italy, covers not only Austrian Tyrol and Italian South Tyrol but also the Italian region of Trentino and the Austrian province of Vorarlberg. The *Accordino* aims at lowering the trade barriers between the countries of the EC on the one hand and neutral Austria (not an EC member) on the other by means of links on a subnational rather than on a national level.[18]

SUBNATIONAL INVOLVEMENT IN FOREIGN POLICY — CARINTHIA

While provincial participation in the conduct of Austrian foreign policy was in the case of Tyrol intended to strengthen the position of the German-speaking group in Italian South Tyrol, in contrast, the goal of the province of Carinthia has been to weaken the position of the Slovene-speaking ethnic group living in Carinthia. This provincial policy has had a special impact on the conduct of Austrian foreign policy *vis-à-vis* Yugoslavia. For centuries, Carinthia has been inhabited by two distinct ethnic groups: the Slovenian-speaking community in the south and the German-speaking community in the north.[19] The Peace Conference of Saint-Germain in 1919 recommended that a plebiscite be held in South Carinthia. In 1920 the plebiscite was held in the area where, one year earlier, Austrian and Yugoslav troops had fought an undeclared war for possession of the region. In that plebiscite 60 per cent of voters voted for Austria and 40 per cent favoured incorporation of South Carinthia into Yugoslavia. A detailed analysis of these results, especially if it takes into account the results of the last census held before the First World War, indicates that not only the German population but also a minority of the Carinthian Slovenes voted to remain in the democratic Austrian Republic rather than join the

Serbian–Croatian–Slovene Kingdom (or Yugoslavia, as it was later renamed).

After 1920 the political situation of the Slovenes in Carinthia worsened as they had to struggle for their cultural autonomy. When Austria was annexed by Nazi Germany in March 1938, they became victims of the Nazi policy of forcible Germanization. Between 1938 and 1945 Slovene property was confiscated and many Slovenes were expelled. The Slovenes responded by increasing their resistance to Nazism and especially by participating in the activities of the Yugoslav partisan movement.

Following the Second World War, Yugoslavia pressed once more for a readjustment of its borders with Austria. The Yugoslav claim, however, was turned down by both Austria and the Allies. The Austrian State Treaty, signed by the occupying powers (the USSR, the United States, the UK, France) and Austria on 15 May 1955, returned full independence and sovereignty to Austria. In the same treaty, Austria committed itself to grant cultural autonomy to the Slovenes in Carinthia as well as to the Croatian ethnic group in Burgenland. But this commitment has not yet been fully realized. There is no Slovene educational system in Carinthia equivalent to that of the German-speaking Carinthians, nor is the Slovene language equally accepted by the courts and administration. Slovene claims in these areas are, of course, counterparts to the Austrian claims on behalf of the German-speaking minority in Italy. The reason for Austria's hesitant fulfilment of its international commitment may be found in the reluctance of the province of Carinthia to act in full accordance with the central government's obligation.

A good illustration of the difference between the official Austrian policy and the provincial policy is provided by the controversies concerning official signposts (*Ortstafeln*). While in 1972 the Nationalrat ordered that signposts were to be bilingual in the major mixed areas, the law was implemented by the provincial government of Carinthia only in those areas which were predominantly inhabited by Slovenes. This provincial evasion of stated policy reminds us of a similar Italian evasion of the so-called *Paket* with respect to the German minority in South Tyrol. The German-speaking, nationalist segments of all political parties in Carinthia, partly organized in a right-wing pressure group, the Carinthian Homeland Service (*Kärntner-Heimatsdienst*), protested vehemently against any concessions to the Slovene minority. In the course of

this controversy the Socialist governor of Carinthia, Hans Sima, was pressured into resigning because he was viewed as too obliging towards the Slovenes.

The background of this specific Carinthian problem is a decades-long climate of hostility towards the Slovenes. While they are politically active, the Slovenes themselves nevertheless constitute a minority too small to be a factor in Carinthia elections. Therefore, parties and individual politicians dread being suspected of being pro-Slovene, for any empathy with the Slovenes may only result in a considerable loss of support among German-speaking voters.[20] Thus, like the Carinthian socialists who yielded to the pressures of the organized right wing, eventually the federal government in Vienna effectively revoked the legislation on bilingual signposts in Carinthia by modifying it on essential points. These changes, products of provincial intrusion into Austrian foreign policy, were bound to cause serious tension between Vienna and Belgrade. Public hostility towards Austria was particularly manifest in the People's Republic of Slovenia (the Slovene region of Yugoslavia), contiguous with Carinthia. Here again, one is struck by the parallels between Austrian efforts to protect German-speaking rights in Italian Bolzano[21] and Yugoslav attempts to protect Slovene rights in Carinthia.

There were other instances of Carinthian unwillingness to respect the political aspirations of its Slovene minority: in 1979 the Carinthian parliament gerrymandered two electoral districts in such a way as to draw the district line across the area predominantly inhabited by the Slovenes.[22] The purpose was to avoid or to minimize Slovene representation in the provincial parliament, in spite of the prevailing system of proportional representation. In other European border regions with similar ethnic problems—such as Schleswig-Holstein in the FRG, bordering Denmark and containing a Danish minority; or South Tyrol with its Ladin minority (Ladin is a special Romansche dialect spoken by about 20,000 people)—the electoral systems contain provisions favouring these minorities. In contrast, the Carinthian electoral system is marked by a clear hostility to the Slovene minority.

Carinthia's policy towards its Slovenes undoubtedly had an adverse affect on Austrian–Yugoslav relations. Yet Yugoslavia did not appeal the issue to the UN, as did Austria in the case of South Tyrol, discussed above. The reason why the disputes did not erupt

into something more serious may be explained in part by the small number of Slovenes in Carinthia, and in part by Yugoslav reluctance to raise the issue on account of its own internal problems with ethno-national questions. There are centrifugal tendencies in some of the six republics composing federal Yugoslavia, especially in Slovenia and Croatia. There are additional troubles in the Republic of Serbia: in the autonomous province of Kosovo, 1.7 million ethnic Albanians press for self-government or secession; and in the province of Vojvodina, which borders on Hungary and Romania, live 150,000 ethnic Hungarians. Furthermore, the Slavic inhabitants of Macedonia, one of the constituent republics of Yugoslavia, have historic links to both Bulgaria and Greece and have caused considerable tension between Yugoslavia and Bulgaria in particular. In sum, Yugoslavia seems to have been inhibited by its own ethnic problems and was therefore hesitant to criticize Austria's minority policies. If, however, Yugoslavia were to overcome its ethnic difficulties, Austria's failure to fulfil the commitment of 1955 could become a major issue in relations between neutral Austria and non-aligned Yugoslavia. The behaviour of the Carinthian provincial government towards its Slovene-speaking citizens can therefore be characterized as a negative provincial input into the central conduct of foreign policy.

CHANCES AND LIMITS OF SUBNATIONAL FOREIGN POLICY

The preceding analysis and case studies have demonstrated the forms in which provinces can affect national foreign policy from below, or develop transborder relations on a subnational level. Three such forms may be identified:

1. *Symbolic foreign policy.* The executive and legislative branches of provincial government participate in transborder contacts with subnational counterparts in neighbouring states; these contacts are ceremonial rather than substantive. While activity of this sort may have no direct impact on the substance of national foreign policy, it does influence the prevailing political atmosphere of international relations.
2. *Domestic opposition with international relevance.* Provincial parties which, at any given moment, oppose the central government tend to raise subnational transboundary issues

in their inter-party competition. Thus, in a federal system, foreign policy may also become a point of contention between the two levels of government.

3. *Subnational inputs into foreign policy.* Domestic pressures directed at the central government also influence the conduct of national foreign policy. This can lead to active and complementary participation of provincial governments in shaping national foreign policy, or it can hinder the national government in its efforts to fulfil its international role.

While analytically separate, these three forms of subnational foreign policy more often than not are intertwined. In the case of the Arge Alp, for example, as we have seen, symbolic foreign-policy activity and internationally relevant domestic opposition are both present. The direct participation of the province of Tyrol in the making of Austria's South Tyrol policy is a case in which all three forms of activity are to an extent present. Carinthia's impact on Vienna's foreign policy, meanwhile, demonstrates how provincial involvement may inhibit the conduct of national foreign policy.

While subnational foreign-policy activity in Austria has gained importance in recent years, this phenomenon should be interpreted not as representing a threat to national unity but rather as illustrating a process of stabilization. Following various domestic and external crises in the wake of the Second World War, and the concomitant restraints imposed on various political conflicts within its federal system, the Second Republic of Austria gradually realized a high degree of stability; it can now afford an increased range of political participation and intra-federal competition. On the international level, Austria's status as a permanently neutral country has been fully accepted and recognized world-wide. Its political system is clearly anchored in Western democratic traditions.[23] On the national level, a broad consensus among political parties as well as a frequently consociational mode of political decision-making in government and among social groups (especially between employers and employees) have helped to produce the often-praised (as well as criticized) image of Austria as an 'island of the blessed'.[24]

This stabilization has also anchored Austrian federalism in firmer ground. Whereas the First Republic after the First World War had to overcome separatist tendencies in some provinces, the loyal adherence of all provinces to the federal Second Republic is now beyond any doubt. In spite of the centralist flavour of the Con-

stitution, the decentralist practices of the federal government, including its willingness to concede more elbow room to the provinces even in matters of transborder relations, do not pose great difficulties for Austria's national unity. It is within the framework of national and international stabilization that the above-described provincial inputs into national foreign policy have manifested themselves. The overall stabilization, therefore, allows a prediction that subnational participation in shaping national foreign policy will gain further prominence in Austria.

NOTES

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2. P. Pernthaler, *Das Forderungsprogramm der österreichischen Bundesländer* (Vienna, 1980).
3. W. Erlwein, *Transnationale Kooperation im Alpenraum* (1981), 113–15. For the case of 'Euregio Alpina', a less formal, academic organization paralleling Arge Alp, to a certain extent, see ibid. 117 ff., and R. Riz, 'Die Euregio Alpina', *Regionalismus in Europa*, 1 (1981).
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5. R. Luza, *Austro–German Relations in the Anschluss Era* (Princeton, 1975).
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7. For the activities of the Arge Alpen–Adria, see, e.g., *Bericht über den Zustand des Föderalismus in Österreich* (Vienna, 1984), 69 ff. For the linkage between the Austrian–Yugoslav conflict and the (comparative) lack of activity of the Arge Alpen–Adria, see A. Khol, 'Österreichs Beziehungen zu den Nachbarstaaten', in R. Kicker *et al.* (eds.), *Außenpolitik und Demokratie in Österreich* (Salzburg, 1983), 390 ff.
8. Erlwein, *Transnationale Kooperation*, pp. 131, 137.
9. Ibid. 145–55.
10. H. Neuhold, 'Österreichs Außenpolitik in den Ost-West-Beziehungen', in Kicker *et al.*, *Außenpolitik und Demokratie*, pp. 315–19; K. Zemanek, 'Austria's Policy of Neutrality: Constants and Variables', in H. Neuhold and H. Thalberg (eds.), *The European Neutrals in International Affairs* (Vienna, 1984). The Austrian attitude towards the EC has started to change in favour of possible membership since the establishment of the 1987 coalition.
11. R. Kessler, 'Die Arbeitsgemeinschaft—ein Beispiel für grenzüberschreitenden

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12. F. Esterbauer, 'Grundzüge der Formen und Funktionen regionaler Gliederung in politischen Systemen', in F. Esterbauer (ed.), *Regionalismus. Phänomen, Planungsmittel, Herausforderung für Europa* (Munich, 1978), 52–7.
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21. Khol, 'Österreichs Beziehungen', pp. 388–91.
22. R. Unkart *et al.*, 'Zur Lage der Slowenen in Kärnten: Die slowenische Volksgruppe und die Wahlkreiseinteilung 1979' (document).
23. See, for instance, W. T. Bluhm, *Building an Austrian Nation* (New Haven, 1973).
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6
Belgium

YVES LEJEUNE

Since 1970 the Kingdom of Belgium has comprised three communities: the French community, encompassing the French-speaking people of Wallonia and Brussels (3.9 million people); the Flemish community, including the Belgian people from Flanders and Brussels who speak Dutch (5.9 million people); and the small German-speaking community, which includes the approximately 66,400 German-speaking Belgians living in the eastern cantons. The Belgian state is also divided into two large regions: the Walloon region, with an area of 16,844 square kilometres, including the area of the German-speaking community (854 square kilometres); and the Flemish region (13,512 square kilometres). All these collectivities are in principle endowed with exclusive powers. There is, furthermore, the region of Brussels-Capital, with nineteen communes (162 square kilometres), and a particular status.

The overlapping of communities and regions, especially in the south of the country, distinguishes Belgium from the classical federations. Belgium also presents some other characteristics unusual in states generally recognized as federal. First, the constituent entities of the Kingdom do not have constitutional autonomy: their organization and their administration are fixed by the Belgian Constitution and by the Acts on institutional reforms of August 1980, December 1983, August 1988, and January 1989. Second, the compartmentalization of the respective powers of the central government, of the communities, and of the regions is more important than in most states where several legislatures co-exist. Also, the communities and regions are only very weakly empowered to participate in the elaboration of national legislation and in the revision of the constitution. Finally, communities and regions are still dependent on the central government, especially in financial matters.

The autonomist aspirations of the component entities of Belgium do not essentially differ from those of their counterparts in truly federal states, nor does the resistance of the centre to such aspirations. This conflict is particularly noticeable in the field of external policy.

THE CONSTITUTIONAL AND INSTITUTIONAL SETTING

The Belgian Constitution, the Special Act on Institutional Reforms of 8 August 1980, as amended by the Special Act of 8 August 1988, and the Act of 31 December 1983 on Institutional Reforms regarding the German-speaking community, and the Special Act on Brussels-Capital Institutions of 12 January 1989, have established five community and regional parliamentary assemblies: a Flemish Council, a Council of the French Community, a Council of the German-speaking Community, a Regional Walloon Council, and a Council of the Brussels-Capital Region. These legislatures, except for the German-speaking Community Council and the Brussels Council, are composed of directly elected members of the national parliament, whose representation is based on their linguistic group and their constituency. The first three have exclusive powers in the fields of international cultural co-operation and international co-operation pertaining to so-called 'person-related matters', such as the delivery of medical care outside hospitals, health education, family policy, and youth welfare. They have been given the power to assent to any treaty to be concluded by Belgium in these matters.[1] The Council of the French Community and the Flemish Council have been the first to make use of this procedure by giving their assent to six bilateral cultural agreements signed before the constitutional revision of 1980.[2] They have also approved several multilateral treaties, the subjects of which fall only partly in the communities' jurisdiction. The Flemish Council also approved the Dutch–Belgian treaty of 9 September 1980, establishing the Dutch Linguistic Union.

Unlike the assemblies mentioned above, the Brussels Region Council, the Walloon Regional Council, and the Flemish Council, in so far as the latter exercises its regional powers, do not dispose of any explicit powers in the field of international co-operation. This does not preclude their using legislative acts[3] applicable in their respective territorial areas to settle external aspects of the matters attributed to their competences. They are also responsible for the

fields of external trade, trade promotion, and market research for foreign investors.[4]

Each Council elects an executive body that elaborates and co-ordinates the policy of its community or region. There are, consequently, a Flemish Executive, an Executive of the French Community, an Executive of the German-speaking Community, a Walloon Regional Executive, and a Brussels Executive. Before the amendment of Article 59 *bis* of the Belgian Constitution in July 1988, these governmental bodies were not given the right to make treaties concerning community or regional matters. By virtue of Article 68 of the Constitution, the King, that is the central executive authority, remained alone entitled to 'make' treaties in Belgium. Further, Article 81 of the Special Act of 8 August 1980 confirms that 'the King remains the sole interlocutor at the international level in compliance with Article 68'. This article, however, weakens this monopoly over treaty-making power through an obligation that the Executives be associated in international negotiations on matters affecting Councils' powers.

These constitutional and legal provisions seemed to be clear. However, they initiated a major controversy concerning both the division of powers in the matter of concluding treaties and in regard to the form that the participation of Executives in the negotiation of international agreements should take. In a note of May 1983 to the president of each Executive, the Minister of External Relations, L. Tindemans, stated the position of the Belgian government about the conclusion of treaties.[5] He reminded them of the fact that no rule of Belgian law explicitly conferred to the Community Executives the right to conclude treaties. He also affirmed, less pertinently, that the rules of international law recognize the exclusive competence of the King and the Minister of External Relations in that regard, in part to assure state cohesiveness and to allow the Belgian state to fulfil its obligations to other states. This exclusive competence, according to him, has to be diffused through the participation of Community Executives in the negotiation of treaties pertaining to cultural, 'person-related', or educational matters, in a manner remaining to be specified; however, he continued, the full power needed for signature can only be wielded by the King under the responsibility of the Minister of External Relations. The participation of Regional Executives in international negotiations pertaining to subjects of regional competence follows

the same rules. The government note states that these limitations are valid only for the conclusion of treaties; they cannot prevent the communities—as well as the regions—from developing international activities as public legal entities. The note also alludes to the multiple bonds already existing between communities as well as regions and foreign public legal entities, even states. The note places these bonds outside the international legal order.

The Flemish, Walloon, and French Community Executives opposed this view in June 1983. In reply to the government, they formulated a common note demanding exclusive treaty-making powers for the Community Executives in the fields of education, culture, and 'person-related' matters.[6] The chief argument put forward was that, in these matters, the amendment of Article 59 *bis* of the Constitution in July 1980 would have implicitly modified Article 68, thus granting the communities the power to conclude treaties. The note asserts that the reference to royal privilege contained in Article 81 of the Special Act would only apply to regional matters, the Regional Executives being the only executives concerned here.

Another argument put forward in the note is that the King could not conclude treaties in cultural, educational, and 'person-related' matters without ministerial counter-signature. But national ministers could not assume this responsibility before the national legislature, because they would be deprived of any competence in these fields. Since the members of Community Executives could neither cover the prerogatives of the King nor be called to account for them before the national legislature, it should be inferred that the responsibility for making treaties should be *de facto* divided between the state, its communities, and its regions in the same way as domestic matters.[7]

The note of June 1983 also asserts that participation by Regional Executives in international negotiations is legally compulsory. Article 81 of the Special Act provides for an active and direct involvement of the Executives in the negotiations, by having some Regional Ministers or officials participate on the Belgian delegation.

In a statement made before the Senate on 28 March 1984, the Minister of External Relations appeared to approve of the thesis put forward by the Executives. He added that it was advisable to find a pragmatic solution since Article 68 of the Constitution had not been amended; either the foreign state concludes a treaty with

Belgium 'in due form', or it concludes an agreement with the communities which does not bind the Belgian state.[8] In spite of the opinion of some people, this surprising declaration does not constitute an 'acceptance by the central authority of the *jus tractati* of the communities'.[9] As a matter of fact, Foreign Minister L. Tindemans concurred with the argument of the Executives only in so far as he recognized their right to make 'agreements', the legal nature of which is not specified but which can in no case bind Belgium. Moreover, he has declared on several occasions that these conventions do not literally constitute treaties.[10] On 25 September 1984 he again presented the two theses in a circular letter, no. 94, addressed to Belgian diplomats abroad, strongly maintaining the former position of the Belgian government.

The Belgian Ministry of External Relations further published a notice in the *Moniteur belge* (the Official Gazette of Belgium) on 7 October 1986 that removed 'any uncertainty... that such agreements do not have the nature of international treaties and that they cannot consequently bind the Belgian State, since only the King is entitled to make treaties'. Most authors agree that the institutional reforms undertaken by Belgium in the 1970s have not divided the treaty-making power among the central government, the communities, and the regions.[11] Article 59 *bis* of the Constitution empowered the Belgian legislature to grant to the Community Councils the right to approve treaties dealing with community matters, but it did not directly award any international prerogatives to the Executives. Nor does the Special Act contain any disposition granting the Executives the power to make treaties: in Article 78 it even specifies that the Executives do not have powers other than those expressly granted by the Constitution and the constitutionally enacted laws, decrees, and ordinances.

An important development occurred in July 1988. Article 59 *bis* of the Constitution was amended so as to give the Communities the treaty-making power. This new competency cannot be exerted yet, until a Special Act determines the methods of concluding these treaties.

In Belgium then, as in most federal states, the central government alone is entitled to make treaties in the matters that, domestically, belong to the exclusive competence of the constituent units of the state. As a result, the Minister of External Relations (or, alternatively, another member of the Belgian government) legitimately

assumes the responsibility of the King's prerogatives in international matters; he is responsible for these acts before the Belgian Parliament, which is solely competent to hold the government accountable for the conduct of international relations.

The agreements with sovereign states concluded first by the French and later by the Flemish community have the same legal status as those concluded with foreign public collectivities such as regions or federated states. In our opinion, these are public contracts with a binding character based on the laws governing each party's capacity to make contracts; the applicable law being either the *lex contractus*, or the general principles of law, or else the so-called 'international law of contracts'. Belgium remains a third party to the agreement, and its international responsibility will not, in principle, be bound in case of non-execution by the contracting community.[12] In any case, the acceptance of direct conventional relations will certainly not involve *ipso facto* a recognition by the co-contracting state that the communities possess either a limited treaty-making power or an international legal personality. No foreign government has ever qualified as 'treaties' the agreements concluded with either community; neither has the Belgian government shown any disposition to acknowledge this capacity to them.

Even though the central government and the communities have not succeeded in settling their disagreement in this field, the Community Executives have soft-pedalled their international pretensions since the legislative elections of October 1985.[13]

The format of the participation of the Regional Executives (in international negotiations of new bilateral agreements for economic, industrial, and technological co-operation, as well as in the meetings of joint commissions in charge of the application of such agreements) has been the subject of an agreement in principle between the Ministry of External Relations and the Executives. This political consensus has been formalized in the previously mentioned circular letter of 25 September 1984, and in a 'note about the participation of the Regions in foreign market activities', which got the agreement of all parties concerned and was communicated in December 1984 to the head secretaries of the regional ministers in charge of external relations. The participation of the regions is considered an all-important procedure,[14] and its methods, from information and internal consultation preliminary to the participation in the negotiations, to the writing of instructions

meant for the negotiators, are to be determined by common consent.

As for the participation of Community Executives, the Ministry of External Relations agreed in 1983 that negotiations required to establish programmes of implementation arising out of bilateral cultural agreements would be carried on by two delegations, representing the respective communities, which would separately negotiate with third countries. The head of the Belgian diplomatic delegation or the representative of the department would merely register the resulting agreement.

Although Article 81 of the Special Act only deals with the negotiation of international *agreements*, the central government has never objected to consulting the Executives when preparing the documents considered in international meetings. The legal text does not exclude the participation of representatives of the communities and regions in the work of international conferences and organizations through membership in Belgian delegations. The Belgian Minister of External Relations has admitted as much on several occasions; he even proposed that 'the representative of the government might activate the Belgian delegation only on condition that the representatives of the three communities (or of the regions) agree to the matter'.[15] This has happened, primarily in the cultural field, since the General Assembly of Unesco in Mexico in 1982.

Such participation of the communities and regions in international meetings, however, has not been the subject of an agreement in principle between the Ministry of External Relations and the Executives, except in the case of the committees and working groups of the Benelux Economic Union. The regions chiefly interested in the activities of Benelux regret that, according to the *modus vivendi* of 1985, the nomination of the Belgian delegates has to be discussed before each Benelux meeting. They would rather have their right to attend these meetings acknowledged once and for all with respect to all affairs pertaining to their jurisdiction.

Generally speaking, it can be said that the Ministry of External Relations is anxious both to protect its traditional powers and to provide pragmatic responses to the requests of communities and regions, while emphasizing the temporary nature of settlements that can neither bind it for the future nor bring about the final resolution of the matter.

The Belgian Constitution denies the communities and regions the

right to maintain their own diplomatic and consular relations, and reserves for the King the right of appointment in external relations, with some exceptions as established by law. No constitutional provision entitles these entities to enter into relations with the members of the international community.[16] The right of legation that belongs to the Belgian state can consequently be exercised only by the central government. However, the subnational units of the state are not forbidden to open tourist offices or centres of cultural or economic promotion abroad. Furthermore, no provision of Belgian law seems to prohibit the Regional or Community Executives from nominating attachés as part of the staff of Belgian diplomatic missions, especially if these attachés were put under the authority of the head of mission.

FACTORS AND MOTIVES OF INTERNATIONAL ACTIVITIES

The two major communities have argued that they could not survive if withdrawn within themselves, and that they must assert their identity abroad. They have consequently promoted their presence in the world by advertising their political, social, and cultural identity. This aim cannot be dissociated from their will to assert themselves on the Belgian political scene.

The Walloon region has developed external-relations policies meant to ensure its economic recovery and its technological development through the promotion of exports and foreign investment. The Flemish community also gives priority to regional economic expansion and to scientific and technical development. Their Executives have developed different strategies, but they have similar emphasis in one respect: both make efforts to be represented internationally when questions belonging to their jurisdiction are discussed.

The Executive of the French Community first showed its dynamism in the field of conventional relations. It has concluded some agreements with foreign partners because of their language, their size, or their geographic proximity. It has recently shown a propensity to define better the extent and aims of its external relations policy in order to prevent over-extension and to be more attentive about the human-rights record of its partners.[17] It has also established some permanent liaison offices abroad. The Flemish Executive makes greater use of existing diplomatic channels. It

developed intensive linguistic co-operation with the Netherlands and maintains good neighbour relations with adjacent countries. It emphasizes the promotion of export and of foreign investments in Flanders. Most of the time it merely supports the initiatives of powerful associations, such as the Flemish Economic Union, and the Flemish Aerospace Group.

The Executive of the German-speaking Community attempts to develop its relations with German-speaking countries. The present Walloon Regional Executive concentrates its export-promoting activities on Europe, the United States, Japan, Thailand, Latin America, and French-speaking Africa; it gives priority to small- and medium-sized enterprises and to enterprises involved in technological innovation.

The close contacts between the Walloon region and the French community 'facilitate an integrated approach to external relations, highlighting concerted action toward foreign parties and on dealing with economic aspects falling under community jurisdiction'.[18] The strategy developed by the region essentially aims to create relations with foreign partners of similar institutional status that have positive economic and technological repercussions for Walloon enterprises.

The Brussels-Capital region's particular situation prevents it from developing a policy of external relations different from that of the Belgian government. At best, it promotes external commercial relations in close association with the private sector and the national administration.

ADMINISTRATIVE IMPLEMENTATION

French community activism had already commenced before 1980. A decree of 19 December 1979 created a public corporation, the Commissariat général à la coopération internationale, which, by a decree of 1 July 1982, became the Commissariat général aux relations internationales de la Communauté française (CGRI). The Flemish community created its own general commissariat for international cultural co-operation by a decree of 8 July 1980. It was transformed by the decree of 28 June 1985 into the Commissariaat generaal voor de internationale samenwerking (CGIS).

Before 1 October 1980[19] the communities had neither an Executive nor an administration. Cultural relations with foreign countries were administered by several national government de-

partments. The decree of 19 December 1979 gave the French community the opportunity to dissociate the French-speaking administration for international cultural relations from the central administration, and to associate culturally representative groups to the new regional organism. In this manner the same decree granted to the community an administration in charge of organizing international co-operation to execute the attendant tasks. The Flemish community followed this model when setting up its Commissariat. Since then, each community has had an executive body and the national administrative departments that dealt with cultural or 'person-related' matters in the international relations field have been put under their exclusive authority. In this way the political and technical reasons that had worked in favour of the creation of commissariats ceased being relevant. The commissariats have, however, been maintained. The reason for this is not quite clear. The greater flexibility of action enjoyed by these autonomous public organisms in relation to the traditional administrations is usually put forward as a reason for this persistence.

The CGRI is solely in charge of the external relations of the French community. It is headed by a member of the Executive in charge of international relations.[20] The CGIS is under the authority of the President of the Flemish Executive.[21] It has responsibility for devising and co-ordinating the external policy of Flanders, both in community and regional matters. Each department of the ministry of the Flemish community manages the international aspects of its own tasks.

In order to attract foreign investment, the Flemish Executive has established a specialized office, the Flanders Investment Opportunities Council (FIOC), whose secretariat is established in Brussels. The FIOC co-ordinates the activities of three investment agents working in the United States, and Japan. The European countries are the responsibility of the Brussels office.

In the Walloon Regional Executive there is a member in charge of the conduct of external relations.[22] Some forty agents of the ministry are grouped into a Direction générale des relations extérieures (DGRE).

In the Brussels Executive the external relations are dealt with by the Minister of Finance of the Brussels region.[23] The Brussels ministerial department comprises an office of foreign investments and external business, with one sole agent.

The German-speaking community has a small administration. Its

director is in charge of all external relations, under the authority of the President of the Executive. However, the two other ministers manage external relations in the special fields of their competence.[24]

There are a variety of forms of political and administrative co-operation between the Walloon Regional Executive and the Executive of the French Community. Working groups bring together members of the different cabinets and administrations in charge of external relations. These groups allow for information exchange and examine the various means of co-ordinating or harmonizing the projects of the community and of the region. Joint meetings of the Executives are held from time to time; these have already led to decisions on the installation of a 'common integrated structure' for both Executives in matters of external relations, in the form of 'common services',[25] bringing together in the same building agents of the CGRI and the DGRE. They have also resulted in the elaboration of a common policy of representation at the international level through the establishment abroad of common administrative units, as well as joint representation at some international meetings.

There is no general co-operation between the Walloon region and the German-speaking community, but the latter co-operates with the CGRI and the CGIS in the cultural field.[26]

THE EXTERNAL RELATIONS OF THE COMMUNITIES AND REGIONS

In their external activities the two large communities wanted, first, to secure a permanent presence abroad by opening cultural centres in foreign capitals. In September 1979 the French community installed in Paris a Centre Wallonie-Bruxelles, previously known as the Centre de la Communauté française de Belgique à Paris. Two years later, the Flemish community established a cultural Centre of the Flemish Community in Amsterdam.

Since 1975 a Belgian Institute of Cultural Exchanges, 'Pro Musica', has existed in Osaka, Japan. This institute is under the administrative supervision of the CGIS and has been renamed 'Centre of the Flemish Community'. The Executive of the French Community established a Centre Wallonie-Bruxelles in Kinshasa in August 1985.

The legal status of these cultural centres is far from uniform. The building in which the Centre of the French Community in Paris is

located belongs to the Belgian state and is managed by a non-profit association established under Belgian law in June 1976.[27] The manager of the centre and his assistant are deemed to be Belgian diplomatic agents. The Flemish Cultural Centre in Amsterdam is an administration ruled by a decree of 30 June 1982 and is under the control of the CGIS. The Flemish Centre in Osaka is an 'établissement d'utilité publique' under Belgian law, officially acknowledged by the local Prefecture in 1975. The Centre Wallonie-Bruxelles in Kinshasa is managed by an agent appointed by the CGRI.

The regions have wanted to establish in certain countries a small permanent infrastructure, to be put at the disposal of their export-oriented enterprises. Since the establishment of a true network of regional offices abroad would have been much too expensive, the regions have left export promotion to private initiative or have made use of existing cultural offices. The Belgian Bio-Industries Association, created by five enterprises at the instigation of the Walloon Regional Executive, has a permanent attaché in Tokyo whose role is to establish contacts with possible business partners and to gather information likely to develop scientific relations between Wallonia and Japan. Since 1 October 1986 an investment officer has been attached to the Flemish Community Centre in Osaka; the establishment of a local secretariat for Flemish export industry is also being contemplated there.

At another level, the French community and the Walloon region have wanted to create permanent missions abroad entitled to engage full time in official representation. First came the establishment in 1982 of a 'Delegation Wallonia-Brussels in Quebec', in the form of an association established under private law. It is comprised of a permanent delegate for the community and a permanent delegate for the region. Then, in 1985, a General Delegation Wallonia–Brussels was established in Paris, headed by a general delegate of the French community for francophone multilateral matters under the direction of the CGRI. Since December 1985 there has also been a contractual delegate of the French community to the international organizations in Geneva, without office, however.

The communities and regions also wish to be able to establish a liaison officer in some principal diplomatic posts.[28] On 25 July 1988 the Minister of International Relations of the French community and the Walloon regional minister of External Relations

concluded an agreement on that subject with the Belgian Minister of External Relations. According to this understanding, the French community and, after the projected amendment of Article 68 of the Constitution, the Walloon region will appoint their representatives abroad and will announce their place of residence and the countries under their jurisdiction. These representatives, who will constitute part of the staff of the Belgian diplomatic missions in their capacity as 'attachés for the French Community and/or for the Walloon Region', will work under the authority of the ambassador of Belgium. They will, however, receive instructions only from the Executives. Their remuneration and the expenditures incurred by their mission will be borne by the community or the region. The Flemish community concluded a similar agreement with the Belgian Minister of External Relations on 18 December 1986.

In October 1986 the Executive of the French Community and the Walloon Regional Executive held a joint session to determine where their joint units connected with Belgian diplomatic missions and consular posts would be set up. The choice of Paris and Quebec was confirmed. Since then new establishments in Dakar, Algiers, Tunis, Rio de Janeiro, and Rome have been considered.

Finally, the regions would like to be directly represented in the Permanent Representation of Belgium to the EC. So far this has not been realized. Under the agreement of 25 July 1988 the French community has assigned one official to Belgium's Permanent Representation to the EC to provide a liaison with Walloon authorities.

Most of the cultural treaty obligations now maintained by the communities were established by the Belgian government before the movement towards federalization began. They were established through treaties, or 'cultural agreements', containing very broad commitments that are periodically fleshed out through working programmes established by permanent joint commissions.[29] Since 1983 the Belgian Foreign Office has agreed, as a temporary *modus vivendi*, that the negotiations necessary for the establishment of these programmes should be headed by two Belgian delegations, composed of agents of CGRI or CGIS, representing their respective communities, and separately negotiating with third countries. The head of the Belgian diplomatic mission or the representative of the department takes note of the undertakings made by each community.

Of the forty-six countries which have concluded cultural agreements with Belgium, some (e.g. Romania) have rejected the new process, proposed by the Belgian Ministry of External Relations, which takes into account the new division of responsibilities in Belgium. As a consequence there is an absence of cultural relations between these countries and Belgium.

Since 1985 the German-speaking community has taken part in the meetings of the joint commissions charged with the implementation of the cultural treaties concluded with the German-speaking countries and with the states adjacent to Belgium. As for the implementation of other cultural agreements, it co-operates with the CGRI and the CGIS: its officials attend the preliminary meetings of the French and Flemish delegations but do not negotiate a separate working programme.

The communities have developed their own networks of conventional relations by themselves concluding new agreements dealing with cultural and 'person-related' matters. The Executive of the French community, anxious to advance its claims to the exercise of real treaty-making powers, has been the most enterprising. On 27 April 1982 the Minister-President of the French community and the Mayor of Rome signed a 'cultural act' in the Eternal City in which they solemnly expressed their desire to co-operate and to foster reciprocal understanding. In Lille on 27 October 1984 a co-operation agreement was concluded with the French border region Nord-Pas de Calais. These agreements cannot, of course, be compared to treaties concluded between nations. They are, however, not much different from the conventional relations established under public law with other legally constituted political authorities such as the subnational governments of federated states.

Three agreements belong to a distinct second category, in that they all derive from an obvious preoccupation with francophone solidarity: the general agreement between the Executive of the French Community and the Government of Quebec, signed in Quebec on 3 November 1982, was followed by an agreement between the same authorities concerning the establishment of a Quebec/Wallonia–Brussels Youth Office, signed in Quebec on 31 May 1984. The co-operation agreement between the Government of Louisiana and the Executive of the French Community, signed in Brussels on 23 January 1984, has allowed for improvements in the

programmes for teaching French as a second language in Louisiana. Another co-operation agreement was reached in Brussels on 21 December 1988 between the 'République et Canton du Jura' and the French community.

Three conventions concluded with independent states attest to the French community's interest in French-speaking Africa: the Cultural Agreement of 7 February 1984, with the Government of Benin; the Convention of 17 February 1984, with the Ministry of the Plan of the Congo; and the Convention of 10 April 1985, with the Ministry of Public Health of Tunisia.[30] The French community has also continued a policy of developing bilateral relations with Latin-American countries which do not have a cultural agreement with Belgium. A convention concluded on 4 October 1984 with the Ministry of National Education of Colombia approves the contents of agreements passed with four Colombian institutes active in the fields of culture, education, and scientific research. The Ministries of Culture of Nicaragua and Cuba agreed to sign a 'convention' or an 'understanding' with the Executive of the French community on 4 October 1984 and 9 June 1985, respectively. All these agreements, signed as they were with sovereign states, have not been welcomed by the Ministry of External Relations. Hence, the ambassador of Colombia in Brussels, summoned by the Ministry, received a verbal note communicating the position of the Belgian government in the following terms: 'The Department thinks it advisable to remind that this agreement can in no case bind the Belgian State.'[31]

Comparable activities by Flanders have been less ambitious. On 24 September 1985 the Flemish Executive concluded an agreement concerning scientific and technological co-operation with Quebec. On 10 April 1985 it signed a protocol of co-operation with the Government of Senegal.

The German-speaking community, the most recent community to be granted legislative and governmental autonomy, has so far signed no arrangement with foreign states or territorial collectivities.

The new conventions concluded by the French and Flemish communities are very similar to the cultural co-operation treaties concluded by the Belgian government and are implemented by the two general commissariats for their respective communities. In most cases, they also establish permanent joint commissions in

charge of the organization of exchanges, not only in the traditional fields of training, education, and culture, but also in the health field, especially in the sector of preventive medicine, and in the field of welfare, particularly in the sectors of family policy and youth protection.

The agreement establishing the Quebec/Wallonia–Brussels Youth Office creates a 'permanent organization fostering closer ties between young people from Quebec and young Belgian francophones'. Unlike the Office Franco–Québécois for Youth, the Agency has not been legally incorporated and does not have managerial and administrative autonomy.

The Community Councils also maintain regular relations with a number of foreign parliaments. As early as 1979 the Council for the French Community created joint interparliamentary co-operation committees with the National Assembly of Quebec, and did the same with the legislature of the Swiss canton of Jura and with the National Assembly of Senegal, respectively in 1984 and 1987. The task of these committees is to exchange information about the organization of parliamentary work and to advise the authorities about any measures suited to developing a co-operation policy. An addition made to the agreement with the National Assembly of Quebec on 25 February 1985 is meant to diversify activities of the joint committee: it entitles it to establish biennial programmes of interparliamentary exchanges, and appoints parliamentary general secretaries and administrative secretaries to take charge of the management of these programmes. The Flemish Council and the Netherlands States-General have also established an interparliamentary commission in the framework of the Belgian–Dutch Treaty of Linguistic Union.

The Walloon regional authorities operate under the principle that, though the region does not have formal jurisdiction over international economic affairs, it can still maintain direct relations with other regions. Links abroad have consequently been created at that level.

Linguistic affinities and cultural similarities made Quebec the first partner of the Walloon region. In December 1980, at the end of the official visit by Quebec's Premier, René Lévesque, to the Walloon Regional Executive, headed by J. M. Dehousse, a common Quebec–Wallonia Declaration was issued creating a joint working group to organize economic co-operation between the two parties.

At a meeting in Quebec in September 1981, this group decided to establish the Quebec–Wallonia Committee. At its third meeting in Quebec in August 1984 the permanent Committee set up an Orientation Group to deal with economic co-operation projects between meetings and with the introduction of new technology or industrial projects. The efforts of Walloon and Quebec authorities have led to a substantial increase in commercial activities between the two regions. To extend these economic relations, the Walloon Regional Executive and the Government of Quebec strove to increase their co-operation on environmental and energy policies. Subsequent agreements on technology transfer and reciprocal access to data banks were also signed.

In November 1986 the Walloon region also concluded two co-operation agreements with the Chinese building industry and the Chinese province of Henan. In June 1986 an agreement was signed with the Centre for Industrial Development (established by the Third Lomé Convention) to foster technological aid to commercial farms in the African, Asian, and Pacific countries.

Finally, the Regional Council of Nord-Pas de Calais and the Walloon Regional Executive on 1 October 1985 adopted a common declaration to deal with the communication and employment problems related to the border character of the two regions. A permanent Wallonia–Nord-Pas de Calais Commission has been created to formalize their co-operation.

The Brussels-Capital region cannot be said to have developed much international activity. In 1986 Brussels signed an agreement with Washington, DC, to create economic and commercial links.

The Regional Executives and the Flemish Executive are also involved in the implementation of a number of bilateral agreements concluded by Belgium in economic and scientific matters. The subject of such agreements in part impinges on the regional powers. As a result, the relevant joint commissions include representatives of the regions as well as those of the national ministries concerned and delegates of professional federations. Regional delegates are selected by the regional ministers of external relations and their nomination announced to the national department concerned. In practically all cases, the Belgian delegation is presided over by a representative of the central government.

The communities and regions are represented in a number of

interregional and international forums. The Walloon region participated in the founding of the Assembly of European Regions (a private law corporation established under the Alsatian local Civil Code), which comprises a number of interregional organizations and 'regions'[32] belonging to the EC member-countries and to the Council of Europe. The new association, the rules of which were adopted at Louvain-la-Neuve (Belgium) by the General Constitutive Assembly of 14 June 1985, has its seat in Strasburg. Its purpose is to organize the interactions among these groups, as well as their interactions with European institutions. On 18 March 1986 the Flemish Executive decided to join the Assembly.

In addition, the Walloon region is a member of the European Centre of Regional Development, another local non-profit association under the Alsatian Civil Code, constituted on 19 January 1985 in Strasburg, and having its headquarters there. It is also a member of the Association of European Border Regions (*Arbeitsgemeinschaft Europäischer Grenzregionen*), with headquarters in Bonn. Recently, the region joined another founder organization of the Assembly of European Regions, the Working Community of Regions of Industrial Tradition. Neither the French community, nor the German-speaking community, nor the Brussels-Capital region is a member of these associations that seek to create links of bilateral co-operation between foreign regions.

Communities and regions are not members of any international organization; they have never been asked to participate in their own right in any diplomatic conferences. However, whenever these meetings deal with matters falling partly or entirely under community or regional powers, the communities or regions are allowed to send representatives to the Belgian delegation, or even to represent Belgium themselves. The latter approach is taken when conferences and organizations discuss matters in principle exclusively within community jurisdiction. The Conference of the Ministers of Youth and Sports of French-speaking Countries, to which a member of the Executive of the French Community is a party, is one such organization. Others include the Agency of Cultural and Technical Co-operation of the French-speaking countries (in which the Executive of the French Community was unable to attain the status of 'participating government' accorded to Quebec and to New Brunswick[33]) and the Dutch Linguistic Union, with its general secretariat in The Hague. The Belgian con-

tribution to these three organizations comes from the budgets of the participating communities.

Community ministers or the General Commissar of International Relations regularly attend the general conferences of Unesco and other conferences held by this organization, the interministerial conferences called by the Agency of Cultural and Technical Co-operation; and some conferences of the Ministers of the Council of Europe (those dealing with culture, sports, youth, family matters, mass media) and the Council of Ministers of Culture of the EC.[34] The same held true for the World Conference on Population, organized by the United Nations in Mexico in August 1984.[35]

In all these circumstances, the 'Mexico Protocol' that had determined the working process of the Belgian delegation to the General Assembly of Unesco in 1982 applies in spirit, if not in letter: Belgium is represented by the competent members of the Community Executives; should they disagree (and this has not so far occurred) the Belgian delegation abstains from voting. The views of the delegation are expressed by an official representing the national government, who is the delegation's spokesman. When a question raises 'political' issues, as happens even in international cultural relations, the matter is submitted to the representative of the central government.

On other matters the communities and regions are part of the Belgian delegation only if the agenda of the international meeting requires their presence. When representatives of communities or regions participate in delegations, it is only the representatives commissioned by the King who have the right to speak for Belgium *vis-à-vis* third parties. The representatives of communities or regions do not dispose of autonomous voting rights, but the head of the delegation acts only in full agreement with them.

Another approach was developed by the French community in connection with the First Conference of the Heads of State and Government of the Francophone Countries. The first summit, held in Paris from 17 to 19 February 1986, not only received a Belgian delegation headed by Prime Minister W. Martens, but also a delegation of the French community headed by Minister-President P. Monfils — just as there were both Canadian and Quebec delegations.

Even though their international activity at the highest ministerial level still creates difficulties, community and regional participation in the numerous working groups, technical committees, and con-

sultative organisms functioning in connection with intergovernmental organizations is smooth and extensive. The Executives of communities or regions[36] see to it that they are represented on various OECD and Benelux commissions, on numerous 'steering committees' of the Council of Europe, on the WHO regional committee for Europe, and on the regional policy and management committees of the EC Fund for regional development. Since December 1985 the delegate of the French community in Geneva assures its representation to the ILO.

Delegations of Community or Regional Executives, often led by ministers, occasionally go abroad. These delegations take the form of economic missions; protocol visits of a commercial, cultural, or touristic nature; travel to negotiate or sign an agreement or to participate in an international meeting; or even an official visit made at the invitation of foreign authorities. In all these circumstances the community and regional ministers, who possess diplomatic passports, can rely, in principle, on collaboration and logistic aid from the diplomatic and consular Belgian posts, but the expenses are to be paid by the visitors. It has, nevertheless, sometimes occurred that Belgian representatives abroad have shown some reluctance to receive community or regional officials travelling abroad on business or to make necessary arrangements in the host state.[37] The Belgian ambassador takes precedence in protocol in his jurisdiction over the regional or community ministers, since he represents the King.

As the result of a tacit agreement with the national government, the Belgian Ministry of External Relations is informed prior to a visit abroad of any member of an Executive. If necessary the Ministry advises the Executive regarding the political appropriateness of the planned visit. Although the community and regional authorities do not seem to have the right of maintaining direct relations with foreign diplomatic missions,[38] they frequently contact these missions. Occasions such as visits of protocol, official receptions, and galas provide such opportunities.

The official visits of foreign representatives to the Community or Regional Executives are permitted as long as invitations have been announced beforehand to the Ministry of External Relations. In this manner, in December 1980 the Premier of Quebec was a guest of the Executives, and similarly, in October 1984, the French Minister of Culture paid an official visit to the French and Flemish

communities of Belgium. The first meeting was the occasion of the signature of a 'common Quebec–Wallonia declaration'; the second resulted in the signature of a 'joint statement' by Ministers Jack Lang and Philippe Moureaux.

Occasionally there are difficulties in the relations between the communities or regions and the Belgian diplomatic or consular posts abroad. The decree of 1 July 1982 authorizes the *CGRI* of the French community to request the support of these posts and to correspond directly with them (Article 10, Paragraph 2). But the Ministry of External Relations requires that the diplomatic and consular posts correspond with them only. Foreign Minister Tindemans has subsequently agreed that telexes addressed to his department and, more generally, messages with contents pertaining to the communities and regions, be redirected to them without delay.

COLLABORATION AND CO-ORDINATION

As in all federal or quasi-federal states, the component units of Belgium co-operate with the central government in the management of Belgium's international relations. 'Concertation' (i.e. concerted action) is the most utilized method: communities and regions participate in the determination of the official Belgian position on a specific question; or, alternatively, co-ordinating mechanisms are instituted which facilitate general foreign-policy co-operation.

Association of the Regional and Community Executives in negotiations dealing with domestic matters under their jurisdiction is an all-important method of procedure. The presidents of the Executives concerned are entitled to complain about the non-observance of this formality to the 'Concertation Committee', empowered to settle the conflicts of interest between the state, the communities, and the regions. The negotiation or the conclusion of a treaty must then be held in abeyance, during 120 days at the longest, until the Committee establishes that the requirements have been formally fulfilled.[39]

Association of the Executives in negotiation of international agreements assumes different forms. In addition to their participation in Belgian delegations to certain bilateral and multilateral negotiations—and even in the signing of international acts, though

such signings are extremely rare[40]—the Executives are also associated in the preparation of instructions to the diplomatic service, in the formulation of Belgian positions, and even in the ratification of undertakings made in the name of Belgium.

When the Ministry of External Relations prepares material for international meetings for the negotiation of treaties dealing with matters relating to the domestic powers of regions or communities, it organizes co-ordinating meetings in which representatives of the Executives are asked to participate.[41] This procedure, regularly applied with respect to Flanders and the Walloon region, has recently been applied to the French community and the German-speaking community. The Executives also relay to the national government their opinions about matters regarding international institutions, or about drafts of international agreements in so far as these documents have been officially transmitted to them.

The Belgian Ministry of External Relations institutionalizes co-ordination on EC questions by organizing the meetings of 'Co-ordination Europe', which involves representatives of ministeral cabinets, higher officials of national ministries, and representatives of the communities and regions. Political and institutional aspects are highlighted in this context. The group also deals with the activities of 'European Political Co-operation', of the West European Union, of the Council of Europe, and of the Benelux.

The implementation of directives, regulations, decisions, and recommendations of the Council of Ministers of the EC or of the Commission of the EC is the responsibility of the Interministerial Economic Committee, headed by the Permanent Secretary of the Ministry for Economic Affairs.[42] This Committee has created an EC subcommittee, and representatives of the communities or regions are invited to attend whenever the examination of a question concerning them appears on the Committee's agenda.

Since 1988 the communities and the regions are entitled to conclude agreements with one another or with the state to co-operate in certain fields.[43] This faculty could be used for the joint management of Belgium's international relations.

The Executives are legally entitled to work together with national administrative organisms in fields of international economic co-operation. Each Regional Executive is represented by two persons on the Board of Directors of the Belgian Office for Foreign Markets, a legal entity whose task is to promote all aspects of the commercial

relations of Belgium.[44] Some regional members attend the meetings of the committee, which prepares the agenda to be submitted to the Board of Directors. Each Regional Executive also has two representatives on the Commission of the Foreign Market Fund, responsible for vetting requests for loans or subsidies and for transmitting a justified opinion to the national minister competent in the matter.[45]

There is also an Interministerial Commission for Scientific Policy under whose auspices the national minister and the presidents of the Walloon and Flemish Executives meet in order to discuss Belgian participation in the 'Eureka' programme. At the administrative level, there is a working team bringing together official representatives of the Ministry of External Relations and the Community and Regional Executives.

There are several other contexts in which the national government, the communities, and the regions try to solve the problems of general co-ordination arising from the international activities of the component units of Belgium. Note, for example, how several meetings of the Belgian Minister of Foreign Affairs and his community or regional counterparts in charge of external relations, institutionalized under the name 'Ministerial Co-ordinating Committee External Relations/Communities/Regions',[46] have led to the following results:

1. acceptance of the principle that quasi-regular meetings, at the ministerial level, between the Ministry of External Relations and the Executives, should take place;
2. agreement on the establishment of a committee of permanent representatives of those ministers who are members of the Co-ordinating Committee;
3. reorganization of joint commissions entrusted with the implementation of cultural agreements;
4. writing of circular letter, No. 94, meant to inform diplomatic and consular posts about the effect of constitutional reform on the powers and responsibilities of the Ministry of External Relations;
5. providing legal status to community representation in certain Belgian diplomatic missions;
6. giving community and regional officials access to the meetings

preparing the work of Belgian delegations to Unesco, ILO, WHO, and the Council of Europe, as well as to the other co-ordination meetings dealing with problems wholly or partly in community or regional jurisdiction;

7. discussion of the rules governing the relations between Executives and Belgian diplomatic and consular posts;
8. presence of Belgium at Summits of French-speaking countries under the name 'Belgique' and 'Belgique-Communauté française'.

The existence of the Co-ordinating Committee arises from pragmatic needs; it has no legal basis. Its usefulness is beyond doubt, even if its 'decisions' are not always made very efficiently. The committee of permanent representatives of those ministers who are members of the Co-ordinating Committee, mentioned above, does not appear to sit very often. On 12 December 1984 it composed a note about the participation of regions in international trade that got the agreement of regional authorities.[47]

The Belgian Ministry of External Relations has created a section directed by an ambassador within the General Direction of Policy. This section is specially entrusted with maintaining good relations between the department and the Executives of communities and regions as well as their respective administrations.[48] An administrative 'concertation' group acts in this framework; it met regularly until autumn 1985.

In a certain way, communities and regions dispose of means suitable to instigate the central power, quasi-exclusive holder of the levers of foreign policy, to grant to their interests the consideration deserved. The Belgian government can, of course, legally establish new international relations without participation by the Executives, but the separation of international prerogatives from internal powers allows each order of government to frustrate the other, thus compelling them to work in concert.[49]

The Belgian government can conclude treaties on all subjects, irrespective of the domestic distribution of powers. No constitutional or legal disposition compels it to refrain from negotiating with other states or with international organizations, even if the Executives refuse to participate in the preparation of instructions for the Belgian delegation. No rule compels the government to

obtain the assent of the Community Councils or the opinion of the Regional Executives before ratifying the treaty it has signed.

Nevertheless, it has become customary that the final consent which binds Belgium to a treaty—whether the subject affects matters under national jurisdiction or community powers, or both—is deemed obtained only after the assent of the national legislature or of the Community Councils concerned, to avoid the state's international liability should assent be refused. As a matter of fact, should assent not be given, the affected treaty would not be applicable in Belgian law or within the legal orders of the affected communities.[50]

It was for this reason that the agreement instituting a European Foundation with cultural aims, signed in Brussels on 29 March 1982, was submitted for the assent not only of the national parliament but also of the three Community Councils. The Executives, which had not been associated with the negotiations, brought in enabling legislation only after having been assured by the Belgian Ministry of External Relations that the appointment of the two Belgian members of the Foundation Board would result only from a consensus between the national authorities and the communities. Foreign Minister Leo Tindemans agreed, in addition, that 'ratification would only take place after approval of the Community Councils'.[51]

The ratification of the Lomé III Convention before the Councils had all given their assent to its cultural provisions contradicts the outlined procedure in appearance only: it had been determined beforehand that the three Councils would not refuse to approve the Convention. Moreover, Belgium had been the last member-state of the EC to present its instrument of ratification, and it was no longer really possible to wait any longer, since the coming into effect of the Convention depended on ratification by all the member-states.

The extensive influence exerted by communities and regions on the conduct of Belgian external relations is also demonstrated in the implementation of international norms. If these norms are not self-executing, communities and regions asked to implement them in their areas of jurisdiction may refuse to do so by pointing out that they have not taken part in their establishment. Once again the national government would risk having its international obligations unfulfilled. It is sometimes argued that the national government has the power to ensure the full execution of international law, even if

this involved the national government and parliament taking action in fields where they have lost their domestic powers to the regions. Actual practice does not confirm this legally questionable proposition. The proper implementation of numerous European directives, in the field of environmental protection, for instance, depends in great measure on the goodwill of the regions.

Belgium has, unfortunately, acquired a somewhat tainted reputation in these matters, which has resulted in the unpleasant consequences of its being subject to infringement procedures undertaken by the Commission at the Court of Justice of the EC. On 2 February 1982 the Court found Belgium in default of the implementation of six directives.[52] The Belgian government in its defence asserted that the incomplete implementation of the directives was due to legal uncertainty as to how the devolution of powers to the regions would apply to environmental matters. The Court stated that these circumstances did not justify the infringement, for a member-state is not allowed to plead that provisions, practices, or special circumstances of its internal legal system excuse failure to comply with its obligations under Community directives.

On 9 May 1986 the Belgian government invited the departments concerned as well as the regions to take the steps necessary for the implementation of European law within the time required and according to the prescribed procedures. The government decided that, every two months, the Concertation Committee would be informed of any problems associated with the execution of European law by the communities or regions. After due deliberation, the Executives decided that there could no longer be any question of holding up the enforcement of European law. This regional goodwill enabled Belgium to comply with its European responsibilities. Therefore Belgium will very probably take into more effective consideration the regional dimension when new European directives are drafted.

SETTLEMENT OF DISPUTES

There is in Belgian legislation no legal mechanism allowing national authorities unilaterally to implement Belgian international obligations that regions or communities refuse to implement. In the absence of such federal coercive power, the methods for peaceful

settlement of disputes between the two levels of government take on a crucial importance.

Meetings of the Concertation Committee, already mentioned above, offer the senior officials of the state, the communities, and the regions the opportunity to discuss political controversies separating them. Created by the Ordinary Act on Institutional Reforms (Article 31), it is composed 'in order to respect linguistic parity', of the Premier, of five members of the national government appointed by royal order in council, of the President and one Member of the Flemish Executive, of the President of the Executive of the French Community, of the President of the Walloon Regional Executive and of the President and one Member of the Brussels Executive. The President of the Executive of the German-speaking Community attends and has a vote whenever this community is affected by matters dealt with by the Committee.

Established to settle 'conflicts of interest', the Concertation Committee works to a *consensus*, which can mean essentially deciding on the measure recommended by the Premier without one dissentient voice. Questioned about appeals introduced by the Walloon Regional Executive against certain European legal measures whose implementation it considered detrimental to Wallonia, the Committee could not reach a consensus. In other circumstances it has been able to contribute to the political settlement of tensions arising between the national government and component units in the field of external relations. The Committee — and not the Co-ordinating Committee created by the Belgian Foreign Office — decided the participation of Regional Executives in the signing, on 12 September 1986, of the Benelux Convention on Transfrontier Co-operation between Territorial Collectivities or Authorities. Hereafter the Committee shall be able to set up 'interministerial conferences', composed of members of the national government and of the Executives, with a view to promoting co-operation between the state and its subnational units.[53] It may, however, be noted that, though the Concertation Committee has a certain role to play, it too often gives way to a dialogue of the deaf, based on misunderstandings sometimes intentionally fostered. The future of the institution will depend on the development of a spirit of tolerance, collaboration, and solidarity between the diverse components of the Belgian state.[54]

The Belgian Constitution (Article 107 *ter*, Paragraph 1) has

entrusted to the national legislature the organization of procedures tending to prevent jurisdictional conflicts between the national government, the communities, and the regions. The legislature refers to the advisory subdivision of the Council of State to determine the constitutionality of bills of the Government, of the Executives, or of private members; or of drafts of regulations. When the opinion concerns a draft legislative text, and the Council of State decides that the draft is *ultra vires*, it is directed to the Concertation Committee. The latter merely formulates amendment proposals which lack any suspensive effect; the failure of this process to generate a consensus does not prevent the adoption of the disputed provision.

The Council of State is always consulted on bills giving parliamentary assent to treaties, as well as on the legislative or statutory drafts meant to ensure their implementation. This advice is purely legal and, though often of outstanding value, does not have any compulsory character.

The Court of Arbitration, the Belgian state's highest jurisdictional instance, annuls Belgian laws and community or regional decrees and ordinances transgressing the 'rules established by the Constitution or in pursuance of the Constitution to determine the respective powers of the state, of the communities and of the regions',[55] or violating the constitutional provisions about equal footing, non-discrimination, and education.[56] Appeals to annul a law or decree by which a treaty receives assent are admissible only when presented within sixty days following the publication of the law or decree (Court of Arbitration Act, Article 3, Paragraph 2). In other cases, the period of appeal is six months. The Court also rules on preliminary questions of this nature submitted by the courts or by the jurisdictional subdivision of the Council of State (Court of Arbitration Act, Article 26). The Court is, consequently, in a position to settle conflicts of jurisdiction that arise between the national government, the communities and/or the regions on international matters. As for those conflicts of jurisdiction instigated by regulations, they can be resolved by the ordinary courts and the jurisdictional subdivision of the Council of State. The former can refuse to apply regulations vitiated by infringements of the division of powers; the latter cancels them upon application made by any person concerned within sixty days of their publication.

According to some writers, the Belgian government could bring

an action of annulment before the Court of Arbitration against a community or a region that through its legislation violated European law, on the grounds that by so doing the community or the region encroached upon the exclusive foreign-relations power of the central government. It would, after all, be 'meaningless to make the latter responsible within the European legal order if it cannot live up to that responsibility domestically'.[57] In our opinion this analysis is inaccurate. No rule assigning powers in the Belgian legal system gives the duty of fulfilling the state's international obligations to the national government exclusively. So far, no court has been called upon to settle a conflict of jurisdiction that opposed the national government to the communities or to the regions in the field of external relations.

APPRAISAL

The most remarkable characteristic of the international activities of communities and regions is undoubtedly their diversity and the diversity of actor strategies. The Flemish Executive appears to adopt a more pragmatic approach than the Executives of the southern part of the country. The latter become involved in rather more political undertakings, even if economic realism subsequently tends to take precedence over ideology. The Flemish Executive often limits itself to accompanying or backing up initiatives of its dynamic private sector; the Executive of the French Community and the Walloon Regional Executive give priority to 'institutional' relations with public partners.

The effectiveness of the policies developed by the Belgian subnational units has never been as great as their ambitions. One may thus wonder whether the CGRI and CGIS constitute the most suitable instruments for managing the diversity of conventional relations that the communities wish to establish. These administrative organisms seek to establish relations of co-operation in 'person-related' matters or in economic matters, but they have never had sufficiently qualified staff for their management and, in any case, the powers possessed by the communities in these matters are closely connected with national powers. Any decision to co-operate with the national government in these fields necessarily depends solely on the Executives. On the other hand, as far as the French community and the Walloon region are concerned,

maintaining distinct external relations detrimentally affects the international public image of French-speaking Belgium.

It must also be noted that no agreements concluded by the communities or regions contain provisions that are self-executing in Belgian law. It could not be otherwise, since such conventions are not law-making treaties. Should the Executives intend to conclude an agreement directly modifying community or regional legislation, the measures negotiated in this fashion can, in our opinion, be enforced in Belgian law only through passage of an incorporating decree transforming the contents of the agreement into a decree. It is in this way that Quebec has been able to ensure the enforcement of the agreement it had passed with France on mutual judicial aid in civil, commercial, and administrative matters.[58]

If the coherence of Belgian foreign policy does not appear to have been destroyed by the multiplicity of governmental authorities anxious to assert their presence on the international scene, it is true that the initiatives and claims of these authorities have compelled the Belgian government to modify its usual approach to certain foreign partners to ensure that legal and political disputes over the international status of communities and regions are not exported.

The empirical solutions to the controversy concerning the treaty-making power of the communities are, unfortunately, dangerously ambiguous. The national authorities have agreed that the implementing programmes of the cultural agreements presently in force should henceforth be negotiated in a totally autonomous way for each community, without requiring harmonization or co-ordination between Flemish and French-speaking delegates. The fact that new cultural agreements have not been concluded by the national government since 1981 reinforces the impression of a 'silent' or 'creeping' communitarization of the international cultural relations of Belgium.

The Belgian Ministry of External Relations, which prefers to regard these developments as temporary, decided to temporize. However, it is not certain that time plays in favour of the theses defended by the central government. The apparent inertia of the latter has already led the communities to make agreements with sovereign states. Had the national government been more receptive to the concerns of each community, it would have been able systematically to involve them in the negotiation and internal execution of new treaties, thus keeping the international prerogative of

the King intact. The Executives, for their part, have thought they might reinforce their political position towards the central government by defending particularly audacious theses about the respective powers of communities and regions in the international arena. This, in our opinion, constitutes an error in judgement: the elaboration of coherent formulae ensuring the participation of communities in non-cultural aspects of Belgian foreign relations has been delayed for several years; the regions have also been induced to refrain from any transnational relations with sovereign states.

On the other hand, the success of the initiatives of the Regional Executives in the field of new technologies and of the canvassing for investors was sufficient to make the conclusion of new bilateral treaties in these matters unnecessary. On the whole, there has been a fragmentation of the policy of economic co-operation with foreign countries. As a result, this policy has been carried on at a level other than the international legal order. So-called 'person-related' matters partly escape this phenomenon, probably owing to their close connection with national powers.

It seems now that the state and its constituent units are aware of the necessity of jointly managing the external relations of matters whose domestic aspects are under community or regional jurisdiction. The Executives have understood that they need the very widely developed network of Belgian diplomatic and consular relations. They have understood that they better ensure the defence of their interests by collaborating with the national government than by opting for rivalry and confrontation. The Belgian Ministry of External Relations, for its part, has realized that the Executives do not mean to interact with foreign governments as competitors of the Belgian government. It has also understood that the onerous burden of co-ordinating the external policy of an officially federal state cannot be carried out as directly as the management of foreign affairs in a unitary state.

The domestic co-ordination of external policies is essential to the credibility of the state at the international level. However, it is obvious that this co-ordination must be the result of a minimal consensus among equal, autonomous, but interdependent partners. It is to be hoped that the spirit of collaboration will wax, and the harmonization of foreign policies will no longer be an empty promise in Belgium.

NOTES

1. Art. 16, §1, of the Special Act of 8 Aug. 1980, which is applicable to the German-speaking Community Council under Article 5 of the Act of 31 Dec. 1983, provides that 'the assent to any treaty or agreement relating to co-operation in the matters affected by Art. 59 *bis*, §2, 1° and 2°, and §2 *bis*, of the Constitution and by Art. 4 and 5 of this Act is given either by the French Community Council, or by the Flemish Council or by both of them if both are concerned'.
2. Cultural co-operation agreements between Belgium and People's Republic of China, Republic of Korea, GDR, Ireland, Finland, and Syria (see French community decree of 8 June 1982, *Moniteur belge* (*MB*) 15 Oct. 1982; Flemish decrees of 30 June 1982, *MB* 27 Nov. 1982, 11 Jan. 1983).
3. The Brussels Region Council passes ordinances of a quasi-legislative nature, while the other community or regional councils legislate by decrees which have the force of law.
4. Art. 6, §1, VI, 3°, of the Special Act of 8 Aug. 1980, as amended by the Special Act of 8 Aug. 1988.
5. Government's note with regard to communities' and regions' competence in the field of international relations, 6 May 1983 (House of Representatives, doc. 4–VIII [1983–1984], No. 3, 8th Schedule, *Documents juridiques internationaux* (*DJI*), 2 (1983), 416–27.
6. 'The Competences of Communities and Regions in the Field of International Relations – Legal Setting', *DJI*, 3 (1984), 166–72 (in French).
7. This ingenious approach was defended for the first time in November 1982 by the principal private secretary of the Flemish Minister of Health's Policy. See J. Ceuleers and D. Vandermaelen, 'International Legal Personality and Treaty-making Power of the Communities in Cultural and "Person-related" Matters', *Rechtskundig Weekblad* (1982–3), 817–26 (in Dutch).
8. *Annales parlementaires* (*Ann. parl.*; parliamentary record), Senate, 28 Mar. 1984, p. 2038.
9. R. Ergec, 'De quelques avatars des compétences internationales des communautés et des régions belges', *Revue belge de droit international* (*RBDI*), 18 (1984–5), 543.
10. See, e.g., *Ann. parl.*, Chamber of Representatives, 2 June 1983, pp. 2446, 2448.
11. See the authors quoted by Ergec, 'De quelques avatars', p. 538 n. 40. See also F. Delpérée, 'Le Roi fait les traités', *évolution constitutionnelle en Belgique et relations internationales* (Hommage à Paul De Visscher; Paris, 1984), 64, and Y. Lejeune, 'Communauté française de Belgique et relations internationales: Aspects juridiques', *Cahiers du CACEF*, 81 (Nov. 1980), 19–20; 'Les communautés et les régions belges dans les relations internationales', *RBDI* 16 (1981–2), 55, 62; 'La Nature juridique de l'Accord de coopération entre le Québec et la Communauté française de Belgique', *Revue québécoise de droit international*, 1 (1984), 79–92, at 84–5.
12. See on this point Lejeune, 'La Nature juridique', *passim*.
13. During the legislature of 1981–5 the political composition of the Belgian government and that of the Executives were very different. This incontestably kept the controversy alive.
14. The Council of State has noted this feature in its advisory opinion of 31 May/6 June 1979 (*RBDI* 17 (1983), 541). See Y. Lejeune, 'Rapport belge au colloque sur les États fédéraux dans les relations internationales', *RBDI* 17 (1983), at 53.
15. *Ann. parl.*, Senate, 4 July 1984, p. 2762. The topic was the Belgian representation in the European Council on Cultural Affairs.

16. Such a legal permission is required. See Y. Lejeune, *Le Statut international des collectivités fédérées à la lumière de l'expérience suisse* (Paris, 1984), 261.
17. Compte rendu intégral [Record], French Community Council, 13 Jan. 1986, schedule, p. 10. See also the Minister-President's statement in French Community Council, doc. 4–III (1985–6), No. 2, pp. 8 ff., 24.
18. P. Suinen, 'La Communauté française de Belgique Wallonie-Bruxelles au carrefour de l'Europe', *Cahiers du CACEF*, 124–5 (1986), 14–17, at 14.
19. Date of the Special Act's coming into force.
20. For the present French Community Executive, see Executive Order (arrêté de l'Exécutif) of 17 May 1988, Art. 2 (*MB* 22 June 1988).
21. From Dec. 1985 to Feb. 1988 there was in the Flemish Executive a Community Minister of External Relations. See Executive Order of 11 Dec. 1985, Art. 10 (*MB* 14 Dec. 1985). For the present Flemish Executive, see Executive Order of 24 Oct. 1988, Art. 3 (*MB* 27 Oct. 1988).
22. Executive Order of 11 May 1988, Art. 6 (*MB* 29 July 1988).
23. For the present Brussels Executive, see Order of 12 July 1989, Art. 3 (*MB* 22 Aug. 1989).
24. For the present German-speaking Executive, see Executive Order of 3 Dec. 1986, Art. 2 (*MB* 28 Jan. 1987).
25. As provided for under Art. 77 of the Special Act of 8 Aug. 1980.
26. See the co-operation agreement, signed at Eupen on 21 June 1984 (*MB* 22 June and 20 July 1985), Art. 46–8.
27. Since 1 Jan. 1987 the CGRI has received the Centre's direct administration.
28. The Belgian Minister of External Relations previously entrusted diplomatic agents with the office of cultural attachés.
29. See P. Gautier, 'La Pratique belge relative aux accords bilatéraux de coopération au développement', *RBDI* 19 (1986), 235–72, at 243–4.
30. *DJI* 4 (1985), 342. It is the only agreement which the Minister-President did not sign on behalf of the French Community Executive.
31. This note is reproduced by Ergec, 'De quelques avatars', p. 555.
32. The term 'regions' is used to designate 'entities immediately situated under the central State's level, endowed with political representative character secured by the existence of a regional elected-council or, in absence of such a council, by an association or a body formed on regional level by collectivities of immediate lower rank'.
33. On this subject, see, e.g., Lejeune, *Le Statut international*, pp. 58 ff.
34. The Belgian Minister of External Relations, who had accepted the autonomous participation of members of Community Executives in informal meetings of the EC's Ministers of Culture, subsequently demanded for himself or another member of the national government the leadership of the Belgian delegation at official sessions of the European Council on Cultural Affairs (Mr Tindeman's statement, *Ann. parl.*, Senate, 4 July 1984, pp. 2762 ff.) The Executives dismissed this claim, and a compromise was reached in November 1984 'as a trial measure': Belgium's representation is henceforth entrusted to the Minister of External Relations of Belgium and to those of each Community Executive. The various members of the Belgian delegation begin to speak when matters within their respective provinces are discussed; the representative of the national government does not preside over the delegation.
35. At this juncture the legal bureau of the UN admitted that the Belgian delegation might include communities' representatives.
36. With the exception of the Brussels region.
37. See, e.g., A. Méan, 'Le Rocambolesque voyage du ministre Ducarme au Zaïre', *La Libre Belgique*, 20 June 1986.

38. See indeed the Vienna Convention of 18 April 1961 on Diplomatic Relations, Art. 41, §2.
39. Ordinary Act of 9 Aug. 1980 on Institutional Reforms, Art. 33, as amended by the Act of 16 June 1989. On the Concertation Committee see below.
40. Once only it occurred that the Belgian Premier invited the Minister-President of the Walloon Regional Executive to sign an international document. The matter was a joint declaration for a 'common centre of development' in the Athus–Longwy–Rodange frontier area, signed by the Belgian ambassador in Luxemburg and the Minister-President J. M. Dehousse on behalf of Belgium, on 19 July 1985. Moreover the members of the Walloon and Flemish Executives in charge of external relations, which had obtained the right to be 'associated in signing the Benelux Convention on transfrontier co-operation between territorial communities or authorities', solely attended the signing of this agreement on 12 Sept. 1986 by the Belgian Minister of External Relations.
41. Mr Tindemans' statements (Senate, *Questions and Answers*, No. 31 (1985–6), p. 1771; House, ibid. No. 12 (1985–6), p. 1100).
42. Order-in-Council of 14 Aug. 1947 amending the legal position of the Economic Interministerial Committee established by Order-in-Council of 26 Aug. 1938.
43. Special Act of 8 Aug. 1980, as amended by the Special Act of 8 Aug. 1988, Art. 92 *bis*.
44. Act of 16 July 1948, as amended *inter alia* by Order-in-Council No. 116 of 23 Dec. 1982.
45. Act of 24 March 1984, as amended *inter alia* by Order-in-Council No. 117 of 23 Dec. 1982.
46. Sittings took place on 11 Apr. 1984, 14 Nov. 1984, and 22 Jan. 1986.
47. Mr Tindemans' statement (Senate, *Questions and Answers*, No. 31 (1985–6), p. 1771).
48. See Mr Tindeman's statement (*Ann. Parl.*, Senate, 28 Mar. 1984, p. 2038; Senate, Questions and Answers, No. 31 (1985–6), p. 1771).
49. Like the legislative and executive powers, according to Montesquieu. See P. De Visscher, 'La Constitution belge et le droit international', *RBDI* 19 (1986), 5–58, at 57.
50. The assent of both Houses is intended to give the treaties legal effect in Belgian municipal law. So it is, likewise, with the assent by Community Councils.
51. Mr Tindemans' statement (House, *Questions and Answers*, No. 19 (1985–6), p. 1904).
52. Cases 68/81, 69/81, 70/81, 71/81, 72/81, 73/81, *European Court Reports*, 153 (1982), with findings of F. Capotorti.
53. Ordinary Act of 9 Aug. 1980, Art. 31 *bis* introduced by the Institutional Reforms Act of 16 June 1989.
54. See, on this subject, Y. Lejeune and D. Delahaut-Monseur, 'Réformer le Comité de concertation?', *Cahiers constitutionnels*, 2 (1984), 75.
55. Special Act on the *Court of Arbitration* of 6 Jan. 1989, Art. 1, 1°. See also Art. 107 *ter*, §2, of the Belgian Constitution.
56. Special Act of 6 Jan. 1989, Art. 1, 2°.
57. See K. Lenaerts, 'The Application of Community Law in Belgium', *Common Market Law Review*, 23 (1986), 253–86, at pp. 259 and 270.
58. See 'Loi assurant l'application de l'entente sur l'entraide judiciaire entre la France et le Québec', *Loi du Québec* (1978), c. 20.

7
Canada

ELLIOT J. FELDMAN AND
LILY GARDNER FELDMAN

In the last decade, René Lévesque, as Premier of Quebec, was invested as a Grand Officer (usually conferred only on heads of state) of the *Légion d'honneur* in France, and Quebec's Paris delegation has continued to enjoy diplomatic status.[1] The Premier of British Columbia, Bill Bennett, was received in Tokyo as a head of state. Premiers Lougheed of Alberta and Davis of Ontario met regularly with members of the US Congress and the Administration. All four premiers had left office by summer 1986 but their successors, including two of different political stripes, have not changed the fundamental parameters of their province's international profile; they have merely elevated the business dimension and added the principle of rationalization. Quebec, Alberta, and Ontario all maintain important political and economic offices in Europe, the Pacific Rim, and the United States, and British Columbia facilitates the sale of coal to Japan; the Government of Alberta helps shape the sale of natural gas and oil to the United States.

These four Canadian provinces are international actors.[2] They design and implement international trade policies, promote exports, recruit foreign investments, conduct negotiations for economic and cultural exchanges with the governments of foreign countries, independently monitor domestic activities in other countries, and lobby foreign governments. Their bureaucracies and budgets devoted to international affairs are, in all four cases, substantial. And, whereas sometimes they act internationally in concert with the Government of Canada, they frequently act alone. Their firm commitments to defend provincial interests beyond Canadian borders challenge conventional concepts of sovereignty and the

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federal view of a national monopoly in the field of foreign policy. Their international activities question the exclusive claim of the Government of Canada to make foreign policy, especially in matters other than diplomacy and security.

Elements of this challenge to Ottawa have long precedent in Canadian history, but the political content and circumstance of developments in the 1970s and 1980s make the overall direction and thrust a new dimension in the international system. Students of international relations in general, and most observers of Canadian politics and foreign policy in particular, have not yet appreciated the potential significance of these trends, even though in terms of scope and institutionalization the Canadian provinces provide the most sophisticated example of transgovernmentalism (activity abroad conducted by subunits of central government). The Canadian example, however, is not unique, and an understanding of this case is essential for comprehension of an international system in which central control over foreign policy is fragmenting and definitions of both the physical and metaphysical boundaries of the nation-state are demanding modification.

Transgovernmentalism is widespread and not particularly new. The question such activity raises is whether it is important. We will give 'importance' here two meanings: first, whether such activity changes the outcomes of international relations from what may have been expected had contact been confined to traditional central-government international actors; and, second, whether the sovereignty of the traditional nation-state is eroded. This review of the role of the provinces in the international system examines the causes of this behaviour, the nature of the activity and its bureaucratic organization, and the consequences for the foreign policy of the Canadian federal government. We consider developments over time to suggest that such activity is a basic feature of federalism rather than a product of individual leaders or particular political parties.[3]

REASONS FOR TERRITORIAL TRANSGOVERNMENTALISM

Provincial governments engage in international relations[4] because they have the bureaucratic and fiscal wherewithal, the formal opportunity, the jurisdictional obligation, or the political and economic necessity (internal reasons); and because the international system beckons or foreign partners look directly to them

(external reasons). Richard Leach (citing Thomas Levy) and Roff Johannson have emphasized the post-war emergence of economic issues on the international agenda as a new opportunity for provincial governments to improve their economies,[5] but there are many other external stimuli. For example, Ontario is obliged to deal with neighbouring states New York and Michigan because of fourteen international bridges that the federal government has no interest in administering or maintaining. The Government of Japan chose the British Columbia government as a negotiating partner for the mining and sale of coal. The Government of France, albeit not without encouragement, has frequently invited the Government of Quebec to participate in conferences with representation separate from that of the Government of Canada. And the Vice-President of the European Commission of the EC toured Canada in 1982, encouraging the provinces to confer directly with Brussels on European issues that concern them.

As Robert Keohane and Joseph Nye, Richard Leach, Roff Johannson, and Garth Stevenson have all recognized,[6] the 'low politics' of economics and commerce have been elevated to loftier international consideration during the last decade, highlighting long-standing provincial international activity. However, changes in the international environment do not provide a complete account for the reasons that provinces engage in foreign policy. Even the most traditional foreign-policy domains of defence and security have not entirely escaped provincial interest, and in all spheres there are important domestic motivations.[7] The basic theoretical work on transgovernmentalism centres on internal conflict to explain subunit behaviour abroad.[8] The Canadian case reveals the limits of this explanation.

Conflict with Ottawa has accounted for some of Quebec's foreign activity, particularly during the period of a Liberal government in Ottawa and a Parti Québécois government in Quebec: in many instances Quebec was motivated politically and culturally and empowered constitutionally to seek non-Canadian partners in language, trade, commerce, scientific and student exchange, and pollution control. But often Quebec's motives have been economic and its activities compatible with those of the federal government.[9] A confidential study by the federal Department of External Affairs, surveying the activities of provincial foreign delegations, concluded that, with the possible exception of Quebec's delegation in

Paris, provincial foreign offices complemented Canada's foreign mission.[10] Moreover, the conflict-based explanations that may have suited the case of Quebec in the past, even in Paris, may be wholly inappropriate in reference both to Quebec's current motivations and to other provinces. It would be unreasonable to argue that Ontario has engaged in international activity the more it has been in conflict with Ottawa, or the weaker Ottawa appears *vis-à-vis* Ontario. Indeed, Ontario upgraded its presence in Paris to a political office partly at the behest of the federal government, to help offset the Quebec presence in the French capital.

Central governments may ask subunits (e.g. the Ontario office in Paris) to engage in foreign activity, and subunits sometimes enlist the foreign-policy apparatus of central governments to help them. When the British Columbia government and private sector decided to expand markets in Japan, the Canadian embassy in Tokyo provided full support and arranged appointments for the province's emissaries with leading Japanese officials. The federal government may have perceived a political advantage in providing a western province with such service, but the important point is that the foreign activity was designed, initiated, and defined by a province, and that the central government then provided willing help.

Central governments may be expected to mobilize support for foreign policy among interested subunits, including provincial governments. Equally, central governments may have both the authority and the political desire to thwart provincial activity yet may countenance acts of independence out of political necessity. Canada's National Energy Board, a creature of the federal government, could have prevented Quebec from striking independent deals with New England for the sale of hydroelectricity. Under Pierre Trudeau, the Government of Canada made plain its desire to curtail Quebec pretences for international recognition and independence; however, it could not afford politically the appearance of damaging Quebec's economy by preventing the sale of a renewable resource. Thus Quebec has negotiated directly with elected officials in New England, more out of economic interest than out of political ambition, but the political symbols are never forgotten. The October 1986 ceremonial inauguration by Premier Bourassa of a transmission line to supply electricity to New Hampshire is but the latest example.[11]

Canadian bureaucrats may complain about the independence of

the Canadian Wheat Board, a Crown corporation, but politicians can be relieved that the Wheat Board can defy declarations of the Canadian national interest and sell wheat abroad. The corporation's headquarters are in Winnipeg and its policies are certainly shaped by the wheat farmers of the prairies. Politically the arrangement is ideal for a federal government that wants to appear in control but can also plead captive. Although the Board is not formally provincial, it surely reflects the interests of the prairies more reliably than it does the foreign-policy interests in Ottawa.

According to Canada's Constitution, the provinces share with the federal government responsibility for their own economic welfare and growth. Most provincial governments appreciate the international implications of such a role,[12] especially because increased exports and reverse investment are seen as channels for job creation. Quebec's Minister of International Relations, at the time of Gilles Rémillard, echoed the sentiments of other provinces when he referred to Quebec's international relations as 'a question of...economic survival';[13] British Columbia officials reflect the political constraints facing all provinces when they cite 12 per cent unemployment and an economy needing to diversify beyond natural resources. Apart from the immediate goal of increased employment, the provinces see reverse investment bringing long-term benefits of training and access to new technologies. Moreover, provincial bureaucracies have grown steadily in the past two decades, and in many ways some are a match for their federal counterparts. This development has given some provinces ever greater confidence in their ability to promote their own interests, first within Canada but increasingly abroad.[14]

Most analysts of Canadian federalism refer to a continuous pendulum balancing federal and provincial authority that swung to the provinces during Quebec's Quiet Revolution; the simultaneous rise in consciousness about international economic interdependence has provoked more foreign initiatives. In some instances, provincial leaders simply do not think they can rely on the federal government to defend provincial interests abroad, as Ontario's Attorney-General made clear in October 1986: 'Provincial governments in Canada no longer regard foreign policy as the exclusive turf of the federal government. When important provincial interests are at stake, provinces want the opportunity to defend and articulate their own interests, rather than have those interests articulated for them

by the federal government.'[15] Alberta, initially chagrined by Canada's National Energy Programme and the probable impact of any US retaliation, established an office in New York to monitor Washington politics (Ottawa's clout has kept provincial political offices physically out of the US capital). Officials in British Columbia, Alberta, and Ontario, moreover, acknowledge that Quebec has thrown light on an international path that could benefit their own provinces, and they have followed accordingly.

The motivations for Canadian provinces to engage in foreign policy have ranged from a quest for independence to an inducement of special federal assistance. Relations with federal officials can be antagonistic or fully co-operative, and the central government may prohibit provincial foreign activity or provoke it. The federal government may possess the authority to prevent a foreign activity, but not use it (e.g. the National Energy Board on hydroelectricity); or it may lack appropriate formal power, but may achieve fixed goals by other means (e.g. by keeping political provincial offices out of Washington). Provinces may have political or economic objectives, and, as an assessment of the range of provincial activity will show, politics may not be limited to the contest over federal or provincial supremacy. Once bureaucratic competence and fiscal means are present, perceived jurisdictional responsibility may predict which provinces will enter the international arena, on what occasions, and in reference to which issues. Foreign activity by provinces is extensive and diverse, and can be categorized according to strategy, scope, and magnitude. With respect to Ottawa, these activities can complement, complicate, or provide a channel for the federal agenda.

TRANSGOVERNMENTAL STRATEGIES

Each of the provinces of Quebec, Ontario, Alberta, and British Columbia has pursued international relations differently, even when its purposes are often similar to those of the others. The different strategies of the provinces have reflected different attitudes towards Ottawa and different perspectives on the nature of federalism. Thus, domestic political conditions shape the mechanisms for the conduct of provincial foreign policy.

Historically, *Quebec* has been by far the most independent-minded of the provinces, concentrating strategy on the performance

of elaborate bureaucracies. Quebec offices exist in fourteen countries stretching from Tokyo to Brussels and from Boston to Caracas. Of the twenty-four offices posting representatives outside Quebec, only four are elsewhere in Canada (Ottawa, Moncton, Toronto, Edmonton) compared to six in the United States.

Co-operation with the federal government to bolster tourism and the economy has grown under the Bourassa government, and emphasis has been accorded to economic objectives abroad.[16] Yet the Quebec government still complements these foreign efforts with formal activities in cultural and educational areas designed to highlight Quebec's distinctiveness (its independent identity under the Parti Québécois government). While emphasizing its commitment to Canadian federalism, representation abroad remains integral to Quebec's claim for a special role at home, as shown by Quebec's part in the francophone summit of February 1986 and in its themes of 'cultural survival' and 'cultural maturity' when confronting the world.[17]

With twelve foreign delegations in eight countries (plus a planned co-location in the Canadian embassy in Korea and a technical office in China), *Ontario*'s international profile may not appear so much more modest than Quebec's, but Ontario has been more self-conscious about being at the centre of the Canadian federal state. Ontario officials have frequently doubted that their interests abroad are pursued adequately by the federal government, but consultation between provincial and federal officials on foreign questions has been frequent. There have been few Ontario international initiatives taken without federal knowledge or sanction, and Ontario has tried to utilize federal resources as much as possible. Ontario especially wants to avoid any suggestion that the province's international activity could be interpreted as a challenge to federal sovereignty, but it is increasingly willing to acknowledge its autonomous activities publicly and to justify them on constitutional grounds of concurrent powers.[18]

Alberta's international efforts are not as elaborate as those of Quebec or Ontario but just as purposeful. The province's essential attitude oscillates between dissatisfaction with, on the one hand, the federal government's ability to articulate provincial interests and the attendant desire for an independent voice (and eyes and ears), and, on the other, a wish not to upset Confederation. On some issues, such as immigration, concrete influence is preferred to

formal power. In the Tokyo Round of GATT, Alberta had to settle for a policy of influencing Ottawa, while emphasizing the provinces' role as partners (rather than subordinates) with the private sector and the government on trade.[19] Alberta in fact sought unsuccessfully its own representation to the GATT ministerial meetings in 1982. Ottawa conceded direct provincial participation in the subcommittees of Canada's joint commissions with the EC and Japan, but continued to resist Alberta's pressure for a direct role in multilateral trade negotiations.

Alberta led the provincial request for a greater formal role in the free-trade negotiations with the United States and in the multilateral talks, and was more successful in 1986 than in 1982. Provinces played a more substantial role in the GATT meetings in Punta del Este in September 1986 and were significantly involved, through consultations and reporting at all levels, in the free-trade negotiations with the United States. Five of Alberta's six offices abroad in four different countries (there are plans for a separate office in Korea—handled until now through the Agent-General in Japan) are designed to complement the federal government. The office opened in New York in 1982, however, was a response to dissatisfaction with federal defence of Albertan interests in Washington; its purpose is to ensure that 'the Alberta Government is fully informed of United States energy developments as well as political, economic and financial policies'.[20]

Alberta chooses independence in some international activity, including the monitoring of foreign events, but prefers co-ordination and co-operation with the federal government in others. Strategy ranges from an independent political office in New York to provincial consultation with appropriate federal departments. Alberta's international interests range well beyond trade and commerce, and the domestic political pressures of a multi-ethnic population can be considerable. But Alberta's international strategy is designed neither for the distinctive identity pursued by Quebec nor for the image of compliance cultivated by Ontario.

British Columbia's international activities have traditionally been the least developed of these four provinces. They have increased recently with aggressive export and reverse-investment programmes and current strategy is again a fair reflection of the province's attitude towards Confederation. Provincial officials believe general compliance with Ottawa maximizes British Colum-

bia's claim to special help when it is most needed, and they believe it is the most cost-effective strategy; the province seeks above all to mobilize the federal government. It was British Columbia, among the provinces, that suggested the co-location projection of provincial presence in Canadian embassies, now being undertaken by the Department of External Affairs. Of the ten co-locations planned in the three-year pilot project, British Columbia will occupy four. British Columbia's fifth office, in Tokyo, will be independent but housed in the federal Place Canada being constructed. In addition to the financial advantages of co-location (the provinces still bear the cost of presence abroad, but at a reduced rate), British Columbia officials cite benefits of international visibility as 'Canadians' and of follow-up on the leads of the federal government's investment officers, whose task is to promote Canada. In their offices abroad, British Columbia will concentrate on reverse investment (about 75 per cent of the workload) because of basic satisfaction with the federal government on trade issues. Similarly, British Columbia is working with the federal government to make Vancouver one of the country's international centres of banking and commerce. British Columbia, like Ontario, is devoted to Confederation, but the bureaucracy is only now beginning to shape sophisticated strategies that do not appear to threaten national unity while serving provincial interests.

The efforts of all four provincial governments were abetted historically by Ottawa's view that international initiatives in 'low politics' were non-threatening; today, the Conservative government is also philosophically attuned, in its 'new federalism', to provincial activity abroad. All the provinces accept the shared jurisdictional responsibility for economic development, and all therefore seek to promote trade and tourism and to secure reverse investment. All want to influence international tariff and trade agreements and have also become involved in trade-policy issues, although the interests of the manufacturing heartland diverge from the interests of the resource-producing west. Each is still determining what is the most effective approach to economic self-interest within the context of national unity, but none will permit unity to stand in its way. Even the co-operative British Columbia approach exploits the delicate union by emphasizing that a price of provincial compliance is federal devotion of effort to the province's foreign ambitions.

The spectrum of strategies arrayed by these four provinces stretched in the past from transgovernmentalism prompted by conflict (exemplified by Quebec) to transgovernmentalism achieved through co-operation and co-ordination (exemplified by Ontario). Today, with the dilution of Quebec's search for distinctiveness, British Columbia's aggressiveness, Ontario's openness, and a federal government committed to provincial autonomy, there is a greater homogenization of provincial strategies around the Alberta model of co-operation and competition, as crystallized in the remarks made by Ontario's Attorney-General in October 1986:

> My argument is that, far from being a problem or a threat to Canadian unity, the involvement of both levels of government in foreign affairs is both natural and healthy. The overlapping of responsibility increases political competition between governments in Canada. This, in turn, increases the likelihood that our foreign policy will be sensitive to the diverse and competing concerns of the regions. At the same time, the emerging provincial presence has not hindered in any significant way Canada's attempt to aggressively pursue international initiatives, such as the free trade talks. In my view, the provinces are only now just beginning to emerge from the wings and take their place on the international stage. I expect to see even greater involvement of the provinces in international affairs in the years and decades to come.[21]

TRANSGOVERNMENTAL ACTIVITY: SCOPE AND MAGNITUDE

Roger Swanson has referred to the 'scope' of transgovernmentalism in Canadian–US relations by counting the sheer number of transactions.[22] A great quantity of such activity may of itself threaten a central government (and Swanson cited 766 interactions between US states and Canadian provinces in 1974 alone, before several provincial bureaucracies had even geared up for such activity[23]), but the resources devoted may be a more reliable indication of how seriously non-central governments view independent foreign activity. Many transactions are inexpensive, but the maintenance of a bureaucracy and foreign affairs for foreign relations can require genuine commitment.

The scope and magnitude of transgovernmentalism involve the number of foreign activities, the range of functional areas they include, their expense, and the foreign and domestic bureaucracy

required to operate and support them. Provincial reporting of such information is not yet consistent and most international activity is uncoordinated, but some measures can be taken.

In *Alberta*, the Department of Federal and Intergovernmental Affairs (FIGA) maintains an International Division of seventeen staff members, including eight officers and an executive director. In addition, Alberta's six offices abroad absorb around 40 per cent of FIGA's entire budget ($6.66 million for fiscal year 1984/5 actual; $6.34 million for 1985/6 estimate; $6.97 million for 1986/7 estimate).[24] The amount spent on foreign offices by FIGA does not represent the total cost of maintenance: Public Works, Economic Development, Manpower, and Tourism also share some of the responsibility. In response to questions from the Legislative Assembly, FIGA calculated that for the fiscal year 1983/4 the total cost to the government to operate offices outside Canada amounted to just over $4 million.[25]

The cost-effectiveness of the offices is constantly considered both by government agencies and by the legislature, as expressed in the debate in the Legislative Assembly over the increased 1986/7 budget allocation for offices abroad.[26] As a result, their mandates are clearly drawn, and short-term and long-term advantages for trade and investment are frequently invoked. Approximately one-quarter of the remaining 60 per cent of FIGA's budget is also devoted to the International Division.

Of course, this formal structuring of a bureaucracy to shape coherent policy and to monitor social, economic, and political affairs in other areas of the world only begins to reveal Alberta's international interests: in 1984, 22 per cent of the gross domestic product, representing $12.37 billion, was exported out of Canada.[27] The Alberta cabinet includes a Minister for Economic Development and Trade to promote such foreign activity, and his Ministry spent $5.6 million in the fiscal year 1984/5 on trade questions, and a further $739,000 on general international operations. A Commissioner-General for Trade and Tourism was appointed recently with a mandate to lead and orchestrate trade missions and a budget of around $1 million. Some twenty-eight other government departments and agencies, ranging from Agriculture to Recreation and Parks to Tourism, also conduct foreign relations.[28]

The Government of Alberta, through the Alberta Agency for International Development in the Department for Economic

Development and Trade, gives foreign aid through a variety of non-governmental organizations: $9 million in fiscal 1984/5 for projects in eighty-five countries; $7 million in fiscal 1985/6 for projects in seventy countries.[29] Alberta has signed an agreement for 'Friendship and Affiliation' with the prefecture of Hokkaido, Japan, that fosters exchanges in culture, education, recreation, agriculture, science, and technology; it has a 'special relationship' in similar areas with the Chinese province of Heilongjiang and with the Korean province of Kangwon. These twinning arrangements can also confer important economic and political benefits, as in the help given by the governor of Kangwon to secure for Alberta a wheat sale of US$750,000.[30]

Alberta is involved in cultural, scientific, and educational activities with a range of other countries, including the United States and the USSR, and has supported the development of Canadian studies in other countries.[31] Government missions in 1983/4 went to the Middle East, Western and Eastern Europe, Latin America, and the Asian Pacific Rim, as well as the United States. Representatives from forty different countries visited Alberta in the same period, with Japan, the United States, China, and the FRG mounting the most delegations.[32]

Regional relations with the United States have increased constantly, and include the Premier's attendance at the annual Western Governors' meeting, participation in the Western Association of State Departments of Agriculture, meetings with state legislators from western states, the addition of a tourism officer in the province's Los Angeles office, the creation of the Montana–Alberta Boundary Advisory Committee, and an agricultural agreement with Alaska. The frequent trips of the Minister of Federal and Intergovernmental Affairs (and later Attorney-General), James Horsman, are further testimony to the significance of the United States for Alberta.[33] During a speech in Vancouver in October 1986, Horsman called for greater co-operation with West Coast states as Pacific Rim members.[34] The United States was the destination of 75 per cent of Alberta's exports in 1984. Japan was the next most important country, accounting for 5.2 per cent of Alberta's exports (the Pacific Rim as a whole received 5.8 per cent of Alberta's exports), followed by the USSR with 4.4 per cent.[35] Natural resources (oil, gas, coal) and grain are the dominant export products.

Trade promotion and trade policy continue to be Alberta's

primary international emphases. Following his month-long trip to China and Japan during August and September of 1983, Premier Lougheed proposed various ways to improve Alberta's competitiveness in world markets, especially in the Pacific Rim. He called for 'full partnership' among the federal government, the private sector, and the provinces rather than the mere 'consultation' referred to by Ottawa's *A Discussion Paper*, the federal statement on trade policy for the 1980s.[36] Subsequently, Lougheed tabled a proposal for Canada's entry into free-trade negotiations with the United States and actively pursued the issue in Ottawa, in the West, in Washington, DC, and with US governors.[37] Alberta chaired the provincial ministers' working group on the subject and in March 1986 opened an eight-person trade representative's office to develop positions on both bilateral and multilateral free trade and to co-ordinate the views and initiatives of all Alberta agencies and departments. The office reports to the Cabinet International Trade Negotiations Task Force, chaired by FIGA with ministers from the Departments of the Provincial Treasurer, Economic Development and Trade, and Agriculture.[38]

Until 1984 *British Columbia*'s foreign activities were conducted by a small staff in the Trade and Industry Division of the Department of Industry and Small Business, and by the Ministry of Intergovernmental Relations. Since then, until November 1986, most of the activity has been initiated and orchestrated by the Ministry of International Trade, Science, and Investment (MITSI), with a strict business orientation. The Investment Promotion Branch of a dozen professionals 'actively seeks potential investors ranging from multinationals to emigrating entrepreneurs [and undertakes] international investment missions, incoming investment missions, investment opportunity seminars and presentations, in-house investment opportunity seminars and presentations, in-house investment counselling and proposal assessments'.[39] British Columbia bills itself as the 'opportunity province' for investors, and in 1985 began a major incentives programme of reduced taxes, energy discounts, low-cost loans, federal–provincial incentives for venture capital, and a special tourism programme.[40] The March 1986 budget provided further benefits for investors and an interdepartmental investment committee (made up of deputy ministers from Industry and Small Business Development; Energy; Finance; and International Trade, Science, and Investment) met regularly to

vet any investment plan destined for cabinet. The Trade Policy Division of MITSI has been 'responsible for developing British Columbia's trade policy and commercial intelligence on international trade matters'.[41] The International Marketing Branch of eight people has mounted trade missions and supported participation in trade fairs. Like other provinces, British Columbia emphasizes both established exporters and those 'new to market' and involves ministers and the premier in trade missions.

Foreign markets are crucial for British Columbia, which exported goods worth $11.7 billion in 1984, amounting to 55 per cent of its total goods production. Forest products and minerals have led exports. The export figure stood at $18.3 billion for all exports through British Columbia customs ports. The United States continues to be the main export market with 40 per cent of British Columbia's total exports (a decline from 60 per cent in the past). The Pacific Rim has grown in importance in the last decade, reaching 30 per cent of the total in 1983 with Japan occupying the central position (25 per cent of British Columbia's exports in 1984, 50 per cent of all Canadian exports to Japan). Western Europe remained significant at 15 per cent of the total.[42]

Part of the activity with Japan has resulted from the North East Coal megaproject that contracts for the mining and shipping to Japan of enough coal to cover 30 per cent of that country's needs for twenty years at a total investment of between two and three billion dollars, of which the province contributed $150 million for the rail line. Even though the development has not met the projected number of jobs or amount of exports, and there are serious questions about the wisdom of such projects and the negotiating capability of the province, the provincial and federal governments and some private sector actors still label it a success and point to increased employment and an augmented tax base as well as improved government–business relations.

'Expo 86', the World's Fair held in Vancouver, has been the second large-scale international project for the province, and while it, too, suffered from short-term deficits (to the tune of $300–400 million), the provincial government calculated that it would bring long-term benefits of tourism, trade, and investment. Major industrial projects planned for the future and involving international relations include offshore oil and gas exploration and harnessing of undeveloped hydroelectric power. In the past, British

Columbia emphasized electricity development for its own requirements, but the third Bennett government began to entertain the idea of increased hydroelectric production for export to the United States. The US connection is equally important for high technology, both as a market and as a source of investment.

While the third Bennett government vested authority over trade and investment questions in MITSI, the Ministry of Intergovernmental Relations retained importance as a central agency and has been a key player on trade-policy questions, particularly the free-trade negotiations with the United States. Other aspects of relations with the United States, such as transborder environmental questions, come under this ministry, but its mandate for international relations has become subordinate to its role in domestic intergovernmental relations and is shaped by just one person. The institutionalization of relations with the United States (or with other countries) is much less developed than in the three other provinces and may be a reflection of British Columbia's more fragile bureaucracy.[43]

The bureaucratic fragility of British Columbia was highlighted in November 1986 with Premier Bill Vander Zalm's cabinet reshuffle. In an efficiency drive, MITSI ceased to exist. Its trade promotion, trade policy, and investment divisions have been incorporated into an enlarged Ministry of Economic Development. So far, the activity of these divisions has not changed substantially. The budget for the International Trade and Investment Division of MITSI was $7.7 million in 1985/6. For 1986/7 it was projected to increase by some $3 million to cover the cost of the trade and investment offices abroad; these are still slated to operate and will report to Economic Development, as will British Columbia House in London, and overseas tourism offices (formerly responsible to Intergovernmental Relations and Tourism, respectively). Moreover, other agencies continue to be involved in international questions, albeit in an uncoordinated fashion: British Columbia Hydro; Energy, Mines, and Petroleum Resources; Education; Tourism, Recreation, and Culture; Finance and Corporate Relations; Agriculture and Fisheries; Forests and Lands; and the Provincial Secretary and Government Services.

In addition to the eighteen full-time members of the International Relations Branch of the *Ontario* Ministry of Intergovernmental Affairs (some sixty-five total personnel), in the past the ministry staffed and controlled directly the province's agencies-general in

Paris and Brussels. Today, all twelve offices come under the Ministry of Industry, Trade, and Technology (MITT), whose International Trade Section comprises 204 employees, 107 of whom are stationed abroad. In June 1983 Ontario opened an agency-general in New York 'in recognition of the importance of that location and the fact that such offices help build Ontario's profile and reinforce its image'.[44] Ontario is upgrading the status of its representation in Japan from a trade office to an agency-general and is developing offices in Korea and China. These decisions emerge from careful cost-benefit analyses, and offices are run on business lines with annual business plans and monthly reporting on spending and results. Such analyses also lead to closures—for example, of the Ontario House in Brussels and the trade offices in Philadelphia and San Francisco. The eight trade offices deal predominantly with trade and investment issues (although they will act as facilitators for other areas, e.g. culture), while the agencies-general (London, Paris, New York, Tokyo) work on all questions, including education, culture, and diplomacy.

Intergovernmental Affairs' share alone for overseas offices in 1982, and again in 1983, was estimated at $1 million, more than 14 per cent of the entire intergovernmental relations budget. In 1986 the cost to MITT for offices abroad was $12–13 million with Tourism and Agriculture contributing approximately a further $0.75 million each. The budget of MITT's International Trade Section for fiscal 1984/5 was $23 million, representing some 44 per cent of the total MITT budget, and $25 million for 1985/6. The Industry Division also contributes to attracting foreign investment. Spending for the International Relations Branch of Intergovernmental Affairs stood at $2.3 million for fiscal 1984/5 (28 per cent of the Ministry's total) and at $2.1 million for 1985/6 (40 per cent of the total). The projection for 1986/7 is $1.3 million (22 per cent of the total), reflecting the removal of the Paris office (to MITT) and the Brussels office (closed).[45] As in the three other cases, multiple agencies are involved in foreign relations. Peculiar to the province, however, is the effort to bring 'unity and coherence' to Ontario's international activities through a Deputy Ministers' Committee on International Relations, with representation from Industry, Trade, and Technology; Tourism and Recreation; Agriculture and Food; Citizenship and Culture; Education; Colleges and Universities; and Intergovernmental Affairs, which chairs the committee.

The United States is inevitably a major focus for Ontario.

Ontario signed four environmental accords with Michigan in December 1985 and is negotiating the reduction of toxic contaminants with New York. It sells quantities of hydroelectric power based on contracts between the province and New York and New Jersey; it lobbies directly in Washington on the issue of acid rain (with the full support and sympathy of the federal government); and its premiers have meetings, arranged by the Canadian embassy, with senior members of the US government to discuss Ontario–US issues. Premier Peterson made his first international visit to the United States in October 1985. Although the Great Lakes Water Quality Agreement is an executive agreement between Canada and the United States, the Province of Ontario is the primary Canadian actor (with substantial federal funding) through the Canada–Ontario Agreement on Great Lakes Water Quality. On a host of other transborder issues, there are regular contacts between the United States and several Ontario government ministries and agencies.

Premier Peterson has continued to stress the economic importance of the United States for Ontario. In 1985, 91 per cent ($53.9 billion) of Ontario's exports went to the United States, generating one million jobs. Automotive parts, motor vehicles, forest products, and non-ferrous metals are Ontario's leading export goods. Europe has been the second most important recipient of Ontario's exports, taking up to 4.2 per cent of the total, followed by the Pacific Rim with 2.3 per cent.[46]

As in British Columbia, the economic future of Ontario is envisioned in increased relations with the Pacific Rim. Ontario's Treasurer and Minister of Economics announced to the legislature in October 1985 the government's decision to reallocate more of its foreign-trade promotion efforts to that region as well as to the Middle East and 'emerging nations', citing as reasons a desire to be cost effective and to revive the concept of economic development.[47] The speech from the throne in April 1986 went on to identify five elements of the Pacific Rim emphasis:

1. upgrading of the Tokyo office to an agency-general;
2. establishment of a trade office in Seoul;
3. opening of a joint Ontario–Jiangsu science, technology, and cultural centre in Nanjing (resulting from the twinning agreement reached between Ontario and Jiangsu in November 1985);

4. implementation of a graduate student exchange programme with Pacific Rim nations;
5. a major government mission to the Pacific Rim, led by the premier and involving senior business and labour leaders.[48]

The last of these mechanisms has been used in the past by Ontario with respect to a number of continents, and, like other provinces, Ontario has hosted senior government officials from Asia, the Middle East, Eastern and Western Europe, Africa, and the United States. The provincial government has developed close relations with the foreign consular corps in Toronto.

Although 'the search for markets and investment' is Ontario's principal international concern, much attention is also paid to the multicultural composition of the province's population, thus involving the provincial government in immigration policy. Various forms of foreign aid have been extended through disaster relief and through specific grants to Commonwealth island nations in the Caribbean. The Ministry of Education has run a programme in the Caribbean, has organized student and teacher exchanges with several countries (including the United States), and has seconded personnel to international organizations including Unesco, WHO, FAO, and the ILO.

International relations have greater priority for *Quebec* than for any other province. In 1984/5 at least two-thirds of the staff in the Ministry of Intergovernmental Affairs alone were committed full-time to international relations (of a total of 381 positions); in the Ministry of International Relations in 1985/6 the number was 389.[49] The International Division spent in 1984/5 $42.1 million (including $14.4 million for overseas offices), some 80 per cent of the entire Ministry's budget; this allocation increased in 1985/6 to $54 million in the new Ministry. The Ministry of Foreign Trade's budget stood at $19.2 million for 1984/5 and increased to $24.3 million for 1985/6; it employed 220 full-time staff.

For 1986/7 the new Bourassa government slashed the budgets of both ministries: International Relations suffered the larger cut of 20 per cent, while Foreign Trade and Technology faced an 8 per cent reduction.[50] In response to critics, both ministers have argued that, in the context of a general 3.8 per cent increase in government spending, the cuts do not reflect diluted commitment to international affairs but rather an attachment to the principles of rationalization and efficiency. The themes of economic develop-

ment, technology, and *la Francophonie* seem to be the new government's credo for economic and cultural survival in a world of economic and societal interdependence. The private sector is to play a larger role, and increased Quebec participation in international fora is intended to bring both cost and efficiency advantages, as well as to provide a forum for global dialogue.[51]

Rationalization in budget terms is manifested in reduced contributions to non-governmental organizations in Quebec and in shrinkage of representation abroad. The then Minister of International Relations wanted to encourage the activities of non-governmental organizations, leaving the government to act as facilitator and co-ordinator, but believes that the non-governmental organizations should bear most of the cost.[52] As in Ontario, there is in progress a cost-benefit analysis of overseas offices. Of the twenty-four offices, half are still large-scale operations (five *délégations générales*, seven *délégations*, and twelve bureaux). The cost of these offices stood at $25 million for 1985, with approximately one-third spent on the United States.

The economic dimension is highlighted by the Liberal government in Quebec, but has always been a critical dimension for previous governments. After all, in 1985 Quebec exports amounted to $18.6 billion, representing 17.7 per cent of the gross domestic product. Seventy-five per cent of exports went to the United States.[53]

Not all of Quebec's activity is economic. As in other provinces, there is expenditure and manpower commitment for foreign affairs in ministries responsible for aid, tourism, immigration, culture, and agriculture, all of which have foreign representations of their own. Education, too, supports various international activities without posting representatives abroad. The diversity of these activities and of Quebec's partners can be seen in the fact that between 1964 and 1984 Quebec concluded ninety-seven agreements with thirty-three different countries.[54]

In addition to its historical relationship with France, Quebec has extensive relations with other European countries, and in the last five years has placed increased emphasis on the United States. The United States, France, Europe, Latin America, Asia, Africa, and the Middle East have their own bureaux in the Ministry of International Affairs. In all cases, visits to and from Quebec at the highest levels are countless. As just one example, in the period from January 1977 to December 1985 there were 167 ministerial visits to

the United States, and, in the eight-month period from February to September 1986 alone, fifteen ministers went to the United States.[55] Much of the activity in the United States is with New York and New England and has become highly routinized.[56]

There can be no doubt, judging by the sheer magnitude and scope of commitment, that Quebec fashions itself as a significant international actor. In the 1960s, when the foundation of this prominence was constructed, the essential absence of other provinces internationally made Quebec unique. When other provinces entered the international stage in the mid-1970s, Quebec's uniqueness continued in the Parti Québécois effort to bolster its separate potential at home through independence abroad. By the 1980s, with the international dynamism of other provinces, the emergence of US states in the international economy, and Quebec's renewed commitment to Canadian federalism, there has occurred a dilution of Quebec's particularity. As an international actor in a North American context, it remains special but no longer unique.

Swanson identified ten functional areas in which provincial international activity could be classified: agriculture, commerce and industry, education and culture, energy, environmental protection, human services, military and civil defence, natural resources, public safety, and transportation.[57] Holsti and Levy, Stevenson, and Leach added 'administrative interactions' and 'political relationships'.[58] All four provinces discussed here engage internationally in almost all of these activities, which cover most of the range of international relations.

The distribution of activity of course varies among provinces. In the past, Quebec's transgovernmentalism was generally more political, cultural, and educational, and the other provinces' more economic. In the 1980s all were motivated by economic concerns which go beyond trade promotion to encompass trade policy and reverse investment. Political and cultural issues are now important for Alberta and Ontario as well, and the latter has made environmental questions a central concern. Johannson observed that the range of activity has extended even beyond these categories into foreign economic aid, technical advising, and scientific and technological exchange.[59] As the categories have multiplied with the greater internationalism of the provinces, even the general distinction between economics and politics has begun to fade.

Since the provinces first became active abroad in the 1960s, the

international system has undergone considerable change: new nation-states have appeared in the third world; new issues of economics, religion, the environment, and culture have arisen on the international agenda; non-governmental actors as varied as the PLO, Greenpeace, the Roman Catholic Church, and the American Friends Service Committee have become integral participants in global questions. The Canadian provinces have been both contributors to and beneficiaries of the richness of this new international system. Much of the provincial involvement analysed above has complemented the activities of the federal government; but, as noted earlier, provinces can also complicate and provide channels for the federal agenda.

CO-ORDINATION, CHANNELS, COMPLICATIONS

So far we have considered the activities of the separate provinces in the international arena, but increasingly there are examples of provinces aggregating their efforts. This provides a maximum challenge, or opportunity, to the federal government. At a minimum, the first ministers' conferences and the premiers' meetings (both the all-inclusive and regional varieties) permit regular exchanges and consultations on international questions, not only among the premiers, but also at the working level. One participant has referred to an active 'sub-culture' among provincial bureaucrats dealing with international issues. Between these gatherings, provincial ministers in different sectors, such as trade or agriculture, meet. One recent example of provincial solidarity came in the speech by the Alberta Minister of Intergovernmental Affairs on the 'very special relationship' between Alberta and British Columbia, in which he specified common interests in the international arena and called for further co-operation.[60]

Two areas where exchange has gone beyond dialogue to action have been acid rain and free trade, both focusing on the United States. The former reveals the provinces as channels for federal interests, whereas the latter demonstrates their potential for complicating federal policy.

The provincial concern about acid rain as an international issue has led to consultation and co-ordination within Canada and, more recently, to joint action with US states. Since 1973 the Conference of the New England Governors and Eastern Canadian Premiers has

been the major institutional expression of state–provincial ties in North America, addressing issues as diverse as energy and fish. In the early 1980s acid rain has become one of the Conference's major focuses and a source of consensus, as the Director of Water Resources for the New England Governors' Conference declared in 1984: 'While the issue has been a divisive one at the federal level, it has been a unifying one at the state–provincial level.'[61] States and provinces are physically closer to the problem, nearer the pressure of local interest groups, and, unlike their federal governments, able to disentangle the matter from other items on the agenda.

Since 1981 the New England Governors and Eastern Premiers have issued joint resolutions, commissioned studies, and organized working groups on acid rain. In June 1984 they created a Standing Committee on the Environment. A year later they hosted twenty-two states and provinces in Quebec City to exchange information on the political and scientific aspects of acid rain.[62] Subsequently, at their thirteenth annual conference, the governors and premiers presented a plan for sulphur dioxide emission reduction (incorporating the strongest goals of any region), called on the two federal governments to reach agreement on a Transboundary International Accord, and offered assistance to the acid rain Special Envoys appointed by Prime Minister Mulroney and President Reagan.[63] After Reagan and Mulroney endorsed the envoys' January 1986 report, the New England Governors and Eastern Premiers wrote jointly to the Canadian Prime Minister and US President urging utilization of existing programmes and the creation of new ones.[64]

For the Canadian federal government, this joint state–provincial position provides an additional pressure point on the US government. The Conference subscribes to Ottawa's view that there is sufficient scientific evidence to warrant immediate action and criticizes the US government's procrastination. At a time when free trade overshadowed acid rain on the national bilateral agenda and acidrain bills were mired in Congress, it was at the regional level that action occurred: there was progress towards implementing the 1985 New England Governors–Eastern Premiers sulphur dioxide emission reduction plan, including actual reductions, the passage of legislation, research, and monitoring the realization of the Special Envoys' recommendations.[65]

Established north–south links have also provided a channel for

provincial–state discussions on free trade. At the National Governors' Association 1985 meeting in Idaho, attended by seven Canadian premiers, a joint state–provincial task force was created to study the implications of a free-trade agreement. While this collaborative effort does not begin to approach the sophistication of the state–provincial activities on acid rain, it did alert the two federal governments that regional interests, objectives, and problems cannot be omitted from the national definition of bilateral free trade. This is particularly true for the Canadian provinces, whose authority over a series of non-tariff barriers (in such sectors as services, natural resources, agriculture, and brewing) made them essential participants for the development of the free-trade agreement and its successful implementation.

The free-trade issue became a major personal preoccupation and political focus for the provincial premiers. They revamped old bureaucracies, developed new ones, and appointed special trade advisors (sometimes culled from the federal level) to help articulate and co-ordinate provincial interests. A number of their meetings centred on the free-trade issue. The premiers of all four provinces treated in this paper visited Washington to talk to Congress and the Administration. Of the four provinces, Alberta supported free trade the most, recognizing 'the long-term economic and employment benefits'.[66] British Columbia shared the perception of economic advantages, but had also made an unheeded call for a 'standstill agreement' on irritants to eliminate the impairment of negotiations by such protectionist actions as the US duty on lumber.[67] Quebec saw the free-trade agreement as a means of obviating US protectionist legislation, and as a stimulus both to Quebec's competitiveness and to its investment. Yet Quebec was aware of the potential costs to its industrial and technological base, its social services, and its culture, depending on the nature of the agreement, and, therefore, emphasized the absolute need for a significant adjustment phase.[68] Ontario was also aware of the benefits, but was much more concerned about the same kinds of costs identified by Quebec, as Premier Peterson reminded his colleagues: 'Ontario is not against secure and enhanced access to the US market. We are only against a hasty and uninformed approach to the issue. We do not expect benefits without costs. But we do expect benefits to exceed costs.'[69]

Despite the differences over substance, the premiers all insisted

on their constitutional rights. At the November 1985 First Ministers' Meeting in Halifax, they agreed on their centrality as partners in shaping the mandate and ratifying any agreement; they subsequently looked to the federal government to implement its promise of 'full provincial participation'. The provincial preference to be 'in the room' was not accommodated in the June 1986 resolution on their role: the federal government offered permanent consultants between the Trade Negotiation Office (which has a provincial wing) and provincial officials, punctuated by quarterly meetings between the Prime Minister and the premiers (the premiers insisted on the Prime Minister, refusing to meet primarily with Simon Reisman, the chief trade negotiator).

The provinces still felt that 'full participation' was not realized and their ultimate power to complicate the federal agenda on free trade was foreshadowed by Premier Bennett in May 1986: 'If Ambassador Reisman were not in a position to deliver the provinces, American consternation would be equivalent to the Canadian response to the US Senate's rejection of the Canada–US East Coast fisheries agreement.'[70]

The free-trade negotiations revealed that provincial behaviour could come into conflict with federal foreign-policy goals. In general, the federal government wants to avoid the appearance or the reality of multiple Canadian voices in the international arena. The Liberal government of Pierre Trudeau was apoplectic about the cacophony from which the foreign partner could draw strength. Nothing created greater anxiety than Quebec's relations with France and *la Francophonie*. The Liberal federal government was concerned that the French-speaking world might extend Quebec independent international recognition, implicitly denying Ottawa's claim to represent all Canadians. Ottawa consistently opposed the establishment in Washington, DC, of provincial offices with any political content (leading to the opening of Quebec's 'tourism' office and Alberta's political listening post in New York).

The Conservative federal government is less concerned about perfect harmony and, to a large extent, sees provincial presence abroad as a reflection of the diversity and richness of Canadian federalism. However, in capitals like Washington, DC, it maintains the position of the previous government and has obstructed the provincial presence. Similarly, like its predecessor, it prefers to be forewarned about provincial actions with major implications for

Canadian foreign policy. For example, both the discussions between Premier Getty of Alberta and Sheikh Yamani (as Saudi Arabia's Energy Minister) about production cuts, and Ontario's liberalization of its securities industry, came as surprises to the federal government. In the former case, the Canadian government was concerned about the effect on the United States and the International Energy Agency, who were trying to unify approaches to production levels; External Affairs and Energy, Mines and Resources had to assure them that production cuts were not Canadian policy. Ontario's actions meant some advantages for the United States and, therefore, annoyed External Affairs and the Department of Finance, both of whom imagined securities liberalization as a negotiating item in the free-trade talks with the United States.

THE FEDERAL RESPONSE

The Liberal government saw complications more than the complementary or substitutive behaviour emphasized by the current Conservative government in Ottawa. Yet both have sought, choosing different means, to reiterate federal supremacy in foreign policy.

The federal government has acknowledged the importance of provincial activity by reacting concretely to it. Federal responses have taken three main forms: control, co-ordination, and co-operation. The Liberal government emphasized control, whereas the Conservatives have sought to build co-ordination and co-operation; but both governments have employed all three mechanisms.

Control has been attempted through the creation of structures to monitor and limit provincial activity abroad. The reorganization of the Department of External Affairs in 1982, including the incorporation of the trade function from the Department of Industry, Trade, and Commerce, was an effort to unify Canadian foreign policy by making External a central agency. Not only was External to oversee and manage the activities of disparate Ottawa federal agencies involved in international relations; reorganization also provided a more effective tool for watching the provinces.

When the Department of External Affairs had neglected economic issues, and the provinces enjoyed a jurisdictional responsibility to assure economic growth and development, the provinces discovered that they could fulfil their mandate best by engaging in foreign commerce. Thus, the provinces captured much of the inter-

national activity affecting the Canadian economy. Consequently, the reorganization sought to improve the mechanisms for control and information flow while increasing provincial reporting of foreign activities to the federal Department of External Affairs. At the time of the reorganization, the department had already identified more than thirty-five formal mechanisms for the provinces to participate in Canada's foreign relations and for provincial economic relations abroad to be co-ordinated through the federal government,[71] but the mandate under reorganization was to make these mechanisms more effective and develop new ones if necessary. Reorganization meant that the Federal–Provincial Relations Office in External became more active.

The reorganization of the Department of External Affairs began with the conviction that the federal government was losing its grip on international economic activity because various Ottawa agencies operated at will and the provinces had become increasingly active. Furthermore, the Prime Minister's closest advisers had concluded that Canada's future foreign relations must give greater emphasis to trade and commerce, the very areas in which the federal government had previously adopted a benign view of provincial initiative.

Some of the Liberals' efforts at control appeared in the guises of co-ordination and co-operation. In 1971, in response to Ontario's desire to create an independent office, Ottawa had created a position of Counsellor for Provincial Interests in the Canadian embassy in Washington, filled by a federal official responding to provincial enquiries and concerns. In 1981 and 1982 an official of the Ontario Ministry of Intergovernmental Affairs was seconded to the embassy to assist in lobbying the US Congress on acid rain. But the fact that both officials reported to and took instructions from the federal government, and not the province, reveals that no change in power took place. Similarly, the Conservatives' co-location scheme, in which provinces will have their own offices in some Canadian embassies, will permit the federal government to have direct observation of provincial behaviour. This may not have been the federal government's intention, but it may well be the outcome.

In other areas, it is clear that the current government's aim is to work with the provinces. In the past, there were efforts to co-ordinate provincial and federal actions by informing the provinces on international matters of concern to them through the dissemina-

tion of written materials and through the visits of Canadian ambassadors to the provinces. The system has become much more elaborate, with greater volume and frequency. In addition, while encouraging and helping the foreign trips of provincial ministers, the federal government is trying to co-ordinate them to prevent the simultaneous appearance of several provinces and consequent dilution of effectiveness.

Co-ordination occurs at home too: for example, the provincial ministers of trade meet with the federal government on a regular basis to improve trade promotion as part of Canada's national trade strategy. For the Canadian 'Export Week' the federal and provincial governments work together to promote awareness of international trade among the public and the business sector.

On trade, as we noted earlier, federal efforts have extended beyond co-ordination to co-operation, beyond promotion to active encouragement of participation in trade policy. So far, the degree is unclear in the Canadian–US context, but is quite high in other areas. For example, there was provincial representation in the Canadian delegation to the GATT meetings in Uruguay in September 1986, and a year earlier the provinces of Alberta, Ontario, and Quebec were allowed to make their own presentations to the representatives of the USSR during the meetings in Moscow of the Canadian–Soviet Mixed Economic Commission.

On other issues, such as acid rain, we have seen the federal government support the separate action of the provinces. On a series of environmental issues, from water quality to air pollution to dams and dikes, the federal government recognizes that often the provinces can identify the problem more closely and negotiate a solution more readily with their US counterpart. As with some of the trade issues, this is a logical and necessary approach from the provinces' viewpoint, because much of the domestic authority over the environment is vested in the provinces.

In addition, there are indications of the federal government according important latitude to the provinces in other areas. In response to an Alberta proposal, Ottawa supported the inception in spring 1986 of a mechanism for the regular exchange of views between agricultural officials in the provinces and the US states. Again, the rationale is that issues are regional in character and that potential problems can be identified best by those directly involved.

CONCLUSION

When in 1983 we described the radical growth in provincial foreign policies, we asked whether the presence of activity could be interpreted as having any importance in international affairs. Despite the many problems of measurement, we suggested that these developments bore the same weight as many others, and we reviewed ways in which provincial initiatives had clearly affected international outcomes.

Today this question of significance is no less important, but in many respects it no longer needs to be asked in the same way. The Canadian federal government has had to reshape its foreign-policy-making apparatus to accommodate the provinces, and has acknowledged its inability to proceed in major international negotiations without institutionalized provincial participation. Foreign governments accept the provinces as legitimate interlocutors with little or no question. Provincial governments themselves continue to spend, in some interests lavishly, on their international activities, and more provinces are involved than ever before. New regional efforts have emerged with the United States that suggest only the beginning of a potential transformation in the international relations of federal states.

There have been many important developments in the institutions of Canadian foreign policy since our first article on this subject in 1983, but two stand out above others. The separatism of the Parti Québécois yielded to a more centrist position under new leader Pierre-Marc Johnson, and then faded as a political force in the 1980s with electoral defeats. The Conservatives in Ontario surrendered power for the first time in more than three decades; Peter Lougheed departed from politics in Alberta; Bill Bennett retired in British Columbia; and Allan Blakeney was defeated in Saskatchewan.

This wholesale shift in power at the provincial level after a decade or more was matched by the second major development, the displacement of the Liberal government in Ottawa. Much of what we wrote in 1983 mistakenly assumed more electoral and political continuity.

Given the assumption of continuity, what might have been predicted? Quebec, ever antagonistic to federal authority, would have continued leading other provinces in the fashioning of foreign-

policy institutions. Quebec would have continued to press political and economic claims abroad, and the other provinces would have pursued their primarily economic interests with calculated supportive doses of diplomacy and cultural, educational, and scientific exchange.

Despite the major political changes erasing the central assumption, such predictions would not have been completely erroneous. Although Quebec has shifted more emphasis to the economic side of its international activities, Premier Bourassa and Prime Minister Mulroney still clashed over diplomatic issues in Paris. Although Prime Minister Mulroney has embraced Secretary of State for External Affairs Joe Clark's 'community of communities' thesis and hence accepts a prominent role for the provinces in international relations, he has refused separate provincial seats at international bargaining tables. The place of the provinces in trade talks with the United States had remained ambiguous and contentious, although free of the bad faith that seemed to characterize the Trudeau era.

Despite political change, the provinces have pressed on in their drive for more international presence, and the federal government has persisted in defending the authority of a single Canadian voice. Despite consolidations and reorganizations, notably in British Columbia, Ontario, and Quebec, non-economic international activity remains central to the strategies of all the provinces.

Sceptics in the 1970s and early 1980s derided Quebec's internationalism and criticized the Parti Québécois for flying the *fleur de lys*. No such criticism is offered now when the Liberal government of Quebec follows essentially the same course. *Raison d'État* is now recognized. And what is true for Quebec is no less true for the successor governments in Alberta, British Columbia, Ontario, and, with new vigour, Saskatchewan.

Internationalism is central to provincial policies, and federal prerogative remains central to Ottawa. But now the provinces have lowered their political profile, and Ottawa has tried to embrace more than co-opt, corrupt, or cast aside their international efforts. There is, consequently, a much greater spirit of co-operation and trust, and the trends we suggested in 1983 have been extended as manifestations of the needs of *l'État*, not as the expressions of wilful partisan politics.

These changes have encouraged co-operative efforts among the provinces as they face the world, whether on acid rain or on free

trade. As well, where issues are regional or local in character, the regional or local political forces may have a better chance of finding compromise or agreement. As antagonism between Ottawa and Washington has grown over acid rain, co-operation between New England and the eastern Canadian provinces has matured. British Columbia and its west-coast partners, Ontario and the Great Lakes states, New England and New York and their northern partners, all signed agreements and are developing relations that recognized their mutual and regional interests whatever the international disagreements. The apparatus that now serves the states and provinces internationally is available to serve transborder regions, a development that promises a reshaping of the economic and cultural, if not the political geography. Some of the most intractable international problems may well prove themselves susceptible to the problem-solving of these actors no longer new to the international scene.

If the burden of studying these developments no longer concerns whether they are important, it does still require assessing their direction and scope. As the provinces have pressed their international economic concerns, the federal government has moved more of Canada's international emphasis to economics. Can the concern of the provinces be fenced off from Canada's other international commitments, responsibilities, and interests? Can the federal government retain its authority for security and diplomacy? Can it continue to give security and diplomacy the emphasis that helped win Canada much international respect during the era of Lester Pearson? Or will the provinces intrude on this domain too, either by sharing it with the federal government or by redirecting federal emphases and efforts? Alternatively, will the provinces fence themselves off, expropriating more of the economic terrain and deliberately ceding to the federal government the traditional foreign-policy turf? And would such a development indeed liberate Ottawa to make more choices, and exercise more international authority?

These questions will be most difficult to answer where diplomacy or security and economics overlap. Acid rain is a crucial test, profoundly affecting the environment and the economy, and requiring a diplomatic solution. The regional effort to influence, and potentially to solve this problem politically and diplomatically, will help define the foreign-policy capacities of the provinces, and also the directions the provinces may take in the international arena.

Furthermore, the way in which the federal government co-operates with, co-opts, or collides with these efforts may define the future of both federal–provincial relations and the limits on the independent international authority of the federal government. There is an opportunity for pragmatism or for constitutional idealism.

Federal–provincial relations have long posed the central questions of the Canadian polity. Now they may determine Canada's place in the world. Although it is no longer necessary to ask whether they are important for Canada's foreign policy, it remains essential to ask where they are going and to watch closely the path they are taking to get there.

NOTES

1. A. Jacomy-Millette, 'Aspects juridiques des activités internationales du Québec', in P. Painchaud (ed.), *Le Canada et le Québec sur la scène internationale* (Montreal, 1977), 543. The Paris delegation was opened in 1961, and, although there are full privileges and diplomatic immunities, it is not on the diplomatic list. Delegations in Mexico and Venezuela, however, are accorded full diplomatic status without such qualification.
2. We have focused on these four provinces because they are the most active abroad. In structure, content, and purpose, the other provinces are much less visible and their activities are somewhat spasmodic and uncoordinated. Often for financial reasons, they tend to rely on the Federal Department of External Affairs for issues beyond Canada's borders. Of the six remaining provinces, Saskatchewan has a significant level of external interactions which in time could place it in the same category as Alberta, British Columbia, Ontario, and Quebec. Saskatchewan has four offices abroad (London, est. 1974; Minot, 1982; Hong Kong, 1985; New York, 1986). The Intergovernmental Affairs Branch of Executive Council is the co-ordinator of the activities of departments such as Agriculture, Environment, Highways, Advanced Education and Manpower, Culture and Recreation, Tourism and Small Business, and Economic Development and Trade. Saskatchewan's interests are largely economic, but there are also cultural dimensions to its presence abroad. Manitoba has frequent bureaucratic contact with US border states, and on specific issues, such as the Garrison Diversion, Manitoba has involved itself directly in arguing Canada's case to the United States.
3. For a review of the first decade of provincial assertiveness abroad (the 1970s) see E. J. Feldman and L. G. Feldman, 'The Impact of Federalism on the Organization of Canadian Foreign Policy', *Publius*, 14/4 (autumn 1984), 33–59. In particular, see p. 35 for identification of the major literature. This chapter is based on confidential interviews and correspondence with provincial and federal officials between summer 1982 and autumn 1986. For more recent literature on the provinces in general see B. Hocking, 'Regional Government and International Affairs: Foreign Policy Problem or Deviant Behaviour', *International Journal*, 41/3 (summer 1986), 477–506; and H. J. Michelmann, 'Federalism and International Relations in Canada and the Federal Republic of Germany', ibid. 539–71.

4. This activity is called 'territorial transgovernmentalism'; the term is used to distinguish the phenomenon from another type of foreign-policy-making segmentation in Canada, 'functional fragmentation', in which multiple governmental agencies and departments in Ottawa compete with the traditional locus of power, the Department of External Affairs.
5. R. Leach, 'Central Versus Provincial Authority in Making Foreign Policy for Canada', paper presented to the Seminar on Canadian–United States Relations of the University Consortium for Research on North America (UCRNA), Harvard University, Oct. 1981, p. 16: P. R. Johannson, 'Provincial International Activities', *International Journal*, 33 (spring 1978), 358; also T. A. Levy and D. Munton, 'Federal–Provincial Dimensions of State–Provincial Relations', *International Perspectives* (Mar./Apr. 1976), 23.
6. R. O. Keohane and J. S. Nye, Jr., 'Transgovernmental Relations and International Organizations', *World Politics*, 27/1 (Oct. 1974), 42; R. Leach, 'Central Versus Provincial Authority'; J. R. Johannson, 'Provincial International Activities', pp. 362–3; G. Stevenson, 'The Distribution of Foreign Policy Making Power between the Federal Government and the Provinces', paper presented to the Seminar on Canadian–United States Relations of the UCRNA, Harvard University, Apr. 1980, pp. 5, 9–10.
7. Leach ('Central Versus Provincial Authority', p. 18) says provincial protest affected the federal decision on the BOMARC missile under Diefenbaker.
8. See Keohane and Nye, 'Transgovernmental Relations'. Even though their emphasis in examples falls almost exclusively on the foreign contacts of functional subunits within the central level, the universal nature of the Keohane–Nye definition of transgovernmentalism legitimizes the application of their framework to territorial subunits such as the Canadian provinces.
9. This point has been emphasized by the then Quebec Minister of International Relations and Minister Responsible for Intergovernmental Affairs. See G. Rémillard, 'Quebec's Role in Relations between Canada and the United States', in E. J. Feldman and P. Battis (eds.), *New North American Horizons* (Conference and Survey Report of the Harvard Project on Canadian–United States Relations; UCRNA, Tuft University; Cambridge, Mass., (1987), 9.
10. Interview with Gilles Mathieu, Office for Federal–Provincial Relations, Department of External Affairs, Ottawa, 10 June 1982.
11. See *Le Soleil*, 11 Oct. 1986.
12. On the impact of jurisdictional responsibilities on international activity, see Stevenson, 'Distribution of Foreign Policy Making Power', pp. 11–15; G. Atkey, 'The Role of Provinces in International Affairs', *International Journal*, 26 (winter 1970/1), 249–73; Hocking, 'Regional Government and International Affairs'; Michelmann, 'Federalism and International Relations'. For a provincial official's position, see I. Scott, 'The Provinces and Canadian Foreign Policy: Form and Substance in the Policy Making Process', in Feldman and Battis (eds.), *New North American Horizons*, p. 14.
13. Remillard, 'Quebec's Role', p. 19.
14. Levy and Munton, 'Federal–Provincial Relations', specifically link bureaucratic growth to increased international activity.
15. Scott, 'The Provinces and Canadian Foreign Policy', p. 7.
16. See the inaugural address to the Assemblée Nationale by Lise Bacon, Deputy Prime Minister and Minister of Cultural Affairs, 16 Dec. 1985 (Quebec, 1985), fo. 8.
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8
The Federal Republic of Germany

HANS J. MICHELMANN

The West German pattern of component unit-central government interaction in international relations is among the most complex of those considered in this volume. The FRG, like the United States and the UK, is a major international actor. With most of the countries we have chosen to study, West Germany shares the need to trade and has historically been one of the great trading nations. The German role in the Second World War resulted in a very low international political profile for the young Federal Republic following the return to quasi-self-determination with the founding of the new state in 1949; this low profile in matters of high politics was partly offset by a very active cultural presence abroad, a presence that has remained as the memories of the Nazi period receded and the FRG took on a political role more in keeping with its size and its status as an economic superpower ranking behind only the United States and Japan in the Western international economic league. Its precarious position at the heart of Europe where the two major power blocs of the post-Second World War era meet, and its reliance on alliance partners, particularly the United States, to help guarantee its security, make international issues matters of day-to-day concern.

The legacy of the Second World War left Germany a divided nation for a long time. The subtleties of managing the relationship with the other German state, the GDR, further internationalized the domestic political and economic affairs of the FRG. Relations with the FRG's Warsaw Pact neighbours, rigid, politicized, and conducted between central governments until the recent astounding changes in their domestic politics, but still highly formal for all that, contrast sharply with the relaxed, wide-ranging

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contacts at the national and subnational governmental as well as non-governmental levels that exist between the FRG and its liberal-democratic neighbour states to the north, west, and south.

Further, unlike Austria and Switzerland, the two German-speaking federations to the south, the FRG is a founding and leading member of the EC — in fact, the only federation among that organization's twelve member-states. EC membership has internationalized what are largely domestic issues in other states (e.g. agricultural policy) and has led to a unique set of component state–federal government jurisdictional disputes over matters that affect three levels of decision-making, the West German *Länder*, the federal government in Bonn, and the EC institutions. In short, not only is there much opportunity for international activity by the FRG and by its *Länder*, but managing the resulting international relations is unusually complicated for a variety of historical, geo-political, and purely political reasons.

The constitutional and political contexts of the management of relations between the federal government and the *Länder* lead to further complexity. In comparison to the Canadian Constitution, the assignment of powers to the two levels of government over matters pertaining to international relations is fairly clear-cut in the Basic Law, the FRG's 'provisional constitution', although it is not without some ambiguity — which was addressed and more or less satisfactory resolved at various times. West German federalism is of the intra-state type, that is, there is a very strong tendency to address policy issues at the national level, in the context of numerous federal–*Länder* councils of ministers as well as in the interaction between the federal executive and Bundestag (lower house) on the one hand, and the Bundesrat (the upper house which is composed of *Länder* government representatives), on the other. In that sense, members of the *Länder* governments are quite legitimately involved in international relations in their capacity as Bundesrat members; they also become involved in international issues during *Land* elections, which, because of the FRG's list system of proportional representation, function as surrogates for (non-existing) federal by-elections. Close ties between *Land* and federal party organizations, as well as *Länder* politicians' ambitions to hold national office or to affect federal policies, all features of a highly centralized intra-state federal system, also lead to international initiatives by *Länder* governments and politicians,

or induce them to take stands on international issues that are customarily considered the business of national-level political élites in other federations.

The *Länder* quite naturally undertake international activities for many of the same reasons that motivate their counterparts in other federal systems. Economic considerations impel *Länder* government initiatives on the international scene in a highly export-dependent country, but not to the degree that one might expect. The reasons for this have to do with the high degree of sophistication regarding the international market-place in the West German business establishment and the trade-intelligence and trade-promotion activities by the umbrella-groups of the business sector, efforts that need large-scale supplementation by the public sector only in economic relations with state-trading countries. The *Länder*, together with the federal government, also become involved in international cultural exchanges and even in foreign aid. Finally, there are the usual multitude of transboundary contacts between liberal democracies whose affairs, especially in the context of West Germany's relations with her EC partners and with her German-speaking neighbours to the south and south-east (themselves, through EFTA, all but EC members) cannot be hermetically sealed in at national frontiers. The pages that follow will elaborate the themes introduced here. We begin with a brief discussion of the historical setting of *Länder*–central government relations on international matters.

THE HISTORICAL SETTING

One of the major results of the Peace of Westphalia for the seventeenth-century German states was the grant of *de facto* independence and the attendant right to conduct international relations that it accorded them. The consequence was a dense network of diplomatic relations among these states, as well as among them and non-German foreign states. The absence of any overall German diplomatic representation was a prime reason for this international activity, and remained a motivation even after the establishment of the German confederation (*Deutscher Bund*) in 1815.[1]

It was only in 1871 with the establishment of the German federation that the pattern of German representation abroad changed fundamentally. Article 11 of the Second Reich's constitution ac-

corded the central government the lion's share of powers in the field of international relations.[2] Thus, though the German states retained the right to continue relations with each other and with foreign countries, the states' foreign activities were much overshadowed by those of the Reich government, had to be conducted within the framework of the allocation of powers in the constitution, and could not conflict with the overall thrust of Reich foreign policy. As a result, the number of state representative offices abroad shrank from twenty in 1872 to eight in 1910.[3] For similar reasons, namely that the central government had been awarded and was exercising most domestic powers, the number and importance of representative offices conducting relations among the states also diminished dramatically.

The Weimar Republic's constitution reduced even further the powers of the constituent states, now called *Länder*, although they retained some rights of international representation, rights that some of them were inclined to exercise, if only to demonstrate their remaining claims to sovereignty.[4] Foreign relations were assigned completely to federal jurisdiction, except that *Länder* could, with the assent of the central government, conclude treaties with foreign entities in areas that fell under their jurisdiction. The *Länder* also retained the right to maintain relations with the Vatican. Hence Bavaria maintained a delegation to the Vatican until 1934, Prussia had its interests represented at the Vatican by the German ambassador in Rome, and there were papal nuncios in Munich and Berlin. A French delegation was accredited in Munich from 1920 until 1934, even though this did not result in formal diplomatic relations between France and Bavaria.[5]

These vestiges of the German states' former international status were completely erased at the Nazi takeover. *Gleichschaltung*, with its relentless thrust towards the unitary state, stripped the *Länder* of all meaningful independent powers and made them each subject to a *Reichsstatthalter*, a centrally appointed and instructed head of government *cum* prefect. Foreign relations were completely dominated by Berlin.

THE CONSTITUTIONAL AND INSTITUTIONAL SETTING

In modern federations, the bulk of the responsibility for the conduct of international relations is in the hands of the federal author-

ities. But there remains the issue of assigning responsibility for the management of the international aspects of those matters falling under the jurisdiction of the component units, including the implementation of international agreements negotiated by the federal authorities in policy sectors under component-unit jurisdiction.

Four articles of the Basic Law address themselves directly to these matters. The most general statement in this regard is found in Article 32 (1), which provides that 'Relations with foreign states shall be conducted by the federation'.[6] Two further paragraphs qualify this assignment of powers. Paragraph 2 provides that a *Land* be consulted before the conclusion of a treaty affecting its 'special circumstances'; Paragraph 3, that *Länder* may, with the consent of the federal government, conclude treaties with foreign states 'in so far as they have powers of legislation'. Notwithstanding these qualifications, it is clear that the great majority of powers over international relations is to rest with the federal government.

Two further articles make this even clearer. Article 73 lists the following exclusive federal powers under the heading dealing with foreign relations: foreign affairs and defence, citizenship and freedom of movement, passport matters, immigration, emigration and extradition. Article 87 further underlines the pre-eminent role of the federal government in foreign affairs by specifying that the foreign service is a matter of direct federal administration. This means that, unlike other sectors under federal jurisdiction in which policies made at the centre are implemented by *Länder* bureaucracies, the diplomatic service and the Bonn foreign-policy establishment are staffed by federal public servants responsible to the foreign minister.

The varying responsibilities of the federal institutions for international relations are outlined in Article 59. The article's first paragraph reaffirms the federation's predominant role in foreign affairs by assigning to the federal political executive the duty of conducting foreign relations. Paragraph 2 stipulates the legislature's role in treaty-making. It provides that 'treaties which regulate political relations or relate to matters of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies competent in any specific case for such legislation'. With this provision, the framers of the Basic Law assured legislative participation in the framing of international agreements affecting the weightiest matters of foreign relations, because

'political relations' are understood to mean membership in alliances, relations with other states and with international organizations, disarmament, declarations of war and peace, and so forth. Further, by having the legislature participate in the decision-making process regarding treaties which relate to matters of federal legislation, the Basic Law assures that the federal executive cannot, through exercising its powers in the conduct of international relations, circumvent legislative consent by negotiating on its own international agreements whose implementation affects the rights of West German citizens on matters that are domestically subject to the normal legislative process. Of equal importance in this context is the fact that legislative ratification of treaties gives *Länder* governments a formal role in the conduct of the FRG's international relations through their membership in the Bundesrat.

The Bundesrat's role in treaty-making is, however, less powerful than that of the Bundestag. As is the case in matters of domestic legislation, its impact on treaties depends on the subject-matter involved. Hence there are two types of treaties: (1) those which cannot obtain legislative ratification without the full *consent* of the Bundesrat (matters relating to the amendment of the Basic Law, matters pertaining to *Länder* rights over fiscal policy and taxation, and those matters which affect the rights and interests of *Länder* in the execution of federal laws), and (2) those that are only subject to *objection* (all remaining matters), and can be ratified if the Bundestag approves them again. In the special case when the Bundesrat objects by a two-thirds majority, its objection can be overridden only by a majority of equal or greater size in the lower house.

An attempt by the Bundesrat to thwart federal government action, be it legislation or be it a treaty, is most likely when its majority is of different partisan composition from the government-sustaining majority of the Bundestag. Because of close ties between parties' federal and *Länder* wings, *Länder* governments are reluctant to create difficulties for their party colleagues in federal office unless the matter at issue is of vital interest to them. This is usually not the case for international matters, and, even should an international matter be of prime importance for a *Land*, there is usually intra-party agreement on the issue, if only because the federal party, especially when in power, has the information and expertise that is usually lacking at the *Land* level. But, even if the

majority in the Bundesrat is controlled by *Länder* governments whose party is in opposition in the Bundestag, the influence of the upper house over the international relations of the FRG is limited.

The reasons for this limited influence are partly constitutional. Treaties relating to 'political' relations are subject only to the objection procedure and hence are not open to Bundesrat veto unless the parties constituting the opposition in the Bundestag have a two-thirds or greater majority in the Bundesrat which the Bundestag majority cannot override—an unlikely scenario. This feature of West German constitutional practice effectively excludes the Bundesrat from direct power over most important foreign-policy matters. However, the *Länder* are involved in the treaty-ratification process and the process whereby domestic effect is given to political treaties entered into by the FRG, because, regardless of whether the matter is subject to consent or to objection, the upper house formally discusses and votes on the matter after the customary communication and negotiation with the executive. In that sense the *Länder* are aware of the issues and have a means, if only indirectly, of influencing their outcome.

The Bundesrat's role in West German foreign-relations decision-making is also affected by the nature of international negotiations. Because the federal executive has the constitutional duty to conduct West German foreign relations, it has the initiative in this area and the expertise that results from long experience. When a treaty is presented to the legislature for ratification, it is a complete package worked out between the West German government and its foreign partners, a package which in any but the most unusual circumstances cannot be renegotiated. Hence the legislature has the choice of ratifying or denying ratification, and, should it decide on the latter course, to risk jeopardizing part of the FRG's foreign policy. *Länder* have been willing to do this only on very rare occasions. What applies to ratification applies in equal measure to domestic legislation implementing West German international commitments.

Consequently, the Bundesrat's influence over FRG foreign relations is at best indirect; it must seek to have the executive take into account its concerns in the negotiation process. The Auswärtige Amt (foreign office) is most likely to do this for matters which are subject to Bundesrat consent, including matters such as international agreements on taxation or reciprocal pension rights on which much of the West German expertise is, at any rate, found in

the *Länder* administrations. In the latter set of cases, constitutional clout and *Länder* expertise coincide; on most international issues the Bundesrat's influence will be largely limited to being heard and hence be determined by the quality of the case it can make. On primarily domestic matters, the Bundesrat can draw on the expertise of the civil services of the *Länder*, but in the foreign-relations field the expertise is found in the federal bureaucracy—the Auswärtige Amt and the diplomatic service as well as the national security and intelligence establishment. The Bundesrat has only a very small staff with international expertise, supplemented by the one or two officials responsible, usually only part-time, for international matters in the *Länder* representative offices in the national capital and by the small number of officials in *Länder* capitals (a few officials in the premiers' offices and in the ministries) who have some responsibility for, and expertise in, these matters. In any case, much of the international expertise at the *Land* level will, at any given time, be in the service of *Länder* governments allied politically with the Bonn executive, who have a partisan incentive not to cause a stir in the conduct of West German foreign relations.

Under the emergency provisions of the Basic Law the Bundesrat can have increased powers over domestic and international matters. These provisions have not been used since 1949 and it is idle to speculate what the institution's role would be in the extraordinary circumstances that would give rise to their implementation. The record shows that the Bundesrat has behaved rather tamely most of the time. It objected to an *Ostpolitik* treaty when its majority wished to show its disapproval with the thrust of the Brandt government's foreign policy towards the FRG's eastern neighbours, but the Brandt government prevailed. In consent situations it has had some impact on the substance of international agreements, although only very rarely at the ratification stage. What is, of course, very difficult to determine is the extent to which the West German position on international agreements has been affected by the anticipation of the Auswärtige Amt of Bundesrat positions on the matters under negotiation. Overall, though the *Länder*'s collective impact is potentially quite significant through their role in the upper house, their direct impact on the FRG's foreign policy has been marginal.

The preponderant position of the federation in international relations is not materially affected by the right of the *Länder* to conclude treaties with foreign states in areas of *Land* jurisdiction.

Some *Länder* have not made use of the provisions of Article 32 (3), and the total number of treaties concluded by the *Länder* does not exceed thirty.[7] All are of limited political importance, and deal with such matters as the regulation of environmental pollution, the construction of roads and bridges straddling the border with a neighbouring jurisdiction, and other matters of strictly limited geographical impact. A large number of these treaties involved administrative agreements concerning matters strictly under *Land* jurisdiction and only few required legislative ratification.

There are four main reasons for the limited number of *Länder* treaties. A primary reason is that there are few important legislative powers remaining to the *Länder*, in part because of the generous assignment of exclusive jurisdiction to the federal government in the Basic Law, in part because the federation has become active in areas of concurrent jurisdiction and has, in accordance with German constitutional practice, taken over responsibility for these areas, and in part because the federation, with the support of public opinion and the *Länder*, has become active in the sectors that are under *Land* jurisdiction. Second, because of the constitutional principle of *Bundestreue* (loyalty to the federation), it is unlikely that the *Länder* would undertake large-scale initiatives with foreign states, since, in addition to undermining the constitutional prerogative of the federal government in foreign relations, such initiatives could undermine West German foreign policy in individual cases. At any rate, federal governments have jealously guarded their role in foreign affairs and have objected strenuously when *Länder* have taken initiatives abroad that Bonn judged to be infringing on its (very broadly defined) prerogative. Third, such actions would, anyway, be of questionable wisdom because Article 32 (3) requires that the federal government give its assent to a treaty negotiated between a *Land* and a foreign state. Without federal government assent, the treaty would not be legally valid domestically,[8] hence even a federal threat to withhold assent would undoubtedly go some way to arresting any *Land* international undertaking that was undesirable to the Auswärtige Amt. The fourth, and most important, reason that there are few treaties between *Länder* and foreign jurisdictions is that the *Länder* and the federal government have come to an agreement on how to deal with matters falling under *Länder* jurisdiction or matters involving both levels of government, the Lindau Convention (*Lindauer Abkommen*).

The Lindau Convention led to a practical resolution of the con-

flicting positions about the roles of the two levels of government in international relations, although the contending parties will hold to their original views because the Convention is neither a constitutional amendment nor a legally justiciable document. One group of *Länder* took the view that the federal government had no international role in areas of *Land* jurisdiction or with regard to concurrent areas not occupied by the federation. They felt that it was up to the *Länder* both to negotiate treaties with foreign states and to implement these treaties. Berlin and the federal government held the opposite view that all aspects of international relations should fall under federal jurisdiction. In the event, an intermediate position, held by the medium-sized *Länder* and advocating federal negotiation but *Land* implementation, was closest to the procedure adopted.

Essentially, the Lindau Convention gives the federal government the leading role in the conduct of international relations in the disputed areas, but the *Länder* participate in important ways. In areas where *Länder* jurisdiction is tangentially affected and sometimes even where *Länder* powers are quite considerable (e.g. consular treaties, business establishment, and commodity trade and payments) the federal government is given free hand to negotiate treaties. The federation is also given a free hand in negotiating treaties that establish international organizations or conventions with cultural and economic goals, even if those treaties affect matters that fall under *Land* jurisdiction. *Länder* are consulted about matters in which they have unquestioned expertise and are thus not excluded entirely from forging the West German position on treaties of this type. On most matters regarding joint jurisdiction, the federal government has found it expedient to heed what the *Länder* had to say because implementation is much more often than not their responsibility, and because of their policy-implementation expertise.

For matters that are exclusively under *Länder* jurisdiction, particularly culture and education, the Lindau Convention provides that the federal government must have *Länder* consent if the treaty imposes obligations on either level of government. The *Länder* are to participate in the preparations for negotiating such treaties, but in every case they must have a say before the treaty's wording is finally fixed. For all treaties affecting essential *Länder* interests, whether or not related to exclusive *Land* jurisdiction,

Länder are to be notified in time to make their wishes known.

A permanent committee of *Länder* officials, which came to be known as the Permament Treaty Commission (*Ständige Vertragskommission*), was created to facilitate communication between the federal authorities and the *Länder* on matters falling under the provisions of the Lindau Convention. At the highest level, this committee is composed of the *Länder* plenipotentiaries to the federation, but, because these are responsible for the whole range of federal–*Land* matters, their deputies in charge of international relations substitute for the plenipotentiaries on all but the most important occasions. These deputies, like their counterpart in other policy sectors, have access to Bundestag committees and have the right to be heard there; they are part of the Bundesrat machinery and represent their *Länder* in that context, and, as trusted senior officials working at the cutting edge between administration and politics, have ready access to the federal ministries as well as to those in their *Länder* capitals. The consequence is that the Lindau Convention procedure is closely integrated into the complex West German policy-making process and has become highly institutionalized.

Most treaties subject to the Lindau Convention procedure are in the fields of culture and education, and they take a standard form in terms of procedure and content. The Auswärtige Amt takes the lead in negotiations, but included in the German delegation is a representative of the conference of *Länder* culture ministers, the Kultusministerkonferenz (KMK), an inter-*Länder* organization that furthers co-operation on educational and cultural matters. The Standing Commission receives drafts of all relevant treaties and coordinates the responses of the *Länder* by getting feedback from their ministries and from the KMK, and by tailoring a common position. This position is relayed to the Auswärtige Amt, which, in turn, sends its response to the Commission. After the required number of iterations, the West German position on the treaty is established and the Commission recommends to the *Länder* governments that they consent. Consent by all *Länder* is required to achieve formal ratification, but this consent is usually achieved without too much ado. From time to time there are irritations, such as insufficient or tardy communication from the Auswärtige Amt which may make it appear that the federal officials wish to confront the *Länder* with a *fait accompli*, or an irresolute *Land* govern-

ment that changes its view after everyone had assumed that the West German position had been established, but the consensus among the participants is that the Lindau Convention is a workable, effective procedure.

THE *LÄNDER* AND THE EUROPEAN COMMUNITY

The Lindau Convention, despite its effectiveness, has not been applied to the very complex set of issues and relationships arising out of the FRG's membership in the EC. This is so notwithstanding the fact that the EC's decision-making process directly affects *Länder* jurisdiction, that the *Länder* have lost powers to EC institutions, and that they may in future lose even more. The reason that the Convention has not been applied arises from the federal government's interpretation of the Basic Law's Article 24 which provides that 'The Federation may by legislation transfer sovereign power to intergovernmental institutions'. Bonn argues that the article gives it the sole legal right not only to transfer powers but also to conduct relations with the EC, including the representation of the FRG's interests with respect to those matters transferred to EC jurisdiction, even if these matters were previously under *Länder* jurisdiction. The federal government further insists that, given the importance, complexity, and intensity of relations with the EC, the FRG must be represented in Brussels with only one voice and not through multiple representations that would result if the *Länder* were to participate in EC institutions, even if only on matters that were transferred to Brussels from their jurisdiction. Bonn has argued that a multifarious West German representation could tempt other participants in the EC process to play off the various West German actors, thus undermining the national interest.

The position of the *Länder* has been, understandably, quite different. They have long argued that EC matters do not fall in the realm of foreign relations and that, as a result, considerations quite proper for the conduct of such relations have no relevance in the Brussels context. Most importantly, the *Länder* have argued that the domestic division of powers should not be altered by the process of European integration, i.e. that the transfer of powers to EC institutions should not shift the responsibility for representing the West German position on affected policy matters in Brussels

from the *Länder* to the federal government, thus further eroding the *Länder*'s already limited powers.

The federal government's attitude about exclusive representation of West German interests in European institutions was demonstrated early on when Chancellor Konrad Adenauer was willing only to keep the Bundesrat informed about ongoing developments associated with the ECSC, inaugurated in 1952, despite strong representation from the upper chamber that it be allowed greater influence over the West German position on coal and steel matters.[9] During passage of the law ratifying the Treaty of Rome that established the European Economic Community and Euratom, a law that, unlike its ECSC counterpart, required Bundesrat consent, the Bundesrat and the Bundestag managed to extract from the government a commitment to provide information on an ongoing basis about law-making developments in the newly created Council of Ministers, the effective legislative institution of the newly created Communities.

In practice this has meant that the federal government has forwarded relevant documentation to the chamber's committees dealing with EC matters; for the Bundesrat, the Committee for Questions of the European Community. Committee input, because it reflects the administrative experience of the *Länder* ministries, has often influenced the Bundestag's position and also that taken by the government, although it is difficult to gauge just how much, because of convergent positions taken by the separate actors.[10] Sometimes West German representatives in Brussels have attempted to bolster their arguments by citing Bundesrat support. It has become clear, however, that the Bundesrat is not an unambiguously useful mechanism for bringing to bear *Länder* influence on EC policy-making, because the second chamber has no effective legal leverage over the federal executive in these matters. It has impact to the extent that it can provide technically sound arguments that persuade, but the federal executive alone makes final decisions about the West German position in Brussels.

Because the Bundesrat has had these limitations as a channel of influence on EC decisions, the *Länder* have, from the inception of the European institutions, attempted to increase their influence through other channels. One way in which this has been accomplished is through demands to have a *Länder* representative as part of delegations to the EC or of the West German contingent on EC

committees. Thus the *Länder* supply an alternate member to the Community's Advisory Committee on Vocational Education, as they do to the Commission's Committee on Regional Policy.[11] The *Länder* have sought to upgrade this representation, but Bonn for many years refused, citing the Basic Law's stipulation that the conduct of foreign relations is a federal responsibility. When *Länder* officials accompany West German delegations to EC meetings of importance to the *Länder*, they do so as members of the federal delegation and subject to instructions from the West German chief representative, always a federal official.

Since the negotiation of the EEC and Euratom treaties, the *Länder* have had an observer in Brussels whose status was regularized through an agreement with the central government. Nominated in recent years by the conference of *Länder* economics ministers, the observer has his seat in Bonn and an office in Brussels. He attends meetings of the Council of Ministers as a member of the West German delegation and reports to the *Länder* governments the most important developments in that context and in other Council-related structures. Through these direct reports, the *Länder* governments are able to stay abreast of matters of interest to them and to discover whether the federal representatives take into account their wishes in the EC context. From time to time the observer transmits to the Commission the concerns of a *Land* or of the *Länder*, but, since he is considered a part of the West German delegation, he takes up contacts with an EC institution as member of that delegation and hence with the assent of the federal government. Given his heavy responsibilities, he is unable to do much in the way of lobbying for the *Länder*, let alone providing a comprehensive intelligence-gathering service for them individually or collectively. Hence the *Länder* have, over the years, continued to exert pressure on the federal government to create mechanisms that would give them greater direct leverage over the determination of the West German position in Brussels on policy matters that are domestically under their jurisdiction.

The federal government gave in to some degree in 1979 because it wanted to remove a source of tensions with the *Länder* and to regularize interactions with them on EC matters. The *Länder* had wanted a legal–constitutional solution that would assure their jurisdiction over policy areas transferred from their jurisdiction to Brussels; the West German representative on the Council of

Ministers represented, according to them, the 'total German state' and should take instructions from whichever level, *Land* or federation, had jurisdiction over the matter(s) in question.[12] The federal position remained as before. Bonn argued that, after a transfer of powers had taken place, the national division of powers was no longer relevant, since neither level of government could any longer exercise its powers over what was now an EC matter, and that the West German representative on the Council of Ministers represented both federal and *Länder* interests. But Bonn committed itself to a non-justiciable *modus operandi*, in the form of a letter from Chancellor Schmidt to the President of the Conference of Land Premiers, pledging the federal government's willingness to co-operate closely with the *Länder* when matters falling under their jurisdiction were at issue, or when vital *Länder* interests were under consideration.

In so far as proposed EC action affected matters either entirely or in part in *Länder* jurisdiction, the *Länder* would be given the opportunity to make clear their positions, albeit within the time frame requisite for Brussels decision-making, and always under the constraint that federal, foreign, and integration political considerations had priority. The letter further committed the federal government to 'serious attempts' at coming to common positions with the *Länder* on the matters in question, to represent this position towards the EC, to depart from it only on the most serious foreign and integration political grounds, and to inform the *Länder* of the reasons for such a deviation if it became necessary. If a matter fell under exclusive *Land* jurisdiction, the federal government pledged itself to involve two *Länder* representatives in the Council and in Commission committees, in so far as such participation was feasible. In typical German fashion, a well-structured process for inter-*Land* co-ordination was created which was to facilitate the flow of the increased documentation henceforth available to the *Länder*,[13] to allow them to arrive at a common position if this was considered desirable, to contact the affected federal offices, and to establish contacts between the *Länder* and their representatives (if any) involved in the West German delegation in Brussels. Finally, the *Länder* made it clear that the newly created process, emanating directly from the *Länder* themselves, and not the Bundesrat as 'federal organ', was responsible for developing and expressing the *Länder* positions, though it must be remembered that this pro-

cedure applied only to matters directly under *Länder* jurisdiction and that the Bundesrat was to be informed, as before, about matters in the EC realm.

The improved communication and information system regarding EC matters did not satisfy the *Länder* fully; the experience after 1979 suggested that the federal government continued to place priority on its own concerns and that, while there was improved communication and more and better information for the *Länder* on EC matters, nothing had fundamentally changed.[14] Most *Länder* continued to strive for the development of legally binding procedures that would allow them to have authoritative leverage in a decision-making system that, in essence, involved amending the division of powers specified in the Basic Law when *Länder* powers were shifted to the EC with the consent of the federal government but without *Länder* consent, and frequently against their will. Spokesmen for the *Länder* made it clear that their position should not be construed as being anti-EC; they were as pro-EC as were the federal authorities, but wished to have a say in matters that were of vital concern to them.[15]

An opportunity to work towards that goal presented itself in 1986, when the Single European Act, an EC initiative to change EC decision-making and to complete the EC's internal market, was before the West German legislature for ratification. The Single European Act appeared to be a particularly appropriate Community measure on which to take a stand *vis-à-vis* the federal government, because its provisions, according to Rhineland–Palatinate Premier Vogel, were a significant step towards making what was previously foreign policy into 'European domestic policy',[16] and because West German ratification of the Act required Bundesrat consent so that the *Länder* were in a reasonably strong position to extract concessions from the federal government. In the event, and after much controversy, the *Länder* succeeded in including in the text of the ratifying law a number of sections that legally formalized the 1979 agreement as outlined in the letter by Chancellor Schmidt and thus made it binding on the federal government.[17] Henceforth, the federal government is, comprehensively and at the earliest possible time, to inform the Bundesrat of all developments in the EC that could be of interest to the *Länder*. The Bundesrat is to be given an opportunity to present its position before West German consent is given to European decisions which

have an impact on *Länder* jurisdiction or affect their vital interests. This position is to be taken into consideration by the West German negotiators, and, in so far as the matter affects exclusive *Länder* jurisdiction, the federal government is to deviate from this position only for compelling foreign or integration political reasons. In case of deviation from the Bundesrat conception in matters affecting *Länder* jurisdiction, the federal government is to provide the Bundesrat with the reasons for its action. Further, representatives of the *Länder* are, upon request, to be given the opportunity to participate in the committees of the European Commission and Council in so far as this is possible to arrange. The mechanisms for assuring information and participation are left to be worked out between the federal government and the *Länder*, and had, at the time of writing, not been formalized. It remains to be seen, then, whether this legal formalization of the interaction on EC matters between the two levels of government satisfies the *Länder* and allays their fears about the potential for a loss of jurisdiction in such key areas as culture and education, which are among the few areas in which they still have legislative powers.[18]

Länder assertiveness on EC matters has gone beyond legally committing the federal government to take into account their concerns in the EC decision-making process. The federal government's insistence on its monopoly over the international representation of West German interests has traditionally included the claim that the *Länder* may not establish offices abroad.[19] For many years the *Länder* went along with this conception, if grudgingly, but their views and practices in this regard have undergone some change in the immediate past. On the strength, in part, of a legal opinion that even official delegations abroad could not be forbidden them, some *Länder* began to establish 'contact offices', so-called *Aussenstellen*, in Brussels to look after their particular concerns.[20] These offices were deliberately not set up as agencies of the individual *Länder* governments, being staffed by former EC officials or by *Länder* civil servants on leave from their official duties, i.e. through arrangements which allowed the *Länder* to signify that they were not public, but private law organizations. Such arrangements were made in large part to avoid open confrontation with the federal government, which accepted the establishment of the offices very reluctantly and probably in part to avert something even more distasteful, the establishment of official *Länder* delegations, which

some *Länder* had threatened to set up in the heat of the dispute over *Länder* participation in EC decision-making.[21] By 1987 more than half the *Länder* had Brussels contact offices, gathering information and informally lobbying the European institutions, and the remaining *Länder* had decided to establish their own. A number of the *Länder*, Rhineland–Palatinate among them, had formally attached the Brussels offices to their representative office in Bonn, thus signifying, to appease federal sensitivities, that the Brussels 'contact bureau' was not an independently operating foreign representative office.[22]

But even Bernhard Vogel of the Rhineland–Palatinate, a premier politically aligned with the Bonn government, while regretting the establishment of these offices and expressing his preference for exclusive federal representation of West German interests in Brussels, acknowledged that there was no real alternative, given the increased importance of EC decisions for the *Länder*, the unsatisfactory interaction with the federal government on EC matters, and the increasing assertiveness of the *Länder* on these and other international issues.[23] It remains to be seen whether these recent developments will undermine the forging of a coherent, single West German position in Brussels as federal officials and some Eurocrats fear, and whether this is part of a development towards a rather more pluralistic West German presence abroad than has been the case up to now in the era of Auswärtige Amt domination of West German foreign relations. It is time to assess whether there are indications of similar developments in other aspects of the international activities of the *Länder*.

INTERNATIONAL CULTURAL AND EDUCATIONAL EXCHANGES AND DEVELOPMENT AID

Because the *Länder* are constitutionally assigned responsibility for culture and education whereas the federation has a dominant position in the conduct of the FRG's international relations, it is not surprising that there is a good deal of interaction between the two levels of government in the fields of foreign cultural relations and in development aid. The federal government early on undertook major initiatives in foreign cultural and educational relations because initiatives in these sectors could be kept largely non-political and evoked comparatively positive images of Germany

past and present at a time when the world, because of the Hitler era and Second World War, was not yet ready to accept a prominent role for the FRG in other aspects of international relations. The *Länder* did not challenge the Auswärtige Amt on these initiatives, even though their jurisdiction was clearly affected, in large part because they lacked the resources and the machinery to undertake such relations individually and because they were preoccupied with the reconstruction and development of domestic economic, cultural, and educational institutions. Neither a co-ordination of *Länder* positions, nor the creation of inter-*Land* structures to interact with the federal authorities in these matters, took place in the early years of the Federal Republic, even though only such actions would have guaranteed a strong role for the *Länder* in forging West German foreign culture and education policies. Soon the cultural division of the Auswärtige Amt became, and has since remained, the largest unit of its type in Western Europe. By the mid-1950s it had negotiated cultural agreements and concluded treaties with seven states.[24]

Of course the Auswärtige Amt did not have within its own ranks the human infrastructure to implement the programmes (German schools, visits of West German musicians, artists, and performers, technical training and education of third-world students, and the like) it wished to establish abroad or at home, where much of this infrastructure existed under *Land* jurisdiction. Federal efforts were instrumental in creating or helping to create institutions to administer the West German international cultural and educational programmes. Thus were born, or reborn after the hiatus of the war, such organizations as the Goethe Institut which directly implement language and cultural programmes abroad, and the intermediary organizations such as the Deutsche Akademische Austauschdienst, the Alexander Humboldt-Stiftung, and the Carl Duisberg-Gesellschaft.[25]

These were established as private law organizations, whose directors come from the federal and *Länder* governments as well as the private sector. Some, such as the Goethe Institut, are subject to legal supervision by *Länder* authorities. In administering the FRG's foreign cultural policy under guidelines set by the Auswärtige Amt, they clearly require the co-operation of the *Länder* governments, without whose officials, teachers, professors, cultural experts, and other personnel the implementation of that policy would be

impossible. Financing, too, is a co-operative effort with private organizations sharing the burden, but most of the funding coming from the federal and *Länder* governments. In short, while the federal government took the initiative in foreign cultural policy, the *Länder* are active participants, particularly in the execution of the terms of the multi-year cultural framework agreements, now negotiated between the FRG and foreign countries through the Lindau Convention procedure and therefore with significant *Länder* participation.

The framework agreements do not, typically, go beyond providing machinery for consultation between the two countries, outlining the broad scope of activities to be pursued, and specifying the procedure for determining these activities. They are of greatest importance for cultural relations between the FRG and socialist countries as well as with third-world countries, since the cultural and educational institutions and organizations in these countries are much more strongly controlled by the state than are their counterparts in liberal democracies, so that interactions tend to take place at the official level. In the cultural relations between the FRG and liberal democracies, the impulses for exchange activities tend to come from the private sector, with governments acting as sources of funding, or of manpower for scientific or educational exchanges. For other states, exchanges are wrapped in more red tape, and, for third-world countries in particular, 'exchanges' is probably a misnomer since cultural and educational interactions involve primarily requests from West Germany's partners for various types of resources.

Details of cultural and educational exchange relations are worked out for two-year periods in committees composed of representatives of both countries. They normally meet biennially to make recommendations to the two governments about the broad outlines of the bilateral relationship and to examine the state of cultural relations. On the West German side, the membership includes representatives of the Auswärtige Amt, the Interior Ministry, the educational and cultural sectors, and the KMK, so that *Länder* interests are taken into account.

At another level, the *Länder* also participate in drawing up the details of the biennial programmes involving those countries that prefer a highly structured and detailed exchange agreement. Each *Land* commits itself to particular components of the exchange

relationship (e.g. providing a guest lecturer from a specific university for a specified period, accepting a specified number of doctoral students for a programme of studies at one of its universities, or arranging a tour of one of its symphony orchestras to the other country). Individual *Land* commitments are co-ordinated by the Standing Treaty Committee, and, together with the commitments of the intermediary organizations as well as the specifications of such single events as a major art exhibition, constitute the West German part of the biennial programme. Sometimes the individual components have already been negotiated previously between *Land* personnel and representatives of the foreign country; thus Lower Saxony negotiated details of the 1982–3 Chinese–West German cultural exchange agreement with Chinese representatives after the visit of a Lower Saxony delegation to China.[26] These details had, of course, to be authoritatively sanctioned at the meeting of West German and Chinese officials that formally structured the two countries' biennial programme. But the contacts between Chinese and Lower Saxony representatives demonstrate that, although most of the government-to-government contacts take place within the context of a highly formalized procedure in which the federal authorities play a leading role, there is a good deal of scope for direct *Länder* contacts with foreign countries even in the relations with a communist state. It should come as no surprise that such contacts are considerably more frequent and more informal when the foreign partner state is a liberal democracy. In the final analysis, however, these relations are with foreign states and hence take place in a framework whose parameters are determined largely by, or under the supervision of, the federal government, even though they involve matters, culture and education, that form the central core of what remains under *Land* legislative jurisdiction.

Much the same holds true in the foreign-aid policy sector, where a large part of the *Länder*'s contribution comes in the form of education and training. In this policy sector there is agreement about the federal government's primacy, as evidenced by a series of premiers' conference resolutions, because of the subject-matter's close and undisputed relationship with classical foreign policy. A *Bund-Länder Ausschuss für Wirtschaftliche Zusammenarbeit* (federal–*Länder* committee for economic co-operation—as development aid is called in the FRG), chaired by a federal official, co-ordinates the foreign-aid efforts of the two levels of government.

For practical reasons and because the federal government prefers it that way, much of the *Länder* contribution to the West German foreign-aid effort comes domestically in the form of education and training of third-world students and workers,[27] and research projects on third-world problems. There is also a great deal of co-operation between the two levels of government in the funding of intermediary organizations, such as the Carl Duisberg Gesellschaft, which operate foreign-aid programmes based domestically and abroad. The federal government, with *Länder* help, has established a number of research and training institutes, such as the Deutsche Institut für Entwicklungspolitik, on whose board the *Länder* are represented in accordance with their individual contribution and which, like other similar bodies, was located in Berlin to provide employment in that city and to acquaint third-world citizens first-hand with the problems of FRG–GDR relations. *Länder* have also co-operated closely with various aid efforts by pursuing a liberal policy of providing leave for the required personnel.

Even though the federal government prefers to have the *Länder* concentrate their foreign-aid efforts on domestically based projects because it fears that the more expensive on-the-spot efforts in the developing countries could cut into the resources dedicated to foreign aid and could lead to some reluctance to pursue the services more efficiently provided in West Germany, the *Länder* have increasingly wished to become active abroad themselves.[28] A major reason for this is political, in as much as projects abroad result in much more media coverage for *Länder* premiers than do domestic foreign-aid efforts. Such activities were particularly important for conservatively governed *Länder* during the Bonn centre-left coalitions of the 1970s and early 1980s, when the Christian Democratic Union (CDU) and Christian Social Union (CSU) parties had no direct levers on foreign affairs at a time when voter interest in third-world issues, especially among the young, was high. Thus four *Länder* with conservative governments, Baden–Württemberg, Bavaria, Lower Saxony, and Rhineland–Palatinate, were particularly active in pursuing aid projects on-the-spot in third-world countries, thereby demonstrating that the CDU and CSU parties also, and not only the centre-left parties of the contemporary federal coalition, had a social conscience about development problems. It is, of course, politically difficult for the federal government to rein in these efforts totally, in part because this would risk

washing party-political dirty linen internationally and because such attempts could interfere with the generally co-operative federal–*Land* climate in the foreign-aid sector. None the less, the *Ausschuss* must give its assent to projects, and a number of aid programmes proposed by conservative *Länder* in reactionary third-world countries were scuttled at this level, as were attempts by the Social Democratic (SPD)-ruled Bremen government to provide development aid to the Polisario movement.

The desire to make political capital also, in part, motivates the efforts by *Länder* governments to publicize development aid and to engender citizen-to-citizen projects such as donations by church or youth groups to particular projects in third-world countries. Thus Baden–Württemberg celebrated its thirtieth anniversary under the motto 'Solidarity with the Third World' during the time of the Social Democratic–Free Democratic (SPD–FDP) Bonn coalition, in connection with which the *Land* organized numerous public events such as lectures and exhibitions to further public awareness of foreign aid and of the commitment by Premier Lothar Späth's CDU government to the welfare of the world's poor.[29]

Economic and partisan political as well as altruistic motivations play a part in *Länder* development-aid efforts, as they do elsewhere. Third-world students who have studied in the FRG are more likely, because of their language proficiency and because of their contacts in the FRG, to favour continued economic and cultural interaction with that country once they return to their home and become part of its educated élite. Workers and technicians who have trained on machinery built in Bavaria or Baden–Württemberg are inclined to have these brands of machinery ordered for their workplace. These are important considerations in a country such as the FRG, which more than almost every other state relies on foreign trade for its prosperity, and particularly in those *Länder* where this export dependency is highest.

ECONOMIC PARADIPLOMACY

In comparison with Canadian provinces and US and Australian states, the *Länder* have, in the past, by and large not been very actively engaged in direct export promotion. This was so for a number of reasons. A major consideration was, no doubt, the prevailing philosophy about public sector–private sector relations

which leans towards *laissez-faire*. At any rate, West German firms, in comparison to those in many other developed states, are long-established in the international market-place, especially the industrial heavyweights, but also many of the smaller enterprises. Thus Northrhine–Westphalia, home of the steel giants, saw no need to engage in much export promotion, at least not until the steel crisis of recent years, which forced the *Land* government to think about increased economic diversification. The FRG has also been more frequently a source, rather than a recipient, of foreign investment, hence until recently there has not had to be the type of investment promotion activity undertaken by the Canadian federal and provincial governments or the Australian and US states. Moreover, German industrial and commercial enterprises can rely on non-governmental organizations to do much of the promotional and economic intelligence-gathering work that is done for the firms of other nations by government agencies. The Deutscher Industrie und Handelstag (DIHT; Association of German Chambers of Industry and Commerce) maintains a network of sixty-plus offices ('external chambers') all over the globe to provide a range of international services for West German firms (and for foreign-member firms). Hence, such activities by West German governments are much less necessary than are government export promotional activities in countries where the private sector has not established this type of organization. Further, because regional diversity and regional rivalries are not as pronounced in the FRG as they are in other countries and because *Länder* governments, by and large, trust federal officials to represent even-handedly their interests abroad, there are fewer incentives for *Länder* governments to strike out on their own to supplement federal international initiatives.

Those international economic–commercial activities that *Länder* do undertake are primarily to supplement the efforts of the DIHT external chambers. One of the most active *Länder* in this regard, Baden–Württemberg, has a very large number of medium-sized and small businesses which have, for over a century, received a good deal of aid for international marketing from regional governments. Much of the aid provided by the *Land* government is channelled by way of the external chambers for special projects abroad, takes the form of special grants to firms for exhibiting at international trade fairs, or is provided locally through export counselling.

Until very recently the *Länder* did not have means of direct international representation, such as the offices and delegations abroad of the Australian and US states and the Canadian provinces. Now a number of them are beginning to establish such facilities. Baden–Württemberg has offices in Japan and China.[30] Rhineland–Palatinate has an office in Houston, Texas, and in Yokohama, Japan, to help export of medium-sized Rhineland–Palatinate firms and to attract US and Japanese investment to the *Land*,[31] and Hamburg has small offices in Tokyo and one in New York.[32] Together with the offices of the *Länder* in Brussels, which also have an economic rationale (in as much as they are charged with gathering economic intelligence and notifying their *Land* capital about EC funding sources) in addition to their duties in connection with the EC decision-making process, they may be the forerunners of more extended networks of international representative offices. Like the Brussels offices, they are staffed by employees and not *Länder* civil servants, allowing the *Länder* governments to argue that they are not official extensions of the *Land* bureaucracy, but rather *Aussenstellen*, hence not evidence of *Länder Nebenaussenpolitik* (parallel foreign policy) and hence not a threat to the federal primacy in foreign relations.[33] Federal officials, even Foreign Minister Genscher, although previously strongly opposed to such *Länder* activities, appear to have accepted these arguments and to agree that they do not present a threat to a strong and unified West German foreign policy.[34] Clearly, though, the creation of these offices abroad represents a significantly higher international profile of the *Länder* in response to increased competition on the international market-place.

REGIONAL PARADIPLOMACY

In the last four decades, since the beginnings of the movement toward European integration, national boundaries in Western Europe have become increasingly permeable, especially among EC member-states at the establishment of the common market. The era of peace since the Second World War and efforts at reconciling past differences among the member-states have led to increasing human contacts across national frontiers. Even without such overarching supranational communities, the affairs of the citizens of liberal democracies are not containable within the confines of hermetically

sealed borders, if only because there is a need to manage common waterways, operate flood-control programmes, co-operate on controlling pollution of the environment, and build and maintain common infrastructure such as roads and bridges. Increasingly, need is not the only or even the major impelling factor for trans-boundary regional co-operation, as the motivation to improve life-styles leads to schemes to facilitate access across national frontiers to man-made or naturally provided recreational facilities, to improve access for non-citizens to public services such as the delivery of health care or education, and even the establishment of common educational facilities for citizens of a bi- or tri-national region to take advantage of special resources available in frontier regions where two or more countries meet.

In principle, the ground rules of such boundary-spanning activities can be established by the representatives of national central governments, and many of them indeed are thus established by the FRG and its neighbours in the context of bilateral *Grenzkommissionen* (frontier commissions) composed of representatives of the two states. The West German contigent always includes a representatives of the *Land* or *Länder* bordering on the neighbouring states, but it is headed by a federal official. The relations between the FRG and the GDR and Czechoslovakia, its socialist neighbours, have in the past largely been managed through these formal commissions. There are some informal ties between Bavaria and Czechoslovakia, but until the events of 1989 there have been practically none between the GDR and the three adjacent West German *Länder*, due to the former difficulties between the two Germanys and the propensity for GDR authorities to direct even unimportant technical matters through the highest political levels.[35]

The relationship between the FRG and its West European neighbours are much more relaxed; hence the implementation of boundary-spanning agreements as well as the determination of some of their provisions are largely in the hands of *Länder* officials, and are conducted in a comparatively informal manner. For similar reasons, the *Länder* are the active West German partners in a number of regional organizations with the cantons, *Länder*, *départements*, and regions of neighbouring states, although these arrangements are sometimes bedevilled by complexities, because the division of powers between local and national governments, and hence responsibility for the subject-matters affected, are different from state to state.

Bavaria has been particularly active in developing and maintaining relations with neighbouring jurisdictions, in part because of the *Land*'s location, in part because of its traditional self-consciousness as a *Freistaat* (free state), and because of the generally activist orientation of Franz Josef Strauss, its former premier. These relations are not always with immediately adjacent states; thus Bavaria has a good deal of contact with a number of Italian regions, because some of its industrial exports are shipped through Italian harbours, because Bavaria is concerned to upgrade roads and railways southward, and because Bavarian dairy and meat products find a market in northern Italy. The *Land* has established a Kommission Bayern-Veneto because of that Italian region's key location at the southern exit of the Brenner pass, over which passes much north–south traffic, and because of its links with the more southerly Italian regions. Bavaria has a special interest in furthering a wide variety of ties with German-speaking South Tyrol. Its ties with the adjacent *Länder* of Austria are also close, as evidenced by annually meeting commissions with Tyrol, Salzburg, and Oberösterreich that parallel, but are separate from, the meetings of the West German–Austrian commission in which federal officials from both countries preside. Bavaria even works closely with four Yugoslavian republics on questions of economic co-operation and on questions regarding the education of dependents of Yugoslav guest workers in Bavaria, and has established a regularly meeting standing committee with each of them.[36]

Munich is also active in regional multilateral organizations, for example the Arbeitsgemeinschaft Alpenländer (Arge Alp, a working group of Alpine states), which affiliates Bavaria with three Austrian *Länder*, one Italian region and two Italian autonomous provinces, and two Swiss cantons. Its conference of government heads meets annually to instruct a working group of senior officials and three commissions responsible, respectively, for transportation questions, mountainous regions, and cultural co-operation, concerns shared by the participating units.[37] Co-operation among these units is facilitated by the fact that they are ruled by conservative governments, and the Arge Alp has been considered an instrument to counteract national governments of frequently differing political persuasions.[38] Further, Bavaria and the Austrian *Land* Salzburg are 'active observer' members of the Arbeitsgemeinschaft Alpen-Adria (Arge Alpen-Adria), a group of eastern Alpine *Länder* and regions whose full members include two Yugoslavian republics, one Italian

autonomous and one regular region, three Hungarian districts, and five Austrian *Länder*. Its institutional apparatus resembles that of the Arge Alp, as do its goals.[39]

Other *Länder* are rather less active in this regard than is Bavaria, in some cases because, as, for example, with Hessen, which borders only on the GDR, the opportunities are limited. Baden–Württemberg is involved in regional organizations that tie it to French and Swiss jurisdictions, Rhineland–Palatinate co-operates with France and Luxemburg, and Northrhine–Westphalia co-operates with adjacent Dutch and Belgian jurisdictions in the Euregio organization. Schleswig–Holstein has concerned itself with the German-speaking minority in Denmark and has generally tried to develop close ties with its northern neighbour, as well as with the other Scandinavian countries, in part to counteract the southern thrust in the EC engendered by the accession to EC membership of Spain and Portugal.[40]

OTHER INTERNATIONAL ACTIVITIES

The rationale for international activities by the *Länder* is most frequently related to the responsibilities assigned them by the Basic Law, and by the need to foster economic prosperity. From time to time, however, *Länder* politicians undertake actions abroad that are difficult to explain in these terms. Premier Vogel of Rhineland–Palatinate has justified such paradiplomacy, visits abroad, or other contacts with foreign governments that do not have as their primary objective the furthering of cultural or economic ties, as being essential for carrying out the premiers' responsibilities to participate intelligently in the formulation of West German foreign policy at the Bundesrat level, and for fulfilling their position of leadership in the political parties.[41] Premiers also play a role in international party groupings. All these responsibilities require that at times the premiers inform themselves abroad directly and on the spot. The frequent visits by foreign ambassadors to *Länder* capitals can also be explained in terms of the national political role of the *Ministerpräsidenten*. Occasionally, premiers have acted as emissaries for the federal government to countries with whom direct contacts were desirable but relations were tense or with whom visible contacts initiated by federal officials or politicians would have proven politically embarrassing for Bonn.

The politician most involved in such 'classical' diplomatic activities was former Bavarian Premier Franz Josef Strauss. He travelled abroad extensively and sometimes became involved in international matters that are normally expected only of national politicians; for example, making a highly publicized journey to East Berlin to negotiate financial aid by the FRG for the GDR. Mr Strauss established an elaborate foreign-policy establishment in the Bavarian *Staatskanzlei*, including an official in charge of EC affairs, one responsible for all-German affairs (relations between the two Germanys), a defence-policy expert, and so on. These positions would normally be found only in the foreign office of a sovereign state and have no counterparts, with the exception, perhaps, of officials in charge of EC affairs, in other *Länder* capitals.

The rationale for this elaborate foreign-policy establishment in Munich had little to do with Bavarian politics or policy. However, it had everything to do with Mr Strauss's leadership of the CSU party, the Bavarian sister party of the CDU, which is a partner in the centre-right governing coalition in Bonn formed in 1982. It had everything to do, as well, with Mr Strauss's ambitions to become foreign minister in that government and otherwise to continue to play a leading role in West German national politics. Similarly, the CSU party foundation, the Hans Seidel Stiftung, like its CDU, SPD, and FDP counterparts, is very active abroad, projecting the CSU philosophy in settings such as Spain, Israel, Togo, and Chile. This brand of transnational 'foreign policy' was the most extreme example of the tendency of *Länder* politicians to undertake actions that are motivated by their national status and ambitions. In other cases, the international profile of *Länder* leaders has been less pronounced, but it is generally politically advantageous for a premier with an eye to high office in Bonn to be seen to have international contacts and experience.[42] With the exception, at times, of Mr Strauss, most premiers have announced their official international travels to the Auswärtige Amt in advance, and thus have demonstrated their acceptance of the principle of federal primacy in the FRG's international relations.[43]

At times, international issues are raised in *Länder* election campaigns. This occurs most frequently when the FRG is faced with weighty foreign-policy matters closely related to her security or even existence; for example, during the national debate over the centre-left coalition's *Ostpolitik* in the early 1970s and, more

recently, during the national debate over the stationing of Pershing II and cruise missiles on West German territory in connection with the NATO double-track policy of deterring intermediate-range Soviet missiles. These issues appear out of place in the elections for the *Länder* legislatures, which have lost most of their powers to the national parliament and certainly do not have any jurisdiction over such crucial matters. However, these elections determine the composition of *Länder* governments and thus the composition of the Bundesrat, which, as we have seen, has a limited role in the foreign-policy-making process. More importantly, *Länder* elections have become 'nationalized' also because they are seen as indicators of the popularity of the national parties whose regional counterparts are actually engaged in the campaign.[44] Hence issues of national impottance, sometimes those pertaining to international relations, quite naturally are raised in this context. This is one more example of the complexity in the relations between federal and *Länder* politics and governments in the FRG.

CONCLUSION

West German *Länder* have not played as active a role in international relations as their counterparts in, for example, Canada and Australia. The reasons are partly constitutional: *Länder* were not endowed with broad powers and have lost some of these powers to the federation over the years. Responsibility for international relations is almost exclusively in the federal domain. Further, the Lindau Convention procedures have proven effective in institutionalizing relations between the two levels of government on the international aspects of matters falling under joint, or exclusively *Land*, jurisdiction; here, also, the most visible international role is that of the federal government.

In relations with the EC, the situation is similar. In the past, the federal government has had the major role, even when powers over matters domestically in the jurisdiction of the *Länder* were transferred to EC jurisdiction. Here, however, the *Länder* have recently taken a stand, by insisting on greater participation in decision-making and by establishing contact offices in Brussels in order to gather information necessary for being better informed about EC

matters, and to lobby EC institutions. This is one instance of increased international activity by the *Länder*.

Another instance of increased *Länder* international activity is in the field of international economic representation. It is true that the West German *Länder* are less active in this regard than are many Canadian provinces and US as well as Australian states, if only because of the international sophistication of West German firms and the activities of the DIHT-sponsored foreign chambers. However, it is also true that two of the *Länder* most active in international economic and commercial activities, Baden–Württemberg and Bavaria, have also been the two most prosperous *Länder* in recent years. As relative economic decline sets into the north, the remaining *Länder* have become more active internationally, and they are beginning to establish contact offices with economic objectives in locations beyond Europe. This may well be a trend of the future.

Regional paradiplomacy between German *Länder* authorities and their counterparts in the FRG's neighbour states are also likely to increase. A part of the reason for this has to do with constitutional change in these countries: Belgium, as Professor Lejeune shows in his chapter on that country, is devolving increased responsibilities to its regions. The French government has recently increased the functions and powers of local governments. These developments portend to greater interaction between the *Länder* and the regions of France and Belgium. On the south-eastern frontier, as well, there is the potential of increased interaction, should the contemporary debate in Austria about accession to the EC result in Austrian membership in the Community, and hence even closer ties between the FRG and Austria. Further, the increased interactions among EC member-states, resulting from the abolition, in connection with the completion of the EC internal market by 1992, of still-existing barriers to commercial relations, will lead to increases in regional paradiplomacy as well, as most impediments to transboundary relations of every kind are removed.

Events of the first half of 1990 have led to the removal of the border between East and West Germany, as the two states became economically unified on 1 July. While formal political unification had not been accomplished on that date, the two governments agreed to formal unification in December 1990. Germany's

easternmost *Länder* in what will until then still formally be the GDR, will then, no doubt begin extensive paradiplomatic relations with subnational jurisdictions in Poland and Czechoslovakia, Germany's eastern neighbours.

In the meantime, *Länder* premiers and ministers continue to travel abroad for a variety of interrelated reasons: to become informed about international matters first-hand in order to fulfil their duties as members of the Bundesrat and as party leaders; to make economic inroads in state-trading nations where government representation of economic interests remains a vital part of doing business; to show the local flag in trade fairs all over the world, including capitalist countries; and in practically every case to benefit from the media attention that such visits attract and hence to help create an image of international sophistication useful in furthering local and national political ambitions. Bavaria's recently deceased Franz Josef Strauss was the most visible of *Länder* politicians in this regard. It is questionable whether his successor will have the same stature in West German politics as Mr Strauss, but all the trends that are likely to induce greater *Länder* international activity generally, as well as the legacy of Bavaria's past activism in paradiplomacy and the Bavarian premier's special national role as leader of the CSU, will ensure that he will become known outside Bavaria and outside the FRG.

NOTES

1. H.-J. Schreckenbach, 'Innerdeutsche Gesandschaften 1867–1945', in Staatliche Archivverwaltung im Staatssekretariat für Innere Angelegenheiten, *Archivar und Historiker* (Berlin, n.d.), 404.
2. Ibid.
3. Ibid. 405.
4. Ibid. 408.
5. Ibid.
6. *The Basic Law of the Federal Republic of Germany* (Bonn, 1981). All subsequent citations from the Basic Law are taken from this source.
7. Estimate of an official in a *Land* representative office in Bonn, 1987. P. Seidl (*Die Zustimmung der Bundesregierung zu Verträgen der Bundesländer mit auswärtigen Staaten gemäß Art. 32 III GG* (Berlin, 1975), 164–8) lists 25 such treaties to 1975.
8. Seidl, *Die Zustimmung*, pp. 76–80.
9. Interview with Bundesrat official.
10. K. Oberthür, 'Die Bundesländer im Entscheidungsprozeß der EG', *Integration*, 2 (1978), 60–1.
11. Ibid.

12. Ibid. 58.
13. The *Länder* were now entitled to receive documentation from an earlier (Commission) stage of Community deliberations.
14. Interview with an official of a *Land* representative office in Bonn, June 1987.
15. 'Das Bangen der Länder um ihre Kompetenzen', *Süddeutsche Zeitung*, 7 Apr. 1987. See also the excellent volume: R. Hrbek and U. Thaysen (eds.), *Die deutschen Länder und die Europäischen Gemeinschaften* (Baden-Baden, 1986).
16. B. Vogel, 'Gibt es eine Außenpolitik der Länder? Eine Klarstellung aus der Sicht eines Ministerpräsidenten', text of an address to the Deutsche Gesellschaft für Auswärtige Politik, Bonn-Bad Godesberg, 19 Feb. 1987, p. 8.
17. *Bundesrat Drucksache* 600/86, 5 Dec. 1986.
18. The prospect of expansion of EC activity in the field of culture, and more specifically education, raised considerable concern among the *Länder* governments. This was demonstrated at a meeting of the *Ministerpräsidenten*, 1–3 Oct. 1986, at which they initiated a comprehensive report by the KMK on, among other related matters, suggestions to provide clear guidelines on boundaries between national and EC powers in the fields of culture and education. (Sekretariat der Ständigen Konferenz der Kultusminister der Länder, *Vorschläge zur Abgrenzung der Zuständigkeiten im Bereich der Bildungs- und Kulturpolitik zwischen der Europäischen Gemeinschaft und den Mitgliedstaaten* (Bonn, June 1987)).
19. On this point see H. J. Michelmann, 'Federalism and International Relations in Canada and the Federal Republic of Germany', *International Journal*, 41 (summer 1986), 564.
20. Interview with an official of a *Land* representative office, Bonn, June 1987.
21. Ibid.
22. Ibid.
23. Vogel, 'Gibt es eine Außenpolitik des Länder?', p. 14.
24. Interview with an official of the Auswärtige Amt, July 1982.
25. R. Schloz, *Deutsche Entwicklungspolitik* (Munich, 1979), 71 ff.; W. Rudolf, 'Mittlerorganisationen der auswärtigen Kulturverwaltung', in J. Delbrück *et al.*, *Recht im Dienst des Friedens* (Berlin, 1975), 141–53.
26. Interview with Lower Saxony officials, July 1987.
27. According to an official of the Ministry of Economic Co-operation, in the mid-1980s about 34,000 foreign students were pursuing their education in the FRG at a cost to the *Länder* of some 500 million DM. On a resolution of the *KMK*, some 8 per cent of study places have been set aside for foreign students.
28. Interview with federal official.
29. Ibid.
30. Interview, with *Land* official in Bonn, June 1987.
31. *Die Welt*, 13 May 1986.
32. *Die Welt*, 15 May 1986.
33. Vogel, 'Gibt es eine Außenpolitik des Länder?', p. 14; *Die Welt*, 13 and 27 May 1986.
34. *Die Welt*, 13 May 1986.
35. Interview with an official of the Bavarian government.
36. Bayerische Staatskanzlei, *Grenzüberschreitende Zusammenarbeit unter bayerischer Beteiligung* (Munich, n.d.).
37. Bayerische Staatskanzlei, *Arge Alp* (Munich, n.d.).
38. See, for example, the chapter by A. Pelinka in this volume.
39. Bayerische Staatskanzlei, *Grenzüberschreitende Zusammenarbeit.*
40. *Die Welt*, 27 May 1986.

41. Vogel, 'Gibt es eine Außenpolitik der Länder?', pp. 16–19.
42. It is noteworthy that all chancellors since Ludwig Erhard have played leading roles at the *Land* (or city-state) level before heading the Bonn government.
43. Interview with an official of the Auswärtige Amt.
44. This is so in part because matters decided in the *Länder* legislatures are of limited significance and also because, as noted in the introductory section, there are no federal by-elections that can serve as indicators of the popular mood.

9
Switzerland

LUZIUS WILDHABER

BRIEF HISTORICAL OVERVIEW, 1291–1848

Swiss constitutional history is of limited relevance for the interpretation of today's constitution. Nevertheless it is helpful for the understanding of the modern pragmatic practice.

The old Swiss Confederation, dating from 1291, considered itself part of the Holy Roman Empire at least until its *de facto* independence in 1499 in the Peace of Basle, which was formally confirmed by the Westphalia Peace Treaty of 1648. The Confederation, which existed until the Napoleonic intervention of 1798, can perhaps best be described in terms of four concentric circles.[1] The innermost circle consisted of the three parties to the original federal treaty, the so-called *Waldstätte* (forest locations) of Uri, Schwyz, and Unterwalden. The three *Waldstätte* were linked by a pact of 1291,[2] which after the victorious battle of Morgarten was replaced by the *Dreiländerbrief* (letter of the three countries) of 1315. These two pacts contained provisions similar to those found in federal constitutions, such as the outline of a common criminal code in the 1291 pact, and, above all, inhibition for any party to enter into political negotiations with a third party or to submit to any power without the consent of the other two. The three *Waldstätte* henceforth acted as a unit on the external level, even in their relations with the Holy Roman Empire.

The so-called 'Confederation of the VIII Old Locations' formed the second circle of the old Swiss Confederation. The three *Waldstätte* acted in unison when they concluded their pacts with the five later members.[3] These pacts were of 'eternal validity', but otherwise were not identical, nor was the status of the confederates. While all had the right to wage war without consulting the others, some were restricted in their treaty-making power.[4] The pacts with Zurich (1351) and Berne (1353), on the other hand,

contained the so-called 'Zurich-clause', which granted the two city-states the right to conclude separate alliances, over which the eternal pact with the confederates had, however, to prevail.

The 'Confederation of XIII Locations', which existed up to 1789, constituted the third circle. The eight old locations acted together when they concluded pacts with the last five members. As symbolized by the lower seats of their delegates in the parliament, the five newcomers all had an inferior status to that of the eight old locations, mainly with respect to their treaty-making power.

The fourth circle of communities belonging to the territory of the old Confederation since the sixteenth century was the *Zugewandte* (the allies), who usually had contractual relationships with only some of the confederates.[5] In addition, there were numerous subject territories. They belonged either to several locations as a condominium or to one location or ally, either as part of the state proper (e.g. the rural parts of the city-states of Berne, Lucerne, Zurich, Solothurn, Fribourg, and Basle) or as a kind of a colony (the so-called 'outer subjects', e.g. Vaud, Aargau, Ticino). These territories had, of course, no treaty-making power, but in Lucerne, Zurich, and Berne the subjects could take part in treaty-referendum votes.[6]

While the treaty-making power of most members of the Confederation was restricted in various ways, there was no centralized treaty-making power in its stead. Treaties of the Confederation were concluded in the name of its members, who had to give their consent to the result of any negotiations. At the same time, the confederates continued to make their own treaties, mainly mercenary treaties (so-called 'military capitulations') with the King of France, the Pope, and other foreign sovereigns, for which they received substantial payments ('pensions'). A decision of the *Tagsatzung* (parliament) of 1503 to put an end to these capitulations was unsuccessful, so that the mercenary tradition continued until 1859.[7] After the Reformation there were two religious alliances within the Confederation, each with its own foreign allies against its confederate step-brothers.

This complicated situation came to an end with Napoleon's military intervention in 1798. The 'Napoleonic interregnum' was a very unsteady period of short-lived constitutions, revolutions, and counter-revolutions, sometimes little short of civil war, which lasted until the Congress of Vienna or, depending on one's view,

until the establishment of the new federal state in 1848, exactly fifty years later. The 'Helvetic Republic' was a unitary state, with Switzerland's first centralist constitution (which lasted from 1798 to 1802). The cantons became mere administrative subdivisions, similar to the French *départements*; they were completely reorganized and their territories were modified. The Helvetic Republic suffered from internal and external warfare and numerous coups. The second, more federalist constitution, was even more short-lived (1802–3) and never fully applied. The main and lasting achievements of the Helvetic Republic were the equality of its component units and the equality of its citizens.[8]

By the Mediation Act of 1803 Napoleon transformed Switzerland back into a confederation of states, largely restoring the old regime while maintaining the equality of the nineteen cantons and the definite abolition of the subject territories and their unequal status. The central government existed more or less only on the external level, where Napoleon needed it for his purposes, while internally it enjoyed neither much power nor much respect; it did not even have its own revenue.[9] The *Landamman* of Switzerland[10] received the credentials of foreign ministers and was in charge of negotiations and other diplomatic intercourse (Federal Act, Article 17). The federal parliament, which consisted of delegates of the sovereign cantons, appointed extraordinary ambassadors (Article 35), declared war, and concluded treaties of peace and alliance with the consent of three-quarters of the cantons (Article 31). While it also concluded commercial treaties and capitulations, it could authorize the cantons 'to deal separately on other objects with a foreign power, if it was justified' (Article 32). Any alliance of a canton with another or with a foreign power was prohibited (Article 10).

Napoleon's defeat brought about the end of the Mediation Act. The *Tagsatzung* declared it null and void in December 1813. The new Federal Pact of 1815 almost completely restored the *ancien régime*, except that it preserved the existence and equality of the new cantons (after due financial compensation of their former owners). On the international level, the *Tagsatzung*, now composed of the representatives of twenty-two cantons, largely maintained its former powers: it declared war, made peace, and concluded alliances with foreign powers, but only with the consent of three-quarters of the cantons. Furthermore, it concluded com-

mercial treaties with foreign states and appointed and dismissed the federal envoys, with the consent of an absolute majority of the cantons. These latter were competent to conclude 'military capitulations and treaties on economic and police matters' with foreign states, provided that these treaties were revealed to the *Tagsatzung* and were 'neither contrary to the federal pact nor to existing alliances nor to the constitutional rights of other cantons' (Federal Pact, Article 8). Many treaties negotiated by the *Tagsatzung* were concluded in the name of the cantons who accepted to adhere, so that the cantons could be considered as the true contracting parties.[11]

FACTORS AND MOTIVATIONS LEADING TO FEDERATED UNITS' INTERNATIONAL ACTIVITIES

An obvious factor in explaining cantonal agreements is history. A large part of the 140 agreements still in force has been concluded in earlier centuries and deals with subjects which have become federal in the meantime. This is true, for instance, of boundary or railroad agreements. Even though taxes continue to be raised at the federal, cantonal, and communal levels, treaties concerning direct taxes or the avoidance of double taxation are today almost always federal. Cantonal agreements on such topics have, therefore, evident historical roots.

Most of the modern international agreements or transnational activities of the cantons stem from the needs of a modern industrial and pluralistic society in a peaceful and interdependent Western Europe. The most important principle would seem to be that of good neighbourliness. There is no need for any special justification or explanation, if border cantons, *Länder*, and *départements* exchange information on nuclear or chemical accidents, provide for the exchange of pupils or hospital patients, or agree on the plans of a new turnpike. The need for explanations might arise, however, if transfrontier co-operation were rendered impossible or unworkable.

The canton of Jura, founded in 1978 by a split from the canton of Berne and the subsequent confirmation of the separation in a federal vote, constitutes a special case. Berne is predominantly German-speaking, Protestant, and oriented towards the other Swiss–German cantons; the Jura is almost exclusively French-speaking (with the exception of one municipality, Ederswiler), Catholic, and oriented

towards France, Basle, and the French-speaking Swiss cantons. These factors, along with a long border with France, a young age, a recently troublesome history, and a sometimes fervent 'missionary' or 'decolonizing' conviction, have contributed to making the Jura visible. It is a canton which is particularly active internationally, particularly in fields which are sensitive politically, and feels a stronger need to affirm its identity on the international plane than the other cantons. Thus it has entered into a cultural agreement with the Commission on French Culture of the Agglomeration of Bruxelles (in 1980), an intergovernmental agreement with the Canadian province of Quebec in 1983 (which was disallowed by the federal government), and an agreement on cultural and technical co-operation with a third-world country, the Seychelles (in 1986). The federal authorities view these activities with some suspicion, but endeavour to avoid a major conflict. Typically, neither the federal nor the cantonal government has made public its views on the dispute over the agreement with Quebec. Neither side seems to believe that a confrontational attitude would help much.

CONSTITUTIONAL SETTING

Today's constitutional division of powers in the field of foreign affairs goes back to the first truly federal constitution of 1848. Up to 1848 the cantons were organized as a confederation of sovereign states. As a consequence, the Federal Pact of 1815 could only be revised unanimously. In 1848 three-and-one-half cantons rejected the new Constitution in the *Tagsatzung*, six-and-one-half in the subsequent popular referendum. Since the Federal Pact of 1815 was nevertheless superseded by the Federal Constitution of 1848, there was no legal continuity, but rather a revolutionary act of original constitution-making. To some extent, this reduces the significance of the history before 1848 for the interpretation of present-day constitutional provisions.

In essence, the way in which the Constitution distributes powers in the field of foreign affairs has remained unchanged since 1848:[12]

Article 8

The Confederation[13] has the sole right to declare war and make peace, to conclude alliances and treaties, particularly customs and commercial treaties with foreign states.

Article 9

Exceptionally, the cantons retain the right to conclude agreements with foreign states on matters of public economy, neighbourship and police relations, provided such agreements contain nothing contrary to the Confederation or the rights of other cantons.

Article 10

1. Official intercourse between cantons and governments of foreign states or their representatives takes place through the agency of the Federal Council.

2. With respect to the matters enumerated in Article 9, the cantons may, however, correspond directly with subordinate authorities and officials of foreign states.

In the first decades of the new federal state, the interpretation of these articles was controversial. Those advocating a 'federalist' interpretation argued that the federal government could conclude treaties only with respect to matters which were within its legislative or administrative competence or which, in addition, were assigned to it for historical reasons.[14] They maintained that Article 8 could not alter the basic distribution of competence laid down in Article 3, as the latter could otherwise be undermined by the conclusion of treaties with foreign states. They also referred to the fact that Article 8 grew out of an 1833 draft, of which the delegate of Geneva had said that it proposed no change with respect to the distribution of powers in the field of foreign affairs under the Federal Pact of 1815.

Those advocating a 'centralist' interpretation, on the other hand, rejected these arguments.[15] They argued that Article 8 had to be interpreted as an independent, substantive source of federal power, and as such as an exception to the presumption of competence in favour of the cantons. Otherwise its enumeration of treaties of alliance, customs, and commerce would have been wholly unnecessary. Furthermore, they argued, since treaties and statutes are different sources of law, the analogy between legislative and treaty-making power was inadmissible. The 'centralists' also invoked history in favour of their interpretation: cantonal agreements were to be 'exceptional' only after 1848, and a conservative proposal by Philipp Anton Segesser to render co-extensive the legislative and the treaty-making power had been voted down in 1871 in the course of the deliberations on the revision of the Constitution. Finally, federal competence over foreign affairs was considered by centralists

not only as a political necessity of international intercourse, but as a power inherent in the federal government even without an express grant.

The Federal Council and the majority of the Federal Assembly have always been inclined towards a more 'centralist' interpretation.[16] While they accepted in 1856 and 1857 that the cantons were competent to conclude agreements on the establishment of foreign companies and on copyright law, the federal authorities challenged the cantonal power to conclude treaties of commerce and residence in 1851, and in 1856 held that some uniformity in the treatment of aliens seemed desirable and could only be accomplished by federal treaty.

The decisive precedent occurred in 1864, when Switzerland concluded several treaties with France, granting all French citizens (including Jews) free residence and protection of literary, artistic, and industrial property; the treaties also dealt with civil and criminal procedure, criminal law, and exemptions from cantonal wine taxes. Under these treaties French Jews enjoyed in Switzerland larger rights than Swiss Jews. In its message to the Federal Assembly, recommending the treaties for adoption, the Federal Council stressed that the federal treaty-making power was not restricted to certain categories of subjects. If the federation could conclude treaties only with respect to matters within its legislative power, it would be reduced to the negotiation of customs and telegraph treaties, which would isolate Switzerland and damage its international intercourse.[17] The commissions of both houses of the Federal Assembly agreed; that of the Council of States argued 'that Article 8 embodies the general competence of the federation to conclude treaties, without any reservation being made in favour of the cantons'.[18] The treaty consequently was approved by the legislature. Owing to the lack of judicial review in Switzerland (Constitution, Article 113 (3)), the matter could not be settled by a court decision. The Federal Tribunal confirmed this interpretation, however, in various *obiter dicta*. In 1970, for instance, it asserted, with respect to a double-taxation treaty concluded in 1951 with the United States, that 'according to Article 8 the federation alone is competent to conclude treaties. From this, the practice has always deduced that the federation may also conclude treaties on matters basically falling within the cantonal sphere of competence and thus supersede cantonal law.'[19]

The last stronghold of cantonal agreement-making power broke down when the Federal Council in 1928 decreed that the federation, rather than the cantons, was competent to conclude treaties for the avoidance of double taxation. The Federal Council deduced this right from Articles 8 and 46 of the Constitution and affirmed explicitly its power with regard to cantonal taxes, although it had previously refrained from occupying this field.[20] Despite the criticism which the pronouncement of the Federal Council provoked, the government continued its policy. Today, there are in force sixty-three federal double-taxation treaties with fifty countries; and the overwhelming majority of Swiss writers[21] agree that the federal treaty-making power is full and plenary.[22]

As a result of the unlimited federal treaty-making power, there is no exclusive cantonal agreement-making power. The cantons retain only a concurrent and subordinate agreement-making power. They can only enter into agreements if, and as long as, there exist no federal treaties on the same subject.[23]

While there is unanimity on this point, writers have disagreed as to the extent of the cantonal agreement-making power. Most have followed the practice of the federal authorities by arguing that the cantons can make agreements, so far as they are empowered to legislate, and not merely with respect to 'matters of public economy, neighbourship and police relations', as Article 9 of the Constitution puts it.[24] These authors point out how difficult it is to give empirical reference to the terms used in Article 9; that historically Article 9 was intended to prohibit the cantons from entering into political and military treaties; and that in actual practice the cantons have concluded many double-taxation agreements which exceed in importance matters of sheer neighbourship or local economy.

I have argued that Article 9 of the Constitution does not permit such an expansive view, since it has, like Article 8, a substantive as well as a formal content.[25] In the same vein, the Federal Council has stated that matters which have repercussions beyond a merely local sphere are reserved to the federal government. It took this view, for instance, when it prevented the cantons, in 1954, from entering into an agreement with respect to the taking of potable water from Lake Constance;[26] or when it ordered the canton of Lucerne, in 1921, to submit a concordat with the bishop of Basle and Lugano for federal approval.[27] It must be conceded, none the

less, that federal practice is not entirely consistent. In a recent statement of 1981 on the European Framework Convention on Transborder Co-operation of Territorial Communities, the Federal Council espoused the larger view, stating that all matters of cantonal legislative competence were included in the cantonal agreement-making power.[28]

Even where the cantons may conclude agreements, they must do so through the agency of the Federal Council. The cantons shall neither accept direct communications from foreign states nor themselves send messages to governments abroad. Generally speaking, according to the Federal Constitution, cantonal agreements are negotiated, signed, and ratified in the name of the cantons (or of both the federation and the cantons) by the Federal Council.[29] If the Federal Council declines to undertake the negotiations, the canton is powerless. The Federal Council may delegate the negotiation to cantonal officials, but this seldom happens. Frequently the Federal Council includes representatives of the concerned cantons in the federal delegation, in which they are, however, subject to federal directives. Often the federal government acts only as a messenger between the canton and the foreign state.

Some authors think that Article 10, Section 2, of the Constitution allows the cantons to conclude agreements directly with subordinate foreign authorities.[30] The better interpretation would accept that cantons might proceed to an exchange of information or views, but not to the conclusion of binding agreements.[31] Even so the section leaves a wide field of transfrontier activities to the cantons.

Swiss practice hardly deals with the question of applicable law. Swiss authors apparently assume that cantonal agreements are automatically subject to public international law. Actually, if direct cantonal agreements are admitted in practice, one might wonder whether such agreements should be considered as subject, not to public international law, but to a given national law or another set of rules. As is well known, this question has been explored in other countries.[32] First of all, one would have to know whether cantons are free to choose between international and 'non-international' agreements. If such is the case, and if cantons are empowered to enter into 'non-international' agreements, the question arises as to which law would be applicable. The range of possible answers is wide. Such agreements might be subject to the collision rules

of private international law, general principles of law, or *lex mercatoria*, or they might even constitute their own legal system (*lex contractus*), as *contrats sans loi*. Suffice to say that such questions are largely unexplored in Swiss writings and practice, so that the cantonal agreements discussed in this paper are considered as international in character.

Despite the terms of Articles 9 and 10, the cantons have occasionally been allowed to conclude agreements directly. The Federal Assembly did so in effect by guaranteeing the cantonal constitutions of Valais (1854) and Fribourg (1857), both of which provided for a concordat to be concluded between those cantons and the Vatican.[33] In two more cases, where the conclusion of a concordat was not provided for by the cantonal constitution, the Federal Council authorized the cantons to do so. In other cases, the federation authorized the cantons to conclude agreements by means of umbrella-conventions or of simple federal statutes, such as the Water Protection Statute of 1971.[34]

In 1986 the Federal Council gave its approval to an agreement on cultural and technical co-operation between itself, 'acting for the canton of Jura', and the Republic of the Seychelles, and authorized the Swiss ambassador to sign the agreement. It is noteworthy that the canton of Jura had negotiated the agreement on its own. For this it was reprimanded by the Federal Council, which insisted on exclusive federal competence for the negotiation of international treaties under Article 10, Section 1, of the Constitution, and required some changes in the original wording (to be negotiated in co-operation with the Federal Office of Development Co-operation and Humanitarian Aid) before it gave its approval.

The cantons are autonomous in the organization of their agreement-making procedures. Nevertheless, these procedures clearly resemble each other.[35] The cantons are represented in their foreign relations by their executive. Usually, the cantonal legislature must give its consent before the conclusion or ratification of the agreement. In some cases, cantonal constitutions authorize the executive to conclude certain categories of agreements on its own.[36] Ten cantons submit some or all agreements to a compulsory popular referendum,[37] eight to an optional one.[38] Numerous agreements have not been promulgated or published because they concern only the administration and not the citizens.

Federal approval is a means of federal supervision. The Federal

Council gives its approval to cantonal agreements if they are 'admissible' (Constitution, Article 102, No. 7), i.e. if they respect the constitutional distribution of competences and contain nothing contrary to federal law or national interests. In effect, the federal control is of an almost discretionary nature.[39] If the federal government intends to conclude a federal treaty in the agreement's field, it may withhold its approval. Certainly, there is no agreement to approve if the Federal Council refuses to sign; whereas, if it does sign, it can hardly afterwards refuse approval unless another canton should protest. In essence, federal approval constitutes a safeguard in case Article 10 (1) is not respected and the cantons themselves undertake direct negotiations. If the Federal Council in such a case disapproved of the cantonal agreement,[40] the canton would either be impeded from ratifying it or else obliged to denounce it, the Federal Council having the power to do so in its place, should it refuse.

Prevailing Swiss doctrine attributes only declarative value to the federal approval. Cantonal agreements would, therefore, already be validly concluded before the federal approval takes place.[41] If an agreement has been negotiated by the Federal Council, of course, the question of the nature of federal approval remains academic. It is conceivable, however, that a canton could negotiate an agreement directly, thereby violating (either unwittingly or intentionally) Article 10 (1). The validity of such a cantonal agreement under national law would seem doubtful. As for the situation under international law, I have myself earlier considered voidability as the correct solution. The lack of federal approval might be equated with a manifest violation of the constitution according to Article 46 of the 1969 Vienna Convention on the Law of Treaties.[42] Later, I abandoned this view, mainly because I calculated that more than half of all cantonal agreements had inadvertently not been submitted for federal approval. Under these circumstances, the violation of the Constitution may not be evident enough to justify nullity or voidability under international law.[43] Those agreements would, therefore, be considered as valid as long as they dealt with matters within the limits of the substantive cantonal agreement-making power. Cantonal agreements clearly encroaching upon substantive federal competences, however, would continue to be considered as voidable for manifest violation of the Constitution.

The canton of Jura negotiated and concluded directly with the

Canadian province of Quebec an intergovernmental *entente*, dated 1 July 1983.[44] Although nothing has been published in Switzerland about this *entente*, it is rumoured that the Federal Council declined to approve it, allegedly because it considered it as a political convention encroaching on federal turf. What about the validity of this *entente*? In Swiss municipal law, the *entente* is invalid. Under international law, I would argue that the *entente* has not become enforceable in the relationship between the Swiss federal government on the one hand and the Canadian federal government on the other. Switzerland could not be held liable for any violation of the *entente* by the canton of Jura. Admittedly, it would be difficult to prevent the canton of Jura from simply observing the *entente*, exchanging information or functionaries, or even making governmental visits. All of this could well be done, after all, even without any *entente*. The canton of Jura could pretend, in other words, that the *entente* is more than a gentlemen's agreement, hoping that in the long run the facts will triumph over the letter of the law, that the law-in-action will replace the law-in-the-books.

Who is competent to denounce a cantonal agreement, the canton or the Federal Council? It would seem logical enough to apply parallel rules to the making and the denunciation of agreements. This would mean that the Federal Council alone would be competent to communicate a denunciation, as it alone is competent to conclude an agreement.[45] Owing to the 'federal courtesy' and reciprocal respect governing the day-to-day relations between federation and cantons, the federal government will usually denounce an agreement only with the consent of the cantons concerned. As a matter of legal principle, however, it would have the right to do so even against their will. This right can be derived from the plenary federal treaty-making power.

In addition, one can perceive a legal basis in the necessity of federal approval and the right of the Federal Council to denounce a disapproved treaty in the event that the canton itself should refuse to do so. Since it is largely at the discretion of the Federal Council to approve or disapprove of a cantonal agreement, one might deduce that it should also be able to revoke its approval and denounce an agreement, the more so if a cantonal agreement was not submitted for federal approval.

Does the Federal Council have power to refuse to communicate a canton's wish to denounce an agreement to the foreign state? Since

an agreement, concluded in its name, directly obliges the canton, it would seem doubtful whether a canton can be forced to continue its obligation against its will. If the federation wished to maintain the agreement, it could do so by concluding it in its own name. The situation is even more complicated if the agreement has been concluded in the name of several cantons. The agreement may, of course, provide that it can only be denounced by all of them acting together. But if it contains no such clause, each contracting canton would be entitled to ask the Federal Council to denounce the agreement in its name, as far as it is concerned. This may induce the foreign state to denounce the agreement also with respect to the other cantons, as it may have no interest to continue the agreement with the remaining cantons only.

In a recent case, the Federal Council considered that it had power to withhold cantonal denunciations of a cantonal agreement.[46] The case concerned the 1935 arrangement between France and Switzerland, acting in the name of Berne and Neuchâtel, on the taxation of foreign transborder workers, to which the cantons of Vaud, Valais, and Jura had adhered at a later stage; and exchanges of letters of 1910 and 1911 between the fiscal administrations of the cantons of Solothurn, Basle-City, and Basle-Country, and of Alsace-Lorraine on the same subject. These cantonal agreements were to be superseded by a new federal treaty of 1983. The new federal treaty was negotiated at the same time as an amendment to the 1965 French–Swiss double-taxation treaty. This latter amendment was less favourable to Switzerland, which was to be compensated, however, by the more favourable regime of taxation of foreign transborder workers. In 1985 the Federal Assembly rejected the amendment to the double-taxation treaty, however. As a result, France decided not to ratify the treaty on the taxation of foreign transborder workers and to renegotiate two separate, not interdependent, instruments. The cantons had submitted their denunciations of the earlier cantonal agreements to the Federal Council in order to enjoy full fiscal autonomy in case there would be no new treaty with France before the end of 1985. The Federal Council did not transmit these denunciations to France, however. It was of the opinion that such a transmittal would be considered as inimical by France and would needlessly complicate the renegotiation of the amendment to the double-taxation treaty. No public discussion ensued as to the attitude of the Federal Council.

Cantonal agreements with neighbouring states or their subdivisions are not the most important means of cantonal foreign policy: co-operation and exchange of information across the borders, institutionalized or *ad hoc*, are probably more significant.[47] The cantons have developed an amazing variety of official and unofficial contacts with subordinate foreign authorities in pursuance of Article 10 (2) of the Constitution. Increasing interdependence, and the transnational character of problems such as the pollution of water and air, transport, or zoning and planning, have resulted in an ever-increasing number of transborder institutions for international co-ordination and co-operation. The impact of this development is more significant than might be expected at first sight because the application and execution of federal legislation is not entrusted to federal authorities but remains, by and large, with the cantons.

Under Article 10 (2) of the Constitution, the cantons may 'correspond' directly with 'subordinate foreign authorities and officials'. This has been interpreted generously by the federal authorities, in the sense that the cantons may take up contacts with the governments of the West German and Austrian *Länder* and, for practical reasons, even with that of the Principality of Liechtenstein.[48] This interpretation seems well established in practice, despite the political nature of the *Länder*, which are more than merely 'subordinate' bodies. Historically, the German *Länder* were at the time of the framing of the Swiss Constitution (in 1848) still independent states. However, as we have seen, Swiss practice permits cantonal contacts not only with low-level civil servants, but with the *Länder* governments directly.

As the cantons, according to Article 10 (2), may only 'correspond' with subordinate foreign authorities, they are not allowed to entertain formal diplomatic relations. There is a strong historical reason for this, cantonal diplomacy having often weakened the Confederation or having even been directed against the Confederates.

As opposed to diplomatic relations, consular relations are usually of a local, apolitical nature.[49] Under the prevailing generous interpretation of Article 9, one might be tempted to argue that the conclusion of an agreement concerning the establishment of consular relations also falls within the sphere of 'public economy, neighbourship and police relations'. Of course, such an agreement would have to be concluded through the agency of the Federal

Council (Article 10, Section 1). Up to now, no canton has expressed its desire to establish consular relations, but a group of cantonal experts did propose that idea in 1979—an idea which the federal authorities seem to frown upon.[50] It is general practice that foreign consuls are given the federal exequatur only with the consent of the canton concerned.

The cantons are not empowered to set up direct contacts with foreign diplomats accredited in Switzerland.[51] However, courtesy visits of such diplomats and protocol visits of foreign heads of state or members of government to cantonal governments are routinely granted. This was not always the case, however: the Constitution of the canton of Uri of 1850 provided in its Article 60 that the cantonal government was in charge of 'diplomatic relations with foreign authorities'. The Federal Assembly refused to give its guarantee to the article, considering it *ultra vires*. It approved a later version, however, under which the cantonal agreement was to be in charge of 'diplomatic matters and exchanges'.[52] In the years from 1863 to 1866 cantonal committees were formed with a view to convincing foreign governments of the desirability of certain alpine railroad tunnels. The Federal Council had to step in and remind the cantons of Article 10 of the Constitution and the federal pre-eminence with respect to external representation.[53] In 1913 the Federal Council intervened again and prohibited a cantonal invitation to French President Poincaré, which was supposed to generate publicity for the Simplon railroad tunnel.[54]

Existence and extent of an international personality of member-units in federal states depend primarily on international law.[55] In the case of Switzerland, it is generally accepted that the cantons have a limited international legal personality (*petite personnalité*), to the extent the Federal Constitution authorizes them to act on the international level. This way of putting the problem takes the cantonal agreement-making power as its point of departure. The question then remains whether this international personality covers other aspects, such as immunity and liability. Traditionally, it has been assumed that only fully sovereign states could enjoy the benefit of immunity;[56] the 1972 European Convention on State Immunity, thus far ratified by Austria, Belgium, the Netherlands, Switzerland, and the UK, confirms this. In Article 28 it excludes member-units of federal states from the benefit of immunity, but enables the federal state to declare the applicability of the Con-

vention (as to both rights and obligations) to the member-units through notification to the Secretary-General of the Council of Europe. Switzerland has not submitted such a notification, considering it as neither necessary nor opportune.[57]

As for the question of liability, if an international agreement has been concluded by the federation in the name of the canton alone or in both its own name and that of the canton, the federation is responsible in international law for its proper execution and for any cantonal breach of the agreement.[58] What happens, however, if a canton concludes an agreement in its sphere of competence without federal approval (which, as shown above, has happened repeatedly) and violates it? In my opinion, the agreement may be considered as valid. The cantons have so often 'forgotten' the requirement of federal approval that the requirement is hardly a 'provision of internal law regarding competence to conclude treaties' of objective evidence and fundamental importance, in the sense of Article 46 of the 1969 Vienna Convention on the Law of Treaties. Despite the validity of the agreement, the federal government should not be held liable to the other contracting party, except if the federation has acquiesced in the agreement or has derived benefits from it. Those authors who are opposed to this view and who consider the federal government as internationally liable in such cases, nevertheless also allege that, under domestic law, the cantons would at any rate have to bear the reparation costs in the end.[59] This is an interesting and delicate issue. There is no statutory basis for such federal reparation claims, so it is doubtful whether the federal government could judicially enforce such claims. However, the degree of co-operation between federal government and cantons is such that the issue has so far never come up.

In the context of the European Convention on Human Rights, when the federal government goes before the European Commission or the European Court of Human Rights (both located in Strasburg) to defend cantonal decisions which have been confirmed by the Federal Tribunal, it usually includes cantonal representatives in its delegation.[60] Costs are then usually allotted so that the cantons bear the costs of cantonal procedures, the federal government those for the procedure before the Federal Tribunal. Again, there is no explicit statutory basis for such a financial co-ordination. Indeed, it is an open question whether cantonal decisions, subsequently confirmed by a federal court, should be considered as

cantonal acts, so that it would be justified to ask the cantons for reparation costs on the municipal plane in such cases. Under domestic law, these are federal acts. Unquestionably, the federal government is responsible for such cases on the international plane.

How far are the cantons liable for the proper execution of federal engagements? This question arose with respect to the extension of the bi-national French–Swiss airport of Basle-Mulhouse. The airport is located on French territory near Blotzheim. In a treaty of 4 July 1949, France and Switzerland agreed to build and operate the airport in common. Under Article 1, Section 4, of the treaty, the canton of Basle-City takes the place of the Federal Council, in accordance with conditions to be fixed between the canton and the federal government, with regard to all obligations resulting from the construction and operation of the airport. The Federal Council had to bear the costs for the first expansion of the airport. In addition to the French–Swiss treaty, the federation and the canton of Basle-City entered into an agreement of 4 May 1950, in which the canton agreed to fulfil the obligations resulting from the treaty. The federation, in its turn, would negotiate all treaty modifications 'in agreement' with the canton of Basle-City. In an exchange of notes of 25 February 1971, the Federal Council and the French government agreed to extend the runways. The costs would have to be borne in accordance with the treaty of 1949. The cantonal government accordingly submitted a proposal for a grant of 36 million francs to the airport. The cantonal legislature cut the credit to 26 million francs. In a referendum vote, the grant of this credit was rejected. Was the canton under an obligation to bear the costs nevertheless, or could the federal government ask the canton to pay the amount of the credit as reparation costs? The cantonal government asked Professor Dietrich Schindler for advice. The expert held that the 1949 treaty created obligations only for the federal government, not for the canton of Basle-City. Although the canton had agreed, in the 1950 agreement with the federation, to fulfil the obligations resulting from the 1949 treaty, a French–Swiss accord to extend the runways would require the agreement of the canton, and this agreement would have to be expressed in accordance with cantonal law; it would, in other words, be subject to a referendum vote. Schindler considered a federal claim for reparation costs as probably unfounded. On the strength of this expert opinion, the 1971 exchange of notes on the extension of the runways was

renegotiated and the project reduced in size. In a second referendum vote of 7 November 1976 the cantonal voters approved of the reduced project.[61]

INSTITUTIONAL SETTING

Relations between the federal government and the cantons are traditionally co-operative, friendly, and pragmatic. There are various reasons for this. The political élite of the country is rather small and its members know each other quite well. Members of the élite 'cumulate roles' and meet each other in different capacities, so that there is no lasting confrontation along the same fronts. Federal politicians have their power base in their cantons of domicile and thus keep close ties with their cantonal constituencies and officials. The political culture is based on a consensual rather than confrontational style. The decision-making process is dependent on various factors, all of which further the inherent tendency towards co-operation. Federalism, the system of proportional representation, the optional referendum against federal statutes, and the compulsory referendum on constitutional amendments are such factors and contribute towards what is commonly called a 'democracy of concordance'.[62]

The Swiss decision-making process is characterized by a tight network of both formal and informal consultations.[63] Various constitutional provisions or federal statutes provide for a regular consultation of the cantons.[64] The consultation procedure is governed by the Federal Council's Directives on Pre-Parliamentary Legislation Procedure of 6 May 1970.[65] According to Article 12 of these Directives, the cantons must be consulted with respect to legislative bills or treaty projects which either affect their rights or are otherwise of considerable political, cultural, economic, or financial significance to them.

This procedure is particularly important in the case of conventions of the Council of Europe. A recent example illustrates the pervasive power of the consultation procedure. The Federal Council had announced its intention to ratify the First Additional Protocol to the European Convention on Human Rights. In the consultation procedure, the cantonal ministers of education objected, on the grounds that the right to education guaranteed in Article 2 of the First Additional Protocol would interfere with the cantonal competence with regard to schooling. Although this

argument is devoid of pertinence, if one looks at the actual practice under Article 2, the Federal Council caved in and decided not to submit the First Additional Protocol to the Federal Assembly for approval.[66] In some rare cases, the federal government has even sought the approval of all cantons before submitting a treaty for approval and ratification.[67]

The inclusion of cantonal representatives in the federal delegation to international negotiations is more effective than mere consultation. It is usually done where local matters are at stake and where the cantons are better informed than the federal authorities, for example on transborder disputes.[68] Although their expenses are usually paid by the cantons, cantonal representatives are subject to federal instructions. Cantons are not, as a rule, invited to participate in federal delegations to international organizations, multilateral conferences, or negotiations dealing with traditional problems of international law. They may, however, be consulted before the federal position is established, or at least before ratification of a treaty. Perhaps the most conspicuous exception to this rule exists in the Council of Europe and its organs. In the procedures before the European Commission and Court of Human Rights, a harmonious co-operation between the federation and the cantons has been achieved. In other committees, too, there exists either a close federal–cantonal co-operation, or even direct cantonal representation in Strasburg.

THE RANGE OF SUBNATIONAL-UNIT INTERNATIONAL ACTIVITY

In the second half of the last century the cantons concluded a sizeable number of agreements with respect to, *inter alia*, diocesan organization and relations with the Catholic Church; civil and criminal law; registry of births, marriages, and deaths; admission and residence of aliens; double taxation; seizure and bankruptcy; literary and artistic property; railways; hydraulic energy; mutual assistance in the administration of justice; and enforcement of civil judgements.[69]

In the first part of this century cantonal agreement-making activity declined considerably.[70] This can be explained by the expansion of federal legislative powers at the expense of the cantons; the increase of federal treaty-making with respect to

subjects within cantonal power, especially in the fields of civil law, residency, and double taxation; the federal supervision of the negotiations of cantonal agreements; and, finally, a certain lack of interest on the part of most cantons and probably of most foreign contracting parties, with the exception of the neighbouring states and particularly their subnational member-units, districts, or departments.

These latter subnational units, along with the growing European interdependence and integration and the increasing importance of transfrontier regional co-operation, have contributed to a certain revival of cantonal agreements. There are about 140 cantonal agreements in force today, most of them with neighbouring states or their federated member-units.[71] Of these, more than forty have been concluded since the Second World War, about twenty in the last twelve years. The older cantonal agreements are mainly concerned with subjects which would have to be considered as federal today: the tracing of borderlines (24), direct taxation (32), double taxation (14), or railroads (8). In more recent times, cantonal agreements have also dealt with problems of environmental protection and pollution, energy, transportation and communications, zoning and planning, health issues, schooling, and the status of international organizations.

The instrument of the declaration of reciprocity has a long tradition in Swiss public law, going back to the eighteenth century. Two or more declarations of identical or parallel context, one being dependent on the other, form an agreement. In 1925 the Federal Tribunal decided that such declarations were not international treaties in the sense of Article 113, Section 1, No. 3.[72] Indeed, the Federal Department of Foreign Affairs, as well as the cantons, seem to consider that these declarations do not constitute international agreements, since they only confirm the state of the (municipal) law. The cantons do not submit such declarations to legislative approval or popular referendum, although a declaration of reciprocity implies a minimal obligation not to modify the municipal legislation without prior denunciation. In that respect, they differ from unilateral declarations, although these too may be binding under international law.

Before the First World War, the cantons used to send plenipotentiaries to so-called 'conferences', with a view to concluding directly cantonal agreements in the form of conventions or pro-

tocols.[73] In more recent years they have made use of what is termed 'correspondence' with foreign governments. In fact, this has repeatedly amounted to direct negotiations and agreement. This procedure would seem to be incompatible with Article 10 (1), but has been tolerated by the federal government, probably because the overwhelming majority of these directly concluded agreements concerned the Principality of Liechtenstein or West German *Länder*.[74]

Usually, cantonal agreements are concluded in the name of the cantonal executive by its president or chancellor or a member of the collective cantonal government.[75] The cantonal governments tend to conclude agreements, which they consider as administrative in nature, in their own right, without submitting them to the approval of the cantonal legislature or the federal government. Examples are the numerous agreements between Basle-City, Berne, Geneva, Neuchâtel, Solothurn, and Vaud, and the departmental directions of labour of Haut-Rhin, Belfort, Doubs, Jura, Haute-Savoie, and Ain, concerning the application of the 1958 Franco-Swiss treaty with respect to transfrontier commuters.[76] While a good many cantonal agreements have been concluded with West German *Länder* or the Principality of Liechtenstein, the cantons also have concluded agreements with sovereign states both neighbouring and distant, with the Holy See, with international organizations, and even with foreign municipalities.[77]

A particular difficulty arises when a canton enters into agreements with bordering foreign municipalities. Basically, municipalities are not subjects of international law and as such lack a treaty-making capacity. In spite of this, the canton of Basle-City has concluded five agreements with the German municipalities of Lörrach, Inzlingen, and Weil am Rhein, and with an intercommunal association, the *Wieseverband*.[78] The agreements do not determine what law shall be applicable, but each contains an arbitration clause, which underscores the transnational character of the agreements. On the other hand, with the exception of the first one named above, the agreements do not appear to have been expressly authorized by the West German *Land* of Baden–Württemberg, nor have they been submitted to the Swiss Federal Council for approval.

Since 1945 the canton of Basle-City also has had an informal agreement on rubbish disposal with the French border town of St Louis; it was replaced by a formal 1981 convention between the

government of Basle-City and the town of St Louis.[79] With respect to the supply of tap water, the Basle Water Works concluded an agreement with an intermunicipal French association in 1938, which was subsequently approved by the government of Basle-City and the subprefect of the French *département* of Haut-Rhin.[80]

The European Framework Convention on Transfrontier Co-operation between Territorial Communities and Authorities of 21 May 1980 has confirmed the increased interest in transnational and transborder agreements.[81] Article 3, Section 4, of the Convention preserves the internal law of each contracting party in respect of international relations, general policy, and any rules of control or supervision to which territorial communities or authorities may be subject under municipal law. While, in the Swiss interpretation, the Convention would create no new competences for the cantons (the needed powers being already attributed to the cantons), it is hoped that the Convention would facilitate co-operation with German and Austrian municipalities, towns, and subdistricts, as well as with French and Italian entities, *départements*, and prefectures.

The direct cantonal contacts with basically 'non-political' administrative and judicial authorities of foreign states, based on Article 10, Section 2, of the Constitution, which take place on different levels and in different forms, are more important in essence than cantonal agreements. It is possible to distinguish between institutionalized and *ad hoc* contacts; between independent contacts and meetings which take place in federal organs or institutions with cantonal participation; between contacts on the level of cantonal governments, ministries ('departments'), administrative offices, officials, or municipalities; between contacts concerning pollution and environment, planning, zoning and roads, schools, and comprehensive and truly regional contacts; between bi- and multilateral contacts; and between contacts with respect to co-ordination, co-operation, implementation, planning, or finances.[82]

Swiss cantons are represented in some thirty federal border commissions. Some of the most important ones concern the area of Geneva. Through a 1973 exchange of notes between the French ambassador in Berne and the Swiss Department of Foreign Affairs, a mixed consultative commission for the canton of Geneva and the neighbouring French *départements* of Ain and Haute-Savoie was established.[83] The commission can draft recommendations and agreements concerning all neighbourhood problems, such as plan-

ning and zoning, environmental protection, energy, traffic, transfrontier commuters, construction, schools and education, research, culture, sport and leisure, health, agriculture, industry, and emergency assistance. The two delegations of seven members each are appointed by the national governments. While the Swiss delegation consists of two federal and five cantonal representatives, the French side is dominated by national representatives, although the prefects of the two *départements* also take part. The delegations nominate the members of the regional committee, which in turn has named some ten working groups.

The canton of Geneva, furthermore, takes part in the commissions for the Free Zones of Upper Savoy and the District of Gex, for the Geneva–Cointrin airport, for the exploitation of the subterranean water basin of the Genevan region, and, together with the cantons of Vaud and Valais, in the international commission for the protection of the waters of Lake Geneva.[84]

The well-known Regio Basiliensis (today Regio) is actually a private association subject to Swiss law.[85] It has issued a good many publications and has launched programmes, plans, and discussions of a transnational character and interest. In 1970 the two cantons of Basle-City and Basle-Country created a semi-official, permanent, international co-ordinating group within the Regio, which includes members belonging to government, industry, and the scientific community. The co-ordinating group is entrusted with the discussion of all problems involving the region surrounding the town of Basle, including the French and German territories. In 1971 the prefect of the French *département* of Haut-Rhin, the president of the German department of Südbaden, a representative of the subdistrict of Lörrach, and two representatives of the cantonal government of Basle-City, founded the *Conférence tripartite*, which was soon joined by a member of the government of Basle-Country. Between 1971 and 1975 this three-party Conference dealt with questions such as transfrontier commuters, the airport of Basle–Mulhouse, energy planning, Rhine bridges, and shipping. The Conference was based on the tacit support of the three national governments; its decisions were not legally binding upon the three states.

In October 1975, at a French request to adapt the regional cooperation to the formal level of international law, the FRG, France, and Switzerland concluded an umbrella-agreement. This agree-

ment provided for a *commission tripartite*, composed of eight representatives of each country, all to be named by the central authorities. The Swiss delegation includes representatives of the federal government, Basle-City, and Basle-Country. On the regional level, a *Comité tripartite*, in different working groups, is composed exclusively of regional representatives.

Quite apart from the Regio, there is a German–Swiss Country Planning Commission, founded by a protocol of 1973, and consisting of representatives of the two national governments, the West German border *Länder* of Baden–Württemberg and Bavaria, and the Swiss border cantons of Basle-City, Basle-Country, Aargau, Zurich, Schaffhausen, Thurgau, and St Gallen. It meets twice a year and discusses problems of common interest.

The cantons of St Gallen, Thurgau, and Schaffhausen; the West German *Länder* of Baden–Württemberg and Bavaria; and the Austrian *Land* of Vorarlberg participate in the annual reunions of the Political Conference on Lake Constance, founded in December 1978. The same parties participate, together with the Swiss federal government, in the International Conference of Lake Constance; and, together with the federal government and the canton of Graubünden, in the Permanent International Commission for the Protection of the Waters of Lake Constance.[86] In Thurgau, members of the cantonal government meet periodically with the *Landrat* of Constance to discuss problems concerning Lake Constance, as well as judicial assistance, extradition, and other police relations. There are analogous meetings on the communal level between the mayors of Kreuzlingen and Constance.

The government of the canton of Schaffhausen meets regularly with German authorities to discuss country and road planning. Cantonal authorities are represented in the German–Swiss commission on cross-frontier railroads, in co-ordinating talks on fishing in the Rhine River and Lake Constance, and in the International Commission on the Regulation of Lake Constance. The planning office, the labour office, the veterinary surgeon, and the fishery inspector are in permanent contact with their German counterparts. Standing was affirmed for several German municipalities which were opposed to the building of a glass factory in Schaffhausen, fearing noxious emissions.[87]

In the canton of Aargau, various cantonal offices maintain regular contacts with the neighbouring German authorities, con-

cerning road planning, Rhine bridges, toll stations, water pollution, and water economy. Information concerning emissions from the planned nuclear plant in Kaiseraugst (canton of Aargau) were exchanged with the *Landrat* Säckingen (*Land* of Baden-Württemberg). Direct talks, which included representatives of German and Swiss border municipalities, led to a reduction of pollution from the rubbish dump of the German town of Waldshut. The Aargau municipality of Rheinfelden has had contacts with its German sister-municipality and the subdistrict of Lörrach concerning pollution from a German dynamite factory. In the same matter, the cantonal Board of Industry and Trade also contacted its German counterpart in the district of Südbaden. Various disputes have been successfully settled in direct contacts between the two municipalities of Leibstadt (canton of Aargau) and Dogern (*Land* of Baden-Württemberg).

Generally speaking, the cantons of Aargau, Basle-City, Basle-Country, Schaffhausen, St Gallen, and Graubünden exchange information with foreign authorities whenever there is a serious danger of pollution across the border. Regular consultations take place in existing commissions.[88]

CONCLUSION: STRATEGIES OF ACTION DEVELOPED BY SUBNATIONAL UNITS AND THEIR IMPACT ON THE FEDERATION'S FOREIGN POLICY

It is an exaggeration to claim that Swiss cantons have developed actual strategies of action when engaging in international activities. Strategic thinking presupposes a concerted, long-range thinking in pursuance of broad aims. If one looks at the entire range of cantonal external relations, it is evident that these relations are based on pragmatic needs of the day-to-day administration, on the reality of modern-day European interdependence in a pluralistic, industrial society, and on the general desirability of good neighbourhood relations.

Put negatively, no cantonal challenge to federal supremacy is discernible. There is no fundamental cantonal opposition to Switzerland's permanent neutrality, its membership in the Council of Europe, its free-trade association with the EC, its development aid, or its linguistic pluralism. No canton tries to secede or to set out on a course of its own. The canton of Jura, which is the latecomer

among the twenty-six cantons, may be a special case, but even the efforts of the Jura cannot be described as a serious counterforce to federal external policy, treaty-making, or treaty-performance. Consequently, cantonal international activity tends to support the federation's foreign policy of good neighbourhood relations and co-operation rather than to undermine it. Not surprisingly, both the federal government and the cantons view the cantons' international activities as a positive and even necessary complement to federal foreign policy.[89] The harmony of this evaluation is readily explained by the non-controversial nature of cantonal behaviour. Even the lack of federal approval of many cantonal agreements does not give rise to prolonged legal or political discussions (although, certainly, the federal constitution expressly requires such an approval). If there were any controversial cantonal external activity, many legal questions which now seem remote might, of course, suddenly gain a new interest.

NOTES

1. C. Hilty, *Revision und Reorganisation* (Berne, 1882), 20.
2. This and the subsequent documents can be found in H. Nabholz and P. Kläui, *Quellenbuch zur Verfassungsgeschichte der Schweizerichen Eidgenossenschaft* (Aarau, 1940), or in D. Lasserre, *Alliances confédérales 1291–1815* (Erlenbach, 1941).
3. Pacts with Lucerne (1332), Zurich (1351), Glarus (1323 and 1352), Zug (1352), and Berne (1323, 1341, and 1353); see also D. Lasserre, *Étapes du fédéralisme, l'expérience suisse* (Lausanne, 1954), 37–8.
4. C. Hilty, *Die Bundesverfassungen der Schweizerischen Eidgenossenschaft* (Berne, 1891), 44 ff., 52 ff., 73 ff. Lucerne was originally in a protectorate-like position. More uneven still was the pact with Glarus (1352), which was amended only in 1450 to grant Glarus equal rights.
5. Hilty, *Bundesverfassungen*, pp. 125 ff., 154 ff., 177 ff. The two federal states of Valais and the three Rhaetian Federations dealt with the Confederation in a status of full and equal rights and had their own foreign policy, while the others had a protectorate-like status, going from the restricted treaty-making power of Geneva to a subject-like status in the cases of Neuchâtel and Mulhouse.
6. L. S. von Tscharner, *Volk und Regierung beim Abschluß von Staatsverträgen und sonstige Fragen äußerer Politik in der alten Eidgenossenschaft* (Berne, 1914); G. Fermaud, *Le Référendum sur les Traités internationaux en Suisse* (thesis; Montpellier, 1932).
7. W. Burckhardt, *Kommentar der schweizerischen Bundesverfassung* (3rd edn., Berne, 1931), 97 ff.; Hilty, *Bundesverfassungen*, pp. 231 ff., 255 ff.
8. J. F. Aubert, *Traité de droit constitutionnel suisse* (2 vols.; Neuchâtel, 1967; supplement, 1982), vol. i, nos. 6–18, pp. 4 ff.
9. Hilty, *Bundesverfassungen*, pp. 367 ff., 372 ff.
10. First magistrate of, respectively, Fribourg, Berne, Solothurn, Basle, Zurich, or Lucerne, who were taking turns at the head of the Confederation every year.

11. Aubert, *Traité*, i. nos. 29–33, pp. 15 ff.; E. His, 'Die Kompetenz der Kantone zum Abschluß von internationalen Verträgen', *Zeitschrift für schweizerisches Recht* (*ZSR*), 48 (1929), 41 ff.
12. Except for a very minor revision of Article 9, which was only an adaptation of the French to the German version.
13. For historical reasons, the term 'Confederation' is still used, although it is legally not correct in a federal state. What is meant is the 'federal government'.
14. F. Fleiner, *Schweizerisches Bundesstaatsrecht* (1923), 751–2; His, 'Die Kompetenz der Kantone', pp. 63–87; E. Ruck, *Schweizerisches Staatsrecht* (3rd edn., Berne, 1957), 324–6; W. Schwarzenbach, *Staatsverträge der Kantone mit dem Ausland* (thesis, U. Zurich, 1926), 26–64.
15. J. J. Blumer and J. Morel, *Handbuch des Schweizerischen Bundesstaatsrechtes*, i (3rd edn., 1891), 238–47; iii (2nd edn., 1887), 347–8; Burckhardt, *Kommentar*, pp. 81–9; M. Paur, *Der Abschluß von Staatsverträgen im Bundesstaat* (thesis; U. Zurich, 1938), 40–97; O. Pinösch, *Die Verteilung der Kompetenzen zum Abschlusse von Staatsverträgen in der Schweiz* (thesis; U. Leipzig, 1906), 78–126; J. Schollenberger, *Bundesverfassung der schweizerischen Eidgenossenschaft* (Berlin, 1905), 160–4, 178–81.
16. Cf. the summaries of Burckhardt, *Kommentar*, 81–9; His, 'Die Kompetenz', pp. 46–56, 79–84; Schwarzenbach, *Staatsverträge*, pp. 36–45, 65–109; L. Wildhaber, *Treaty-making Power and Constitution: An International and Comparative Study* (Basle and Stuttgart, 1971), 310–15.
17. *Bundesblatt der Schweizerischen Eidgenossenschaft* (*BBl*) (Feuille Fédérale) (1864), ii. 256–64; AS 8 215, 328, 334, 364 (1984).
18. *BBl* (1864), ii. 699.
19. *Entscheidungen des Schweizerischen Bundesgerichts* (*BGE*), 96 I 737, 747–8 (1970), *X. c. Eidg. Steuerverwaltung*. See also *BGE* 9 175, 178 (1883), *Leuthardt*; W. Burckhardt, *Schweizerisches Bundesrecht*, i (Frauenfeld, 1950), no. 96, III, p. 237.
20. *Verwaltungsentscheide der Bundesbehörden* (*VEB*), 2 (1928), no. 70, pp. 77–8.
21. Aubert, *Traité*, i. 256–9; A. Favre, *Droit constitutionnel suisse* (2nd edn., Fribourg, 1970), 186; F. Fleiner and Z. Giacometti, *Schweizerisches Bundesstaatsrecht* (Zurich, 1949), 810–14; U. Häfelin and W. Haller, *Schweizerisches Bundesstaatsrecht* (Zurich, 1984), 306; Y. Hangartner, *Grundzüge des schweizerischen Staatsrechts*, i (Zurich, 1980), 186; J. Huber, *Le Droit de conclure des traités internationaux* (thesis; Lausanne, 1951), 65–9; J. Monnier, 'Les Principes et les règles constitutionnels de la politique étrangère suisse', *ZSR* 105/2 (1986), 143; D. Schindler, 'Supranationale Organisationen und Schweizerische Bundesverfassung', *Schweizerische Juristenzeitung*, 57 (1961), 200–1; J. Secrétan, 'Swiss Constitutional Problems and the ILO', *International Labour Rev.*, 56 (1947), 1–20; L. Wildhaber, 'Bundesstaatliche Kompetenzausscheidung', in *Handbuch der Schweizerischen Außenpolitik* (Bern and Stuttgart, 1975), 240–3, and 'Rapport suisse', *Revue belge de droit international* (*RBDI*), 17 (1983), 119–21; cf. also L. Di Marzo, *Component Units of Federal States and International Agreements* (Alphen aan den Rijn, 1980), 27–8; and J. Y. Morin, 'La Conclusion d'accords internationaux par les provinces canadiennes à la lumière du droit comparé', *Canadian Yearbook of International Law* (*Can. YBIL*), 3 (1965), 161–5. Contra: M. Bridel, *Précis de droit constitutionnel et public suisse* (2 vols.; Lausanne, 1959, 1965), i. 347–53.
22. A problem arises from the implementation of non-self-executing treaties infringing upon cantonal legislative competences. Although the practice is hesitant

and inconsistent, it would seem that the federal government can engage the cantons to execute federal treaties and, if necessary, take the adequate measures in their place. For general reasons of federal courtesy and restraint, such measures are taken only very rarely. Cf. Burckhardt, *Kommentar*, p. 90; L. Wildhaber, *Treaty-making Power and Constitution* (Basel and Stuttgart, 1971), 320, and *Handbuch*, pp. 243–4.

23. Aubert, *Traité*, i, no. 676, p. 258; Burckhardt, *Kommentar*, pp. 14–15, 91; Fleiner and Giacometti, *Schweizerisches Bundesstaatsrecht*, p. 814; Häfelin and Haller, *Schweizerisches Bundesstaatsrecht*, p. 98; Monnier, 143; Wildhaber, *Treaty-making Power*, pp. 280, 315.
24. Aubert, *Traité*, i, no. 676, p. 258; Burckhardt, *Kommentar*, pp. 93–4; Fleiner and Giacometti, *Schweizerisches Bundesstaatsrecht*, pp. 811, 814; Monnier, 'Les Principes', pp. 160–6; Pinösch, *Die Verteilung*, pp. 88–95, 116–18, 120; Schwarzenbach, *Staatsverträge*, 62–4. Also D. Blumenwitz, *Der Schutz innerstaatlicher Rechtsgemeinschaften beim Abschluß völkerrechtlicher Verträge* (Munich, 1972), 110. Contra: Bridel, *Précis*, i. 345, 350, who on the other hand wants the federation to conclude treaties within the cantonal sphere of competence only with the consent of the cantons (247–8, 350ff.); Paur, *Der Abschluß*, pp. 78–9, who would permit cantonal agreements even on federal matters, and R. Kundert, *Völkerrechtlicher Vertrag und Staatsvertragsgesetz im schweizerischen Recht* (thesis; Zurich, 1919), 27–30, who would try to give some meaning to the terms used in Article 9.
25. Wildhaber, *Treaty-making Power*, pp. 317–19, and *Handbuch*, p. 248. See also Y. Lejeune, *Le Statut international des collectivités fédérées à la lumière de l'expérience suisse* (Paris, 1984), 118–28, and Di Marzo, *Component Units*, pp. 29–30.
26. *VEB* 24 (1954), no. 5, pp. 32–3.
27. *Répertoire suisse de droit international public*, ed. P. Guggenheim (Basle, 1975), i, nos. 3.98–3.102, pp. 532–65.
28. *BBl* (1981), ii. 837.
29. Aubert, *Traité*, i, no. 682, p. 260; Bridel, *Précis*, i. 344–6; Burckhardt, *Kommentar*, pp. 93–7; Fleiner and Giacometti, *Schweizerisches Bundesstaatsrecht*, pp. 815–16; His, 'Die Kompetenz', pp. 74–8; Lejeune, *Statut*, no. 87, 128–47; Monnier, 'Les Principes', pp. 167–73; Paur, *Der Abschluß*, pp. 16–20; Schwarzenbach, *Staatsverträge*, pp. 109–29; Wildhaber, 'External Relations of the Swiss Cantons', *Can. YBIL*, 12 (1974), pp. 213–16.
30. Bridel, *Précis*, i. 346 n. 1; Fleiner and Giacometti, *Schweizerisches Bundesstaatsrecht*, pp. 815–16; Schwarzenbach, *Staatsverträge*, p. 114.
31. The Federal Department of Justice declared in an opinion of 1931 that 'article 10 (2) Cst. does not refer to the conclusion of international agreements', in *Répertoire*, i, no. 3.103, p. 566. Cf. also Burckhardt, *Kommentar*, p. 96; P. Guggenheim, *Traité de droit international public*, i (1st edn., Geneva, 1953), 309; Lejeune, *Status*, pp. 148, 157; Monnier, 'Les Principes', p. 168; Pinösch, *Die Verteilung*, p. 35.
32. See the learned discussions by Lejeune, *Statut*, pp. 253–79; Di Marzo, *Component Units*, pp. 14–53; J.-Y. Morin, 'La Personnalité internationale du Québec', *Revue québécoise de droit international*, i (1984), 263–79.
33. Lejeune, *Statut*, p. 148; Monnier, 'Les Principes', p. 168.
34. *Systematische Sammlung des Bundesrechts* (*SR*), 814.20; art. 12, sec. 2, of the Statute reserves the right of the cantons to conclude agreements of a limited scope 'according to arts. 9 and 10 Cst.', providing only for the information of the federal authorities on the course of the negotiations. See generally Lejeune, *Statut*, pp. 149–54; Monnier, 'Les Principes', pp. 168–70.

35. Lejeune, *Statut*, pp. 164–9; Wildhaber, 'Rapport suisse', p. 124.
36. In Uri, Nidwalden, Glarus, Basle-City, Grisons and Jura.
37. Zurich, Nidwalden, Glarus, Solothurn, Appenzell-Ausserrhoden, Grisons, Aargau, Thurgau, Valais, Jura.
38. Berne, Lucerne, Uri, Schwyz, Basle-City, Neuchâtel, Nidwalden and Jura in addition to the compulsory referendum for certain agreements.
39. Aubert, *Traité*, i. 260; Burckhardt, *Kommentar*, p. 94; Lejeune, *Statut*, pp. 136, 146–7; Monnier, 'Les Principes', p. 170.
40. Lejeune, *Statut*, nos. 106–7, pp. 158–62, mentions a 'capitulation' between Uri and the King of Naples of 1849 as the only actual case of federal disapproval of an already concluded cantonal agreement; the Federal Council ordered Uri to denounce the agreement.
41. In this sense: His, 'Die Kompetenz', p. 78; Hangartner, *Grundzüge*, p. 81; Lejeune, *Statut*, pp. 161–3, 263–4, 301–2; Monnier, 'Les Principes', pp. 171–3.
42. Wildhaber, *Treaty-making Power*, pp. 176, 181–2, 316–17; id., 'Die völkerrechtlichen Wirkungen von Verträgen, welche die bundesstaatliche Kompetenzverteilung einer Bundesverfassung verletzen', *Schweizerisches Jahrbuch für internationales Recht* (*SJIR*), 24 (1967), 163–4, 171–2. Similarly Burckhardt, *Kommentar*, pp. 93, 678; Di Marzo, *Component Units*, pp. 159–68.
43. Wildhaber, 'External Relations of the Swiss Cantons', *Can. YBIL* 12 (1974), 211–21; id., *Handbuch*, pp. 249–50; id., 'Rapport suisse', pp. 123–4.
44. It is reproduced in *Documents juridiques int.*, 3 (1984), 113–15. For the Canadian dilemma, see the comprehensive discussion of Morin, 'La Personnalité internationale', pp. 163–304 (the *entente* is mentioned at p. 247, without reference to federal approval).
45. Lejeune, *Statut*, pp. 169–84; Monnier, 'Les Principes', pp. 173–7.
46. See a summary of these events in Monnier, 'Les Principes', pp. 175–6. The cantonal agreements are reproduced in Y. Lejeune, *Recueil des accords internationaux conclus par les Cantons suisses* (Berne, 1982), 178–80.
47. Monnier, 'Les Principes', pp. 178–9; Wildhaber, 'External Relations', pp. 211–16, and 'Rapport suisse', pp. 129–30.
48. Lejeune, *Statut*, pp. 156–9, 207–8; Di Marzo, *Component Units*, p. 85; Monnier, 'Les Principes', pp. 178–9; Wildhaber, 'Rapport suisse', pp. 129–30.
49. Art. 5 of the 1963 Vienna Convention on Consular Relations.
50. See *Kantone und Außenpolitik* (ed. Stiftung für eidgenössische Zusammenarbeit, Solothurn, 1979), 28. Contra: Monnier, 'Les Principes', pp. 177–9; also Lejeune, *Statut*, p. 193; Wildhaber, 'Rapport suisse', p. 131.
51. Art. 10, sec. 2, Cst.; Art. 41 of the 1961 Vienna Convention on Diplomatic Relations; Lejeune, *Statut*, pp. 192–5; Monnier, 'Les Principes', p. 178; Wildhaber, 'External Relations', pp. 212–13.
52. R. E. Ullmer, *Die staatsrechtliche Praxis der schweizerischen Bundesbehörden 1848–1860* (Zurich, 1862), no. 29, pp. 26–8.
53. *Documents diplomatiques suisses 1848–1945*, ii *1866–1872* (Berne, 1985), no. 17, pp. 21–4.
54. *Documents diplomatiques suisses 1848–1945*, v *1904–1914* (Berne, 1983), no. 393, pp. 848–49.
55. See the full discussions in Lejeune, *Statut*, pp. 365–405; Di Marzo, *Component Units*, pp. 1–21; Monnier, 'Les Principes', pp. 180–8; J.-Y. Morin, 'La Personnalité internationale', pp. 163–304; Wildhaber, *Treaty-making Power*, pp. 256–72.
56. Cf. Lejeune, *Statut*, nos. 245–51, pp. 328–37; Monnier, 'Les Principes', pp. 181–3; H. van Houtte, 'Immunités de juridiction', *RBDI* 17 (1983), 461–82.

57. *BBl* (1981), ii. 992.
58. Lejeune, *Statut*, pp. 389–98; Di Marzo, *Component Units*, pp. 168–87; Monnier, 'Les Principes', pp. 183–8; Wildhaber, *Treaty-making Power*, pp. 266–72; E. David, 'La Responsabilité des États fédéraux dans les relations internationales', *RBDI* 17 (1983), 483–504.
59. Lejeune, *Statut*, no. 244, pp. 327–8; no. 300, pp. 404–5; Monnier, 'Les Principes', p. 185. Contra: Wildhaber, 'External Relations', p. 220, and 'Rapport suisse', pp. 123–4, 134–5.
60. See O. Jacot-Guillarmod, 'La Convention européenne des droits de l'homme et la Suisse', *Schweizerisches Zentralblatt für Staats–und Gemeindeverwaltung*, 87 (1986), 66–8.
61. D. Schindler, 'Gutachten betreffend die aus dem französisch-schweizerischen Notenwechsel über den Flughafen Basel-Mülhausen vom 25. Februar 1971 sich ergebenden Verpflichtungen des Kantons Basel-Stadt' (unpublished, 12 Mar. 1975). The text of the 1949 treaty can be found in *SR* 0.748.131.934.92, that of the 1971 exchange of notes in *SR* 0.748.131.934.922, that of the 1950 agreement in *BS GS* (*Systematische Gesetzessammlung des Kantons Basel-Stadt*), vol. 9, no. 956.400, that of the 1976 decree which led to the second referendum vote in *BS GS*, vol. 9, no. 956.520.
62. See, e.g., C. Dominicé, 'Fédéralisme coopératif', *ZSR* 88/2 (1969), 743–893; U. Häfelin, 'Der kooperative Föderalismus in der Schweiz', *ZSR* 88/2 (1969), 549–741; A. Meier and A. Riklin, 'Von der Konkordanz zur Koalition', *ZSR* 93/1 (1974), 507–25; L. Neidhart, *Plebiszit und pluralitäre Demokratie* (Berne, 1970); L. Wildhaber, 'Vertrag und Gesetz – Konsensual – und Mehrheitsentscheid im schweizerischen Staatsrecht', *ZSR* 94/1 (1975), 113–49.
63. Lejeune, *Statut*, pp. 185–9; Wildhaber, 'Rapport suisse', pp. 125–6, 128.
64. Various such provisions can be found, e.g. in Cst. arts. 22 *bis*, sec. 2; 24 *bis*, sec. 4; 27 *ter*, sec. 2; 27 *quinquies*, sec. 4; 31 *quinquies*, sec. 1; 32, sec. 2; 34 *ter*, sec. 4; 34 *quinquies*, sec. 5; 34 *sexies*, sec. 5; 34 *novies*, sec. 5; 42 *quinquies*, sec. 4; 45 *bis*, sec. 2; or in art. 12, sec. 1 of the 1971 Water Protection Statute (*SR* 814.20), art. 5 of the 1973 Fishery Statute (*SR* 923.0), or art. 12 of the 1976 Statute on International Development Co-operation and Humanitarian Aid (*SR* 974.0).
65. Published in *BBl* (1970), i. 993.
66. Cf. G. Malinverni and L. Wildhaber, 'Schweizerische Praxis zur Europäischen Menschenrechtskonvention 1984', *SJIR* 41 (1985), 249, with a strong criticism at p. 245.
67. Examples can be found in Wildhaber, *Treaty-making Power*, p. 316.
68. See *Kantone und Außenpolitik*, pp. 19–24; Lejeune, *Statut*, pp. 187–9; Wildhaber, 'Rapport suisse', pp. 125–6.
69. For more details see His, 'Die Kompetenz', pp. 47–57; Schwarzenbach, *Staatsverträge*, pp. 69–109; Wildhaber, *Treaty-making Power*, p. 317; B. Ehrenzeller, *Die Diözesankonferenz des Bistums Basel* (thesis; Basel, Fribourg, 1985).
70. Lejeune, *Recueil*, pp. 10–14; Monnier, 'Les Principes', pp. 161–2; Wildhaber, 'External Relations', pp. 217–18.
71. Lejeune, *Recueil*, contains the texts of these cantonal agreements. See also Lejeune, *Statut*, pp. 110–24; Monnier, 'Les Principes', pp. 161–2; Wildhaber, 'External Relations', pp. 217–18. Since more than half of the cantonal agreements have neither been published nor submitted for federal approval, the actual number might be slightly higher. It is believed, however, that the cantons have now been made sufficiently aware of the problem, so that not many agreements are likely to be found in addition to those computed in the above figures.

72. *Entscheidungen des Schweizerischen Bundesgerichts*, 51 I 3, p. 6 (1925). Under art. 113, sec. 1, no. 3, Cst., individuals may invoke the violation of treaties before the Federal Tribunal.
73. Lejeune, *Statut*, pp. 152–3, mentions agreements of the Grand-Duchy of Baden with the canton of Basle-City (1894) on the use of the Wiese water (see his *Recueil*, p. 140) and with Aargau (1912) on the maintenance of the Laufenburg Rhine-bridge (*Recueil*, p. 105).
74. Lejeune, *Statut*, pp. 153–4, mentions three agreements of St. Gallen with Liechtenstein (*Recueil*, pp. 270, 273, 274) and one with the Austrian *Land* of Vorarlbeg (*Recueil*, pp. 264) on the attendance of schools; hospital agreements of Liechtenstein with St. Gallen (*Recueil*, pp. 302, 303) and Graubünden (*Recueil*, p. 221) and of Basle with Baden-Württemberg (30 Mar. 1972), denounced 31 Dec. 1978, not published; cf. J. Witmer, *Grenznachbarliche Zusammenarbeit* (thesis; U. Zurich, 1979), pp. 126–7; and tax agreements of Liechtenstein with St. Gallen (*Recueil*, pp. 278, 279) and Graubünden (*Recueil*, p. 214).
75. Cf. Lejeune, *Statut*, no. 103, pp. 154–5, also 166–9.
76. Lejeune, *Recueil*, pp. 171, 180, 197, 238, 349, 398, 400.
77. Lejeune, *Statut*, pp. 110–18.
78. Agreements with the municipality of Lörrach concerning drainage of 22 Nov. and 5 Dec. 1911 (*BS GS* 784.710); with the municipality of Inzlingen concerning drainage of 18 *Dec.* 1961/12 Apr. 1962/18 June 1962 (*BS GS* 784.720); with the 'Wieseverband' concerning the passage of sewage of 5 Dec. 1963/16 Mar. 1964 (unpublished); with the town of Weil am Rhein concerning drainage of 24 June 1970/21 July 1970 (*BS GS* 784.730), and concerning rubbish disposal of 10 June 1970/14 July 1970 (unpublished).
79. Wildhaber, 'Rapport suisse', pp. 129–30; Witmer, *Grenznachbarliche Zusammenarbeit*, p. 128; *BS GS* 727, 750.
80. Witmer, *Grenznachbarliche Zusammenarbeit*, p. 134.
81. Text in *SR* 0.131.1., *BBl* (1981) ii. 842, European Treaty Series No. 106. Cf. also S. Ercman, 'Das Europäische Rahmenübereinkommen über die grenzüberschreitende Zusammenarbeit zwischen Gebietskörperschaften', in *Rechtsfragen grenzüberschreitender Umweltbelastungen* (ed. [deutsche] Gesellschaft für Umweltrecht; Berlin, 1984), 249–57; Lejeune, *Statut*, nos. 42–9, pp. 74–82; *BBl* (1981), ii. 833–74.
82. Wildhaber, 'External Relations', pp. 123–4.
83. Witmer, *Grenznachbarliche Zusammenarbeit*, pp. 150–6, 190–1.
84. Ibid. 57, 118, 135, 66.
85. See E. Diez, 'Grenzbeziehungen des Kantons Basel-Stadt zum Ausland', in *Handbuch des Staats- und Verwaltungsrechts des Kantons Basel-Stadt* (Basel, 1984), 323–7; E. Heil and P. Meyer, 'Die "Commission tripartite"', in *Rechtsfragen grenzüberschreitender Umweltbelastungen*, pp. 259–65; Witmer, *Grenznachbarliche Zusammenarbeit*, pp. 156–61, 192–3.
86. E. Diez, 'Probleme des internationalen Nachbarrechts', *SJIR* 35 (1979), 24–5; Lejeune, *Statut*, pp. 195–6, 200, 210–11.
87. M. Kriech, *Grenzüberschreitender Umweltschutz im schweizerischen Recht* (thesis; Zurich, 1986), 75.
88. Ibid. 74–6; L. Wildhaber, 'Procedures for Consultation at National and International Level Prior to the Setting Up of Polluting Plants in Border Areas', Committee of Experts on Air Pollution, Council of Europe Doc. EXP/Air (73) 2, pp. 41–53 (1973).
89. *BBl* (1981), ii. 835–7; *Kantone und Außenpolitik*, pp. 35–7.

10

The United States of America

EARL H. FRY

This chapter will trace the development of the international activities of US state governments and view these activities within constitutional, institutional, and political parameters. The wide range of international contacts will also be examined in detail, as well as the motivation for establishing and expanding international liaisons. Finally, an analysis will be made of the impact which these subnational activities are having on the ability of the US Government to conduct foreign policy in an age of complex interdependence.

THE HISTORICAL SETTING

The first constitution of the United States of America was the Articles of Confederation. This document was drafted in 1776, submitted to the states for ratification a year later, and finally ratified by all of the states by 1781.[1] The Articles of Confederation produced a league of friendship among the newly created states, with state governments having a great deal of power and the national government, represented by Congress, having very limited authority. Indeed, Article 2 stipulated that each state would retain 'its sovereignty, freedom and independence', and be entitled to 'every power, jurisdiction and right' not specifically delegated to the national government.[2] Congress was granted authority:

1. to make war and peace;
2. to send and receive ambassadors;
3. to enter into treaties and alliances;
4. to coin money;
5. to regulate Indian affairs;
6. to establish a post office.[3]

Congress was forbidden, however, to raise taxes and to regulate commerce.

In the foreign-policy sphere, states often ignored provisions of treaties negotiated by Congress, including major tenets in the Treaty of Peace of 1783 signed with England.[4] When John Adams sought a commercial treaty with England, he was rebuffed. The English representative claimed with great justification that US treaties were ignored by state governments and that ambassadors from the thirteen states should be selected because Congress had no real authority. Trade wars were also waged between the states, with New York placing special duties on imports destined for New Jersey and Connecticut, and the latter two states retaliating by taking similar action against New York.

The system of government outlined by the Articles of Confederation simply did not work. The national government was chronically bankrupt and a provision in the Articles which called for any amendments to be passed by a unanimous vote of the states made it virtually impossible to remedy a deteriorating situation. This was particularly the case when an amendment to permit Congress to impose a 5 per cent import duty was blocked in 1781 by one state, Rhode Island. The United States of the mid-1780s was at best a very loose confederation of sovereign mini-states which were slowly but surely drifting apart.

Recognizing the serious nature of their predicament, state representatives agreed to meet in a new constitutional convention in 1787. Instead of tinkering with the existing Articles, the leaders assembled at Philadelphia made a bold decision to throw it out and begin the constitutional process anew. The new Constitution, which was ratified in 1788 by more than the minimum number of states (only nine of the thirteen states had to ratify the new Constitution, so the unanimity principle in place under the Articles of Confederation had been eliminated), greatly strengthened the powers of the central government. Under Article 1, Section 8, Congress was given the power to regulate commerce with foreign nations and among the states, as well as the authority to 'lay and collect taxes, duties, imposts and excises'. Congress also retained the right to declare war, and the President was empowered to make treaties.

Even with the new Constitution, however, the states continued to exercise considerable influence over foreign affairs. For example, the US Senate, whose members were originally selected by the state legislatures, was granted the authority to ratify all treaties and to

pass judgement on presidential appointments to ambassadorial posts.[5] In addition, Congress was granted exclusive control over the purse strings and the senators could therefore refuse to fund any foreign venture which they considered to be incompatible with either national or state interests. Perhaps more importantly, the states originally maintained control of a major instrument of foreign policy—the militia. The new Constitution granted the central government the authority to maintain an army and a navy and to organize and to use the militia of the states. Near the end of the eighteenth century, however, the young nation had little in the way of an army and a navy, so the military might of the country was centred in the state militia. It is not inconceivable that the framers of the Constitution considered that the militia would continue to be the major instrument of the United States' defence policy and the backbone of the nation's foreign policy.[6]

Under the Articles of Confederation, the central government had been totally dependent on the state governments for military protection and often encountered resistance in persuading the state militia to put down sporadic disorders in the countryside. Thus the new constitutional provision which permitted the national government to organize and to use the militia of the states is understandable. On the other hand, the second amendment to the new Constitution guaranteed to the states continued control of the militia and the responsibility of selecting and training these troops. In other words, direct control of the day-to-day operations of the militia remained with the states, and, as such, the national government's diplomatic resolve was rarely stronger than the states' willingness to back up the diplomacy with military force.

The predominance of the militia as the United States' primary military force lasted until at least the end of the War of 1812. As an illustration, Henry Clay, who had cast a covetous eye on Canada, stated on the floor of Congress in 1811 that 'the militia of Kentucky are alone competent to place Montreal and Upper Canada at your feet'.[7] Some of the New England states, however, disagreed with US government objectives in the War of 1812 and actually withheld militia from the war effort, thus helping to bring a quicker end to the conflict.

Eventually, the army and the navy were transformed into the United States' major military force and the states progressively forfeited much of their control over the development of major

foreign-policy guidelines. As an example, some of the New England states were again in opposition to Washington's goals in the Mexican War of 1846, but, apart from damaging recruitment in the New England region, this opposition had a marginal influence on the conduct of the war. The rebellion of the Confederacy against the national government was the ultimate point of state resistance, but the predominance of the Union troops in the Civil War once and for all cemented the hegemony of the national military forces as an instrument of central government foreign policy.[8] Thus the prerogatives of Washington in terms of a co-ordinated foreign and defence policy perhaps evolved to a much greater extent that had been envisioned by the framers of the Constitution.

THE CONSTITUTIONAL SETTING

In the twentieth century, the power of the presidency and of Congress over the major diplomatic parameters has grown considerably and the state governments have had little direct influence over the establishment of substantive diplomatic and military guidelines. Through such decisions as those rendered in *Missouri* v. *Holland* (1920) and the Massachusetts–Vietnam War controversy of 1970, the US Supreme Court has also helped to accentuate this tendency towards national governmental control of major foreign and defence policy initiatives.[9]

As will be discussed in a later section, the states have become much more actively involved overseas in the search for tourists, foreign investment, and new markets for state goods and services. By liberally interpreting the meaning of 'compact' and 'agreement', Congress has helped to accelerate this process. As Article 1, Section 10, of the Constitution stipulates, the states are forbidden from entering into any agreement or compact with a foreign nation without the consent of Congress. However, during both the 74th and 88th sessions of Congress, the national legislature issued opinions that the terms 'compact' and 'agreement' in Article 1, Section 10, do not apply to every compact or agreement, but rather 'the prohibition is directed to the formation of any combination tending to the increase of political powers in the States which may encroach upon or interfere with the just supremacy of the United States'.[10]

With this interpretation of Article 1 of the Constitution, Con-

gress has accorded the state governments much more flexibility in negotiating compacts and agreements with national and sub-national governments abroad. Several hundred such agreements have been signed with foreign governments, ranging from economic development and cultural pacts with Chinese provinces to Great Lakes water standards with Canadian provinces.[11] The Constitution, the federal court system, and Congress have thus made it abundantly clear that the national government will establish the major guidelines for US foreign policy, but that the states will enjoy a fair degree of latitude in carrying forth with their international economic and cultural pursuits.

The parameters within which state governments can pursue international activities are clouded by political factors. In effect, there is a major difference in the US system between what is *constitutionally permissible* and *politically expedient*. The Constitution is explicit in giving the national government control over the regulation of foreign commerce. Seemingly, the President and Congress can act to forbid states from levying taxes which violate US treaty commitments. This notwithstanding, a few states continue to impose unitary taxes which go beyond the so-called 'water's edge', thus permitting the states to tax multinational corporations on the basis of their global earnings. This is arguably a form of double taxation, which is prohibited in various US tax treaties. However, neither the White House nor Capitol Hill has been eager to face the political and electoral consequences of going to battle with the states over this very controversial federal issue.

Various state governments have also passed laws which:

1. prohibit state pension funds from being invested in companies which do business in South Africa;
2. mandate that state liquor houses refrain from selling Russian spirits;
3. stipulate that English is the only 'official' language of the United States;
4. require foreign residents to provide special economic data;
5. exclude foreigners from owning banks, insurance companies, or farmland;
6. discriminate against foreign suppliers in the government procurement process.

All of these actions in one way or another affect US government foreign-policy decisions. None the less, because of unofficial senti-

ment favouring such decisions, the limited policy implications of such actions, or the lack of political will to force changes in these policies, Washington has basically gone along with the state interference in these foreign-policy-related areas.

THE RATIONALE FOR INVOLVEMENT ABROAD

Why have most of the state governments dramatically increased their international activities over the past decade? The first reason is linked to the imperatives of complex global interdependence. Governors are now acutely aware of the influence which international actors such as foreign governments, state-owned oil companies, or multinational corporations can have on the economic well-being of their constituencies. Moreover, they are painfully aware that international events may affect one state very differently from another. For example, the inability of OPEC to maintain higher oil prices during the mid-1980s boosted the economic fortunes of many states, but precipitated major economic chaos in such resource-rich states as Texas, Oklahoma, Louisiana, Colorado, and Alaska. Many governors and state legislatures are therefore convinced that they must keep abreast of international activities, and try to maximize and protect individual state interests in a very complex and rapidly changing international economic milieu.

Secondly, the growing dependence of the United States on the global economy has forced state governments to look abroad for new marketing and investment opportunities. The United States now ranks as the number one host nation in the world for foreign direct investment, with more than twice as much investment as the number-two ranked country, Canada. Most of this investment has entered the country since 1970 and close to four million Americans now work for foreign-controlled enterprises in the United States. Foreign portfolio investment in the form of equity, bond, and T-bill purchases has also increased dramatically over the past decade. In addition, the United States remains the largest trading nation in the world and much emphasis is now being placed on improving the United States' dismal performance in the exporting arena. Approximately six million Americans are currently working in export-linked industries.[12] Tourism is also an important source of revenue for several states, and many economic development agencies at the state level are either combined with or work very closely with tourism offices.

Thirdly, electoral factors have clearly persuaded state leaders to become more actively involved overseas. In most elections at the national and state levels, pocketbook economic issues generally determine voter preferences for candidates and initiatives. Thus incumbents, who generally share a desire to be re-elected, must look very closely at the economic fortunes of their constituencies. Through successes in the areas of reverse direct investment, trade, and tourism, the states can generate new jobs, diversify their economic bases, and expand tax revenues, all of which attract electoral support.

Fourthly, state governments are learning that they must decrease their reliance on transfer payments from Washington. The federal government's efforts under the rubric of 'renewed federalism' to transfer various programmes back to the states, without the concomitant revenues to pay for these programmes, have understandably upset the state capitals. In addition, the implementation of legislation which may eventually balance the federal government's 1.3 trillion-dollar annual budget has substantially reduced the flow of funding from Washington to the states. In order to secure alternatives to federal funding, which in 1987 provided 19 per cent of total state and local government outlays, state governments are now looking at various new options, including a search abroad for trade, investment, and tourism exchanges.[13]

Fifthly, advances in communications and transportation and a growing trend towards the internationalization of production have combined to bring the world closer together and to facilitate the interaction of state governments with both governmental and non-governmental actors abroad. Most states now have international airports and sophisticated communications systems which link an Olympia to Hong Kong or an Austin to Riyadh. These states are also home bases for scores of businesses which are highly dependent on global sales for their survival. Consequently, state governments now understand it is a necessity, and not a luxury, to keep abreast of and be an active participant in international economic activities.

Finally, the constitutional ambiguity discussed earlier has facilitated the growth in state activities overseas. The US states have been assigned the 'reserved powers' in the Constitution, meaning that what is not enumerated as being within the sphere of competence of the national government automatically falls within the purview of the states. Thus, as the challenges of interdependence

grow and as domestic and international issues increasingly overlap, states may have more discretionary authority in their quest to carve out economic niches abroad. Moreover, the national government's laxity in interpreting what the states can do in the realm of international commerce, or in entering into binding international contracts and agreements, further confuses the issue of state-government competence abroad and of central–regional policy co-ordination.

THE RANGE OF INTERNATIONAL ACTIVITIES

The involvement of the states overseas is a phenomenon which has largely occurred over the past two decades, although states have taken a sporadic interest in trade issues throughout the history of the republic.[14] Governor Luther H. Hodges of North Carolina directed the first state mission to Western Europe in 1959, and a few states sponsored trade missions overseas during the 1960s. Since the period of the late 1960s, the states have steadily increased their involvement overseas, and in 1987 governors from forty-three states and territories made a total of eighty-seven trips to thirty-six countries in an effort to increase the foreign-trade and investment prospects for their states.[15] Forty-nine states also sponsor on an annual basis at least one export seminar for local businesses, and forty participate in foreign trade shows. In addition, forty-five use publications and computerized matchmaker systems to apprise local exporters of current trade leads, twenty-four publish export handbooks, and thirteen operate language 'banks' which offer foreign-language skills to local businesses. Fifteen states have also passed export finance legislation geared at providing loans or grants to businesses which desire to export. A handful of states are also considering offering direct government support to export trading companies.[16] In 1985 Texas became the first state to enter into a bilateral trade agreement with Mexico, and a few other states have initialled trade and economic development accords with foreign governments, mostly at the subnational level. Illinois, for example, has signed agreements with the Chinese province of Liaoning and the most populous USSR republic, the Russian SFSR.

New York was first among the states to establish a permanent overseas office, opening a bureau in Europe in 1963. By 1970 four US states had some form of overseas representation for the purpose of attracting foreign direct investment and enhancing trade and

tourism opportunities. In 1990 forty-one states had opened 120 overseas offices or bureaux, mostly in Japan and Western Europe.[17]

Competition among the states is particularly intense in the direct-investment arena. More than thirty-five states took part in several bidding wars to attract major foreign automobile assembly plants to their respective localities. Pennsylvania offered more than $70 million in incentives in its successful bid to attract Volkswagen, Tennessee offered a similar amount to land the Nissan assembly plant, and Kentucky offered $325 million over a twenty-year period for a Toyota facility. On an aggregate basis, states are willing to offer billions of dollars annually in grants, loans, and services in order to lure foreign investors to their areas of jurisdiction. This effort is made not only to create new jobs, but also to diversify their economic bases so that their economies will be less dependent on one industry or economic sector for employment opportunities and revenues. Quite a few states are heavily dependent on one economic sector and have suffered through cyclical downturns in these sectors. For example, western and south-western states heavily dependent on the oil and gas industries suffered greatly during the mid-1980s. Agriculture-oriented states in the mid-west have also been severely damaged because of the downturn in the price of commodities and in US exports. In Nebraska, for example, the average value of farmland decreased by 46 per cent from 1981 to 1985.[18] States largely dependent on automobile or steel production or coal or copper-mining have also suffered through major crises because of cyclical downturns. Consequently, the attraction of new domestic and foreign direct investment is viewed as a panacea for too much dependence on a single industry, and states are willing to fork out a great deal of money to attract such investment.

Kentucky offers a good example of what an aggressive state is willing to do to entice new direct investment. Kentucky advertises extensively both within the United States and abroad and offers to provide the following incentives to qualified investors:

1. rebates on property, income, state, and use taxes;
2. special funding through the issuing of revenue bonds and community-block grants;
3. custom training for industrial workers at little or no cost;
4. site-selection services, including working with privately sponsored groups to secure options on property;

5. seven Enterprise Zones offering numerous financial benefits for those willing to locate facilities within the designated urban areas;
6. two Foreign Trade Zones providing special financial arrangements for export-oriented industries;
7. ombudsman services to cut through any governmental red tape at the state, county, or local levels.

Kentucky's high-profile programme and its vicinity to large eastern US markets have helped it to attract a significant number of foreign firms, including Toyota, which has built an 800-million-dollar facility in the state.

Tourism also generates over 300,000 direct jobs in the United States and is a major industry in several US states. In 1988 more than 33 million foreign visitors came to the United States and they contributed in excess of $24 billion to local economies. Forty-nine states and five US territories maintain official government agencies responsible for travel promotion and development. In forty-three states the travel bureau is part of a larger office responsible for overall commercial and economic development. More than fifty sister-state relationships have also been established with corresponding governments in Europe, Asia, South and Central America, and the Caribbean. These relationships have cultural, tourism, and economic development dimensions. For example, Illinois signed its trade pact with China's Liaoning province in 1984. Both of these subnational governments have agreed to establish reciprocal offices which will foster tourism, trade, and investment linkages.

One must also remember that subnational government activities abroad go beyond even the level of the states. In all, more than 83,000 governmental units exist in the US federal system, including 3,000 counties and 19,000 municipalities. In 1985 state and local governments produced revenues amounting to $575 billion and ran a total surplus for governmental operations of almost $59 billion.[19] Mayor Andrew Young of Atlanta, who was President Carter's ambassador to the UN, supervised an energetic programme to make his city the gateway for trade with Africa. In an effort to provide more jobs for local people and to diversify its municipal economic base, the South Carolina city of Spartanburg began actively seeking foreign investors two decades ago. Today, more than fifty foreign firms have invested in excess of $1.2 billion in that city, thereby creating thousands of new jobs. In the autumn of 1981

the US Conference of Mayors sponsored a five-day 'Investment in America's Cities' programme in Zurich. Sixty municipal governments also participated in an investment conference held in Hong Kong in 1983. Many big-city mayors travel abroad extensively trying to facilitate economic exchanges, and it is now commonplace for municipal and county governments to advertise investment opportunities in trade magazines and journals.

Various international cultural and educational exchanges are also sponsored at the subnational governmental levels. For example, because of its close cultural ties to Scandinavia, the state of Minnesota has opened offices in Oslo and Stockholm. Texas also maintains an office for tourism, trade, investment, and cultural purposes in Mexico City. Hundreds of US municipalities also participate in the Sister Cities Program which evolved from President Eisenhower's original People-to-People Program. The Sister Cities format links a US city with a municipality overseas and is primarily intended for cultural exchanges, although commercial interactions are also very common.[20] Infrequently, some of these exchanges can prove to be embarrassing for Washington, as illustrated by the almost forty exchanges between US and Nicaraguan cities during the period when a Sandinista government was in power in Managua. Some of these exchanges have been politicized, with local groups within certain US cities expressing disapproval of the Reagan Administration's policies towards this Central American nation. In November 1986 an initiative was passed by voters in Seattle instructing municipal leaders to keep the Sister Cities project with Nicaragua out of politics. In addition, the initiative overturned a City Council resolution designating Seattle as a sanctuary city for political refugees from Central America.[21]

International educational exchanges are primarily funnelled through state-government-sponsored colleges and universities. Thousands of student and faculty exchanges currently exist between US and foreign institutions of higher learning, exchanges which receive the tacit approval of state legislatures.[22] During the 1986/7 academic year states spent a total of $32 billion in tax revenues on higher education, a figure which surpasses the national budgets of many countries. Moreover, almost two-thirds of the 344,000 foreign students enrolled in US colleges and universities in 1986 were attending public institutions.[23]

In many respects, however, state governments should be expected to do more to facilitate international educational and

cultural exchanges. The United States continues to be a parochial nation, with only 15 per cent of high-school students enrolled in foreign-language courses in 1980, compared to a peak of 36 per cent back in 1915.[24] In addition, it is estimated that less than 5 per cent of these students study the same foreign language for more than two years.[25] With the push now on for greater US economic competitiveness in an increasingly complex world, some state governments are now mandating more foreign-language and international-studies training at the primary, secondary, and post-secondary educational levels, but this effort to 'internationalize' curricula is still in its formative stage.

THE INSTITUTIONAL SETTING

In several areas of international economic activity, the US state governments have found it fruitful to co-operate on a regional or national basis. At the suggestion of President Carter, the National Governors' Association, which represents the chief executives of the fifty states and the US territories, established in 1978 the Committee on International Trade and Foreign Relations to oversee state interests abroad. The National Association of State Development Agencies, a Washington-headquartered group sponsored by many state-government development offices, also does a fair amount of work on international economic activities.

In the trade sector, regional councils or commissions have been established to co-ordinate certain trade policies. The Mid-America Trade Council, the Great Lakes Commission, and the New England Trade Group are the major regional trading organizations formed by state governments. In the agricultural arena, twelve states participate in the Mid-American International Agri-Trade Council, ten in the Eastern US Agricultural and Food Export Council, fifteen in the Southern US Trade Association, and eleven in the Western US Agricultural Trade Association. US territories such as Puerto Rico, Guam, and American Samoa also participate in these regional bodies. The main functions of these organizations are to exchange information, sponsor or participate in trade shows, provide match-making services, and arrange trade missions.

In the area of tourism, the Travel South organization represents eleven states and Foremost West six states. These regional groups dispense tourism information and participate annually in more than a dozen trade and travel shows world-wide.

It is not difficult to understand why agricultural and tourism groups do co-operate on a regional basis. Quite often, agricultural commodities are pooled together before being sent to port, and overseas contracts are so large that they go beyond the productive capacity of a single state. For tourism, an overseas visitor who travels to a Disneyworld in Florida or to the Grand Canyon in Arizona will often visit tourist attractions in neighbouring states. Thus, the ability to attract a visitor to a noted tourist spot in one state may pay significant dividends for the geographic region as a whole.

In contrast, very little co-operation exists among the states in their quest to attract direct-investment opportunities. It is true that state offices in Western Europe do meet on an informal basis to compare notes, but states usually jealously guard their investment leads.[26] In addition, it is not that unusual for states to 'raid' businesses in other states. For example, Delaware has enticed several banking establishments in New York to move to the small eastern state by offering an attractive taxation policy, no usury ceilings on loans, and a lenient code regarding out-of-state companies taking over Delaware banks. Delaware is currently making a concerted effort to attract foreign-banking offices in New York City by offering to waive taxation on international banking transactions. By eliminating personal income, corporate, and personal-property taxes and offering moderately priced unemployment and workman's compensation insurance, the government of South Dakota has successfully lured more than sixty business firms away from Minnesota over the past few years.[27] Indiana business development officers spend time in Michigan, Missouri's governor meets with business representatives in Illinois, and North Dakota officials host receptions for businesses in Manitoba. The competition for new jobs and new enterprises is very keen and state governments generally view the struggle for attracting new foreign and domestic direct investment as a zero-sum game. In other words, in each battle there will be only one winner and a lot of losers. One source has referred to the efforts of US states to entice foreign investors as a 'civil war for foreign money', and at times the competition is indeed very intense.[28]

Because of the nature of the US federal system and the stiff competition which prevails among the states for overseas investment, a large number of companies which were forced by market

conditions to come to the United States have been able to secure significant incentive packages. For example, Volkswagen was losing its market share in the United States several years ago because of the high value of the mark versus the dollar. The company decided that it must establish an assembly plant in the United States in order to remain competitive. States entered a bidding war and Pennsylvania finally offered a huge incentive package to this company which was already committed to manufacturing in the US market. Some observers consider that incentive packages are a waste of taxpayer money, because most foreign firms would come to the large, highly affluent US market anyway. Others doubt that the state governments will ever be able to recoup the costs of such lavish incentives. For example, Volkswagen has now closed its plant in Pennsylvania, but will continue to receive benefits from the state incentive package through the 1990s. However, state-government thirst for new direct investment, and the unwillingness of Washington to prohibit such practices, mainly for political reasons, has given major foreign firms significant leverage in deciding where to locate new US facilities.

Direct state-government involvement in the international arena has largely been limited to the economic sector. Indirectly, however, state officials can have a significant voice in various foreign-policy issues. Institutionally, the states are represented on a population basis in the US House of Representatives, and by equal representation in the US Senate. All legislation regarding foreign affairs must be passed in exact form by these two chambers, and all treaties entered into by the executive branch of government must receive the affirmative vote of two-thirds of the senators. Because of the separation of powers between executive, legislative, and judicial branches, and the fact that the chief executive's tenure in office is not based on the passage of key legislation in the Congress, party discipline in the United States is much less important than in parliamentary systems which follow the British model. In effect, liberal Democrats and moderate Republicans often join forces in Congress to oppose legislation supported by conservative Southern Democrats and conservative Republicans, and vice versa.

Without intense party loyalties, regional or state-based issues can be given greater priority by the members of Congress. For example, the East Coast Fisheries Treaty negotiated between the governments of Pierre Trudeau and Jimmy Carter was rejected by the US

Senate because of intense lobbying by the New England states. This lobbying effort was spearheaded by Edward Kennedy of Massachusetts and Claiborne Pell of Rhode Island, both members of Carter's Democratic Party. Quite often, state-government officials show intense interest in foreign-policy issues which might have a negative affect on powerful and deeply entrenched local interest groups. As a consequence, many state governments favour special protection for certain local businesses from foreign competition. These efforts to 'assist' local firms help explain why hundreds of protectionist trade bills are currently before the US Congress.

As of 1989, thirty-nine state governments also had their own representatives in Washington to keep track of legislation or executive initiatives which might have a dramatic impact on their fortunes. Most of these representatives are based in the Hall of the States, which is located only a couple of blocks from Capitol Hill. Governors will frequently visit the capital city and meet executive officials as well as the members of Congress from their state. The ability of a governor to work with the Congressional delegation from his or her state depends upon party affiliation, political ambitions (real and imaginary), and interpersonal relations. A Republican governor and a Democratic senator might have some problems communicating, particularly if the senator thinks the governor will be his opponent in the next election. However, almost all members of Congress recognize that they must above all look after the interests of their constituents, and are therefore committed to working with state officials to pass legislation profiting the home state.

The fifty governors also meet yearly at the National Governors' Conference. This meeting helps them to compare stances on issues and to interact with leaders from the national government. Periodically, these meetings have taken time to focus on foreign-policy issues. In 1949 the governors voiced continued support for the UN and offered new support for the Marshall Plan and the North Atlantic Pact. In 1960 they met in Glacier Park, Montana, and discussed Canadian–US relations with Prime Minister John Diefenbaker. In 1985 premiers from the ten Canadian provinces were invited to meet with the governors at their annual meeting in Boise, Idaho. Delegations of governors have also engaged in fact-finding trips to the USSR, Latin America, and other regions. The National Governors' Association Committee on International

Trade and Foreign Relations has taken numerous stances on foreign economic issues and has been credited with bringing about several changes in the US Export Administration Act.[29] The governors have also influenced specific provisions linked to US refugee law, the activities of the Export–Import Bank, the creation of export trading companies, and the establishment of the US Foreign Commercial Service.[30] As a group, the governors generally favour few restrictions on inward direct investment, an international system based on open and 'fair' trading rules, tourism promotion, and a constructive dialogue with other nations and peoples. This forum helps to dissipate some of the protectionist ardour which officials sometimes profess when back within the familiar surroundings of their own state capitals.

THE IMPACT OF STATE INTERNATIONAL ACTIVITY ON US FOREIGN POLICY

Thus far, we have discussed the ways in which state governments have attempted to reach out to the international economic system and take advantage of growing interdependence. The flip side of the issue involves ways in which state governments as subnational actors might impede closer international co-operation, especially in the economic arena.

State governments, often in response to constituency pressure, at times take stances on international issues which might better be left to the national authorities. In 1956 both South Carolina and Alabama enacted legislation which encouraged a consumer boycott of Japanese textiles. Japan eventually agreed on a voluntray basis to restrict textile exports and the two states repealed their boycott laws. In the wake of the Soviet downing of the KAL airliner of September 1983, fifteen states placed an embargo on the sale of Soviet liquor. As mentioned earlier, several state governments now ban state pension funds from investing in any enterprises which do business in South Africa. In reaction to the growing number of immigrants to the United States who do not speak English, several states have formally declared English to be their 'official' language.[31] Half a dozen states have also passed legislation that would mandate that state-pension-fund investment in companies doing business in Northern Ireland be limited to those which offer 'fair and equal' employment opportunities to the Catholic minority.[32]

State governments are also much more involved than ever before in regulating businesses, whether they be domestic or foreign based. A recent Conference Board study of 253 of the largest corporations in the United States indicated that 75 per cent now engage in lobbying efforts in one or more states, and nearly one-half of the companies which employ state-government-relations specialists have hired them since 1975. Forty-three of the state legislatures met annually in 1981, compared to only eighteen in 1960. State legislative staffs have grown dramatically and state legislators have shown an increasing interest in the regulation of business activities. In 1980 seven times as many business-related laws and regulations were passed by state legislatures as by the US Congress. Sixteen times as many bills of all categories are currently being passed at the state level as at the national level.[33] Furthermore, one should keep in mind that the odds of a particular piece of legislation passing successfully through a state legislature are generally higher than legislation introduced in the US Congress.

Some state-enacted laws, such as the unitary taxation formula or a prohibition on foreign investment in certain business or agricultural sectors, have a clear and precise impact on the overseas business community. On the other hand, other state rules are more subtle, but definitely affect international trade and investment activity. For example, state governments exercise extensive powers in the areas of land use, insurance and banking, environmental controls, hazardous waste disposal, labour relations, civil rights, and corporate taxation and chartering. Ohio requires non-resident aliens and corporations to disclose special information if they invest in the real-estate, minerals, or mineral-product sectors. Failure to disclose the proper information could result in a minimum $5,000 fine or a maximum fine of 25 per cent of the value of the investment.[34] A state court in Pennsylvania has also determined that five nations have violated the state's Trade Practices Act of 1968. Consequently, products from these countries cannot be used in construction projects which receive any financing from the state government.[35] Asahi Metal Industry Company, a Japanese producer of a tyre valve used in a Taiwan-made motorcycle tyre, was sued in California when a tyre burst and the driver was injured. Although Asahi has no business operations in California and never even sold a valve there, the California Supreme Court ruled that the company was liable for damages because it had 'sold goods into the stream of commerce that might foreseeably end up in California'.

State-court decisions which give an extraterritorial application to product liability, antitrust, tax, and securities laws have put a definite strain on US commercial relations. Court efforts to force foreign firms to provide documentation from their home offices have also impeded the solidifying of transnational linkages.[36]

Forty-six US states also enforce 'Buy American' or 'Buy State' provisions, with some of the provisions dating back several decades. 'Buy American' or 'Buy State' statutes, which were often patterned after the national government's original Buy American Act of 1933, give a preference to US or even to local suppliers in the awarding of state-government contracts. Some 'set asides' are also permitted in the bidding process, a rule which also works against the interests of foreign-based firms. In 1986 members of the Alabama legislature narrowly turned down a local-content amendment to that state's 'Buy American' laws. This bill would have required state and local governments to buy only products with at least 51 per cent US-made materials. The only exception to this rule would have been foreign-owned companies with plants in Alabama.[37] The impact of subnational government procurement codes on international commerce should not be underestimated, for in 1985 state and local governments spent $460 billion for the purchase of goods and services, up from $322 billion in 1980.[38]

CONCLUSION

On the whole, the major expansion in state-government activities abroad has been a positive force, which is helping to break down parochial barriers and assisting Americans to understand that the imperative of complex global interdependence is co-operation and harmonization of policies which go beyond national borders. On the negative side of the ledger, states are at fault:

1. in passing parochial legislation such as unitary taxation and in pushing for the protection of non-competitive local industries at the ultimate expense of US industries which are globally competitive;
2. in permitting the extraterritorial application of state or US laws by state courts;
3. in perpetuating cut-throat competition and in wasting expenditures on inward direct-investment incentives.

None the less, these tendencies are often favoured by local con-

stituencies and it is difficult for elected officials to buck the mainstream of opinion. The national government must also assume a great deal of the blame for allowing national courts to dictate the extraterritorial application of US law and for not using its constitutional powers to clamp down on investment-incentive wars and unitary taxation. The issues of state-level procurement ('Buy American') codes, state-government-supported export-subsidy programmes, and state restrictions on some types of foreign investment and on economic ties with certain nations should also be given careful scrutiny by GATT. Eventually, subnational governmental policies, including the development of state-level industrial strategies, will have to be a major topic of discussion in a new multilateral trade round.

In the future, the state governments will continue to expand their activities abroad, particularly in the trade, investment, and tourism sectors. It is highly unlikely that the US Congress will interfere with this increased level of overseas involvement, and co-operation between national-government agencies and the state governments may actually increase in an effort to improve the United States' pathetic trade performance. Foreign businesses entering the US market will have to focus increasingly on state-level restrictions and regulations, even though the vast majority of these statutes will apply in a non-discriminatory manner to domestic and foreign enterprises alike. Furthermore, foreign-based businesses must be prepared to interact directly with state governments, and must dispel the image held by many of them that all important legislation affecting the business community is passed in Washington. This image distorts the reality of the decision-making process in the US federal system.

The record of foreign-based multinational corporations in helping to convince several state governments either to eliminate or substantially modify their world-wide unitary-taxation codes indicates that direct lobbying at the state level can be successful. Spearheaded by the chairman of Sony, representatives from a group of Japanese firms which were increasing their investment activity in the United States flatly told unitary-taxation states that they would not be the recipients of any new Japanese direct investment. The group added, however, that states abandoning unitary taxation might be in line for new Japanese-directed projects. Oregon, Florida, California, and Indiana were among the states that dismantled their world-

wide unitary-taxation policies, and they have indeed attracted new investment projects sponsored by Japanese firms.[39]

State governments will continue to expand their role in the business sector in order to enhance revenues and protect constituency interests. Moreover, states will evolve their own mini-industrial strategies in hopes of continually expanding job opportunities and diversifying their economic bases. One should also remember that some of these states are very powerful actors, both politically and economically. For example, California's current production of goods and services would rank it as the sixth largest economy in the world. In addition, the budgets of some of the large state governments are comparable to or greater than those of many nation-states. Within the realm of domestic politics, the dozen most populated states control enough electoral votes to select the President (279 of the 538 total votes), and enough seats in the House of Representatives to command a solid majority (255 of the 435 total seats).

In certain respects, the model established by several of the Canadian provinces may be followed by a growing number of states in the future. These provinces are making a concerted effort to diversify their economies and sponsor a far greater number of overseas trade, investment, and tourism programmes than their US counterparts.[40] It is true that the Canadian provincial governments have much more policy-making latitude than their southern neighbours, and that the Canadian economy is much more dependent on exports as a percentage of gross national product than the US economy. None the less, state and provincial officials have been holding joint meetings and comparing notes, and it is to be expected that the states will accelerate their overseas economic activities.[41]

As the largest trading nation, the number one foreign investor and host nation for foreign investment, and the repository for the dominant global trade and reserve currency, the United States will continue to be the main focus of attention in the international economy. Within the economic sector, state governments will play an increasingly important role, although the main parameters for foreign economic policy will continue to be hammered out in Washington, with the state governments having at best an indirect influence on the policy process. The major policy impact state governments will have should be in the areas of exporting, inward

investment, and tourism promotion, and in establishing in part the business climate for their areas of jurisdiction.

To keep the issue of subnationalism in proper perspective, it must be stressed that important decisions linked to fiscal and monetary policies, policies which will have the most profound impact on the business climate nationwide, will continue to be exercised by Congress, the White House, key agencies in the executive branch, and the Federal Reserve System. On the other hand, states will continue to expand their activities abroad in an effort to cope with the special challenges found in an increasingly complex and interdependent world. Moreover, interdependence will make it much more difficult to distinguish between what is 'domestic' and what is 'foreign' policy. As a result, the expansion of state activities overseas will further complicate the co-ordination of economic policy at the subnational, national, transnational, and multilateral levels.

NOTES

1. All of the states except Maryland ratified the Articles within two years, while Maryland, holding out for Congressional assistance for western land claims, waited until March 1781 before voting in favour of the document.
2. For a detailed examination of the Articles, consult M. Jensen, *The Articles of Confederation* (Madison, 1963).
3. The federal–state division of powers under the Articles is discussed in A. H. Kelly and W. A. Harbison, *The American Constitution: Its Origins and Development* (New York, 1948), 100–9.
4. For example, some states ignored US treaty commitments to return property to those citizens who supported the English monarchy, and to make sure that debts to merchants were paid in full.
5. Senators were not elected directly by the people until the ratification of the 17th amendment to the Constitution in 1913.
6. W. Riker has expressed this viewpoint in his book *Federalism* (Boston, 1964).
7. Quoted in R. A. Divine (ed.), *American Foreign Policy: A Documentary History* (Cleveland, 1960), 50.
8. Interestingly enough, state governments continue to maintain control over their National Guard units until such time as these units are called into federal service. Recently, some governors used their authority over the National Guard to prohibit units from engaging in training exercises in Central America, even though the Pentagon had requested that these units take part in the exercises. In 1986 Congress passed a law prohibiting the governors from interfering with the deployment of National Guard troops in other countries.
9. In *Missouri* v. *Holland* the state of Missouri brought suit against the game warden of the United States to keep him from implementing a treaty with Canada which mandated certain closed seasons for the shooting of migratory birds. Missouri argued that the national government did not have the constitutional authority to regulate migratory birds nor the right to dictate hunting

regulations for the states. The Supreme Court sided with Washington, arguing that the national interest in this case clearly took precedence over a state interest.

In 1970 the Massachusetts legislature passed a law stating that members of the armed forces from Massachusetts could refuse to fight in Vietnam because the war effort in Indochina was unconstitutional. The state also sued the US government over the constitutionality of the Vietnam War, but, by a 6–3 vote, the Supreme Court refused to hear the case.

10. Quoted in R. F. Swanson, *State/Provincial Interaction: A Study of Relations Between U.S. States and Canadian Provinces Prepared for the U.S. Department of State* (Washington, DC, 1974), 52.
11. Swanson found in 1973 (ibid. 11, 50) that individual US states had entered into at least 44 agreements, 181 understandings, and 541 arrangements just with the Canadian provinces.
12. In 1984 5.8 million Americans were employed in private industries directly or indirectly related to exports. This represented 6.5% of the total employment in the private industrial sector. More than one-half of these export-oriented jobs were in wholesale and retail trade, agriculture, transportation, communications, utilities, and the services sector. See K. Young, A. Lawson, and J. Duncan, 'Exports Generate "Hidden" Job Gains', *Business America*, 3 Mar. 1986, pp. 6–10.
13. Washington's aid to the states and localities fell by almost 40% in real terms in 1980–8, with total grants-in-aid adding up to $115 billion in 1988.
14. The modest state involvement in foreign commerce during the nineteenth century is discussed in J. Kincaid, 'The American Governors in International Affairs', *Publius*, 14/4 (autumn 1984), 97–9.
15. *Governor's Weekly Bulletin*, 28 May 1988, p. 1.
16. These figures are based on 1985 data and were provided by the National Governors' Association. See their publication, *States in the International Economy* (Washington, DC, 1985).
17. National Association of State Development Agencies, 'Memorandum on State Foreign Offices', 29 Mar. 1989.
18. *Fiscal Survey*, p. 21.
19. See D. J. Levin, 'State and Local Government Fiscal Position in 1985', *Survey of Current Business* (Feb. 1986), 35.
20. See N. Daniels, 'Cities as a Catalyst in International Trade', *Nation's Cities Weekly*, 4 Aug. 1986, pp. 5–6.
21. *New York Times*, 1 Feb. 1987, iv. 6.
22. For a typical example of ties which link US universities to their counterparts overseas, see C. Harrison, 'U.S.–Brazil: Partners in Education', *Change* (July/Aug. 1986), 54–5. In this bilateral exchange, about two-thirds of the US partners are state-sponsored colleges and universities.
23. *Chronicle of Higher Education*, 22 Oct. 1986, p. 31.
24. National Advisory Board on International Education Programs, *Critical Needs in International Education: Recommendations for Action* (Washington, DC, 1983), 5.
25. Ibid. 6.
26. Co-operation among state offices in Western Europe is discussed in J. Kincaid, *Comparative State Politics Newsletter* (Aug. 1985), 22–8.
27. *Wall Street Journal*, 14 Feb. 1983, pp. 1, 11.
28. *Economist*, 25 Oct. 1980, p. S14.
29. See J. M. Kline, *State Government Influence in U.S. International Economic Policy* (Lexington, Mass., 1983), 45–9.

30. The influence of the National Governors' Association on these pieces of legislation is discussed in Kincaid, 'The American Governors', p. 103.
31. These states are Indiana, Nebraska, Illinois, Virginia, Kentucky, and Georgia.
32. *Wall Street Journal*, 12 May 1986, p. 48.
33. The Conference Board, *Managing Business–State Government Relations* (New York, 1983).
34. See R. E. Glaser, 'Foreign Investment in the United States: Ohio's Limitations on Foreign Investment', *Canada–United States Law Journal*, 4 (summer 1981), 107.
35. *Washington Post*, 19 Apr. 1984, p. B2.
36. For example, in the case of *Messerschmitt Bolkow Bloehm G.m.b.H.* v. *Walker*, the West German aircraft maker was sued when a helicopter it manufactured crashed in Texas. A lower court ruled that the company must provide subpoenaed documents from the FRG, throwing out Messerschmitt's argument that the requests for documents should be subject to the Hague Evidence Convention, an international agreement signed by the United States.
37. UPI wire service report, 26 Feb. 1986.
38. *Survey of Current Business*, Mar. 1989, p. 2.
39. The ultimatum put forward by Japanese firms is reviewed in the *New York Times*, 2 Feb. 1984, p. D17.
40. See E. H. Fry, 'The Economic Competitiveness of the Western States and Provinces: The International Dimension', *American Review of Canadian Studies*, 16 (autumn 1986), 301–2. A survey of selected states and provinces which was prepared by the author indicated that the ten Canadian provinces have almost as many overseas offices as the fifty states combined. Moreover, the provinces sponsor a greater number of trade, investment, and tourism missions on an annual basis than the fifty states combined.
41. An important gathering which brought together most of the Canadian premiers with the fifty state governors was held in 1985 at the National Governors' Association annual meeting in Boise.

11
Conclusion

HANS J. MICHELMANN

The seven country studies that constitute the bulk of this volume amply demonstrate the scope and complexity of the 'trans-sovereign encounters of a new kind', as Ivo Ducachek, in the Introduction, has called the international activities of subnational units of federal systems. They highlight the challenges to federal governments that such activities represent, as well as the opportunities for federal states to forge international relations that are more attuned to the needs of their citizens in a world whose states, for a whole host of social, political, technological, ecological, and economic reasons, are becoming increasingly interdependent, less parochial, and less self-sufficient. The country chapters also shed light on the range of constitutional and institutional practices that have been devised to deal, more or less effectively, with the realities of provincial/state/*Länder* paradiplomacy. What conclusions can we draw from this seven-country symposium?

REASONS AND MOTIVATIONS FOR PARADIPLOMACY

Our seven country chapters have demonstrated the importance of economic motivations for component-unit paradiplomacy. This reason for 'going abroad' has its origin, even during a period when classical liberal or neo-conservative notions of the role of the state are popular, in the fact that most voters still hold governments accountable for the polity's overall economic performance come election time, even if such attributions of government responsibility are more justified in the case of, for example, the Canadian provinces or Australian states, whose jurisdictional scope is fairly broad, and less justified for the West German *Länder*, which have lost much of the legislative responsibility to Bonn for welfare-related matters that they might have had in the early years of the FRG. Hence many of these governments are involved abroad in a large

number of activities designed to promote trade, investment, and tourism, or otherwise to scout for commercial opportunities and even, in the case of West German *Länder*, to tap sources of funding from an international organization, the EC.

A major reason for economically motivated paradiplomacy by component units of federal states is their greater familiarity, as compared to national governments, with their own turf. They feel they are closer to and more aware of the problems of individual firms in their jurisdiction, particularly the small and medium-sized firms that are most likely to require help in dealing with foreign markets. It is unlikely that commercial officers in central-government-staffed embassies abroad will be able or even inclined to deal with specific requests from a multitude of small firms from back home, nor will foreign-trade and investment counsellors stationed in the national capital have the same incentives to help a firm in an economic backwater as will officials of a Canadian provincial or US state government, whose political masters are more susceptible to lobbying by the small entrepreneur who may create fifty new jobs by expanding to serve export markets. What is more, in highly regionalized federal states, certainly in Canada and Australia as our country chapters have shown, provincial/state élites are suspicious of the efforts of the central government and feel that they must be on the scene abroad to represent their own interests so that these interests will not be subordinated to those of other jurisdictions which may have more electoral clout or greater partisan affinity with the national government.[1]

One source of variation in the intensity of international activities is, of course, economic structure itself. Canada and Australia have relied very heavily on international commerce for their economic well-being, as has the FRG, the world's largest exporter. Hence one might normally expect from these provinces, states, and *Länder* roughly similar levels of activity to promote international commerce. But, in fact, we see considerable variation. In the FRG, Baden–Württemberg has been the most active *Land*, in good part because of the large number of small- and medium-sized firms who require, and have traditionally received, *Land* government aid to explore and develop export markets. In contrast, Northrhine–Westphalia, with its large heavy industries, for years did little export counselling or promoting of international commerce because of these firms' expertise on the international market-place. Its

government has only in recent years increased such activities because the rationalization of the steel industry led to the need for export growth in non-traditional industries and even for foreign capital to facilitate economic diversification in the FRG's largest *Land*.

Inter-country comparisons between Belgium and the FRG, on the one hand, and Canada and Australia, on the other, would also lead to the conclusion that additional factors are at work in explaining the level and types of international economic activities undertaken by their respective component units. The executive of the Flemish community has frequently chosen to support the export- and investment-promoting activities of private sector groups rather than work through its own administrative apparatus (see Chapter 6). In the FRG much foreign economic representation is organized and undertaken by the private sector-supported Association of German Chambers of Industry and Commerce, which has established, in co-operation with local firms, West German–host country (e.g. German–Canadian) chambers of commerce all over the globe. This network provides West German firms with foreign economic intelligence and helps these firms in their efforts to establish markets abroad; hence, *Land* activity directed towards international commerce is less necessary than in other federations where the private sector has not taken such initiatives and where, contrary to the more pronounced *laissez-faire* attitude in the FRG, there are traditions and thus expectations of government action to aid firms in their forays abroad.

These last considerations bring us more closely into the realm of political motivations for paradiplomatic activities, motivations that are always at least partly mixed with the economic or other rationales for international economic activities, but which take on a greater importance or may become the primary rationale for paradiplomacy in some instances. It is a commonplace, but none the less true, that international representational activity, either visits by provincial élites abroad or the drama attendant to receiving foreign national or subnational élites in provincial/state capitals, attracts the kind of positive media attention in which politicians bask and which gives them the aura of seasoned, sophisticated statesmen with world-wide connections. This glamour factor alone, coupled with the attraction of journeys abroad at the expense of the public purse and as VIPs, is undoubtedly a major motivation in at least

some international travel by subnational political élites, whatever its officially-stated rationale may be.[2] In some cases, such political paradiplomacy takes on unusual dimensions engendered by the political ambitions as well as the character of the official jet-setters. Examples include the dramatic appearances on the world stage by Bavaria's late Franz Josef Strauss (see Chapter 8) or those by former Queensland politician Joh Bjelke-Petersen (Chapter 4), both highly charismatic premiers with their sights set on national politics.

Broader, party-political considerations motivate, or impinge on, paradiplomacy in other instances: Anton Pelinka (in Chapter 5) underlines the conservatively oriented transborder regionalism practised by the West Austrian *Länder* as a partial counterthrust to national foreign policy when that policy was under socialist direction. In the FRG, CDU-controlled *Länder* governments engaged in unusual levels or types of well-publicized internationally oriented activities to keep their party visibly involved in international affairs at a time when the party was out of power nationally and hence had no access to the foreign-policy establishment in Bonn. Another political wrinkle is added to the paradiplomacy of West German *Länder* by the pattern of political contacts that are established: there is a tendency for the SPD-controlled governments to focus their paradiplomatic activities in countries with left-wing governments (Oskar Lafontaine, the dynamic SPD premier of the Saarland, for example, has had extensive contacts in Eastern Europe) and conservatively governed *Länder* to develop ties with like-minded governments abroad. Such affinity-inspired contact networks add a richness and subtlety to West German foreign relations that would not exist in the absence of paradiplomacy, and allows that country to enjoy better relations with states that might find friendly ties with the ruling party(s) or personalities in Bonn awkward, or with whom Bonn would find it difficult openly to have good relations. This pattern of international ties is possible only given the nature of West German federalism and the fact that *Länder* premiers have a leading role in their national political parties. In Canada, on the other hand, and in other federations, there is a greater hiatus between national and provincial parties and politics, and hence such a pattern of paradiplomacy is not found.

As we have also seen (in Chapters 1 and 10), the actions of subnational units domestically have implications for international relations; for example, state (and municipal) politicians in the

United States have made political capital from constituents' anti-apartheid or pro-Ulster Catholic sentiment when they have wielded their decision-making powers to direct the investment of public-servant pension funds away from firms investing in South Africa or from firms not following certain employment practices in Northern Ireland. Protectionist policies by provinces and states which serve to provide advantage for local products and firms and to handicap imported products or foreign firms have been in effect in both Canada and the United States. On the other hand, Australian and US states, as well as Canadian provinces, have frequently implemented a variety of measures such as tax holidays and subsidized infrastructure or energy rates in order to attract foreign investments and the jobs that come with them, as well as the votes that can be attracted from flaunting such visible signs of economic growth right on the home turf.

The most dramatic political motivation for paradiplomacy is, undoubtedly, what Ivo Duchacek has earlier referred to as proto-diplomacy, i.e. international ties by a subnational unit forged to further the goal of political independence. There is no doubt that, though most of its components individually had a pragmatic rationale, the overall thrust of the very elaborate fabric of international relations established by the Quebec government (detailed by the Feldmans in Chapter 7) was dedicated to such a goal, especially in the heady early days of the Parti Québécois government, before the results of the referendum on 'sovereignty association' blunted Quebec separatism. The more muted, though (from an international comparative perspective) still elaborate, paradiplomacy of the present Bourassa government, which is committed to keeping Quebec in Canada, is still marked by controversies with the Canadian federal government over, for example, the respective status of the national government and that of the province in international sporting events or in meetings of *la Francophonie*. On these matters, the Quebec government has taken a rather assertive role in response both to the pressure of a strong body of nationalist sentiment in the province and to Quebec's claim of being a distinct society as homeland of the French–Canadians; hence it considers itself entitled to special consideration, even in the context of international relations. Quebec's paradiplomacy, then, is driven by more than cultural considerations, though certainly not in the late 1980s by separatist aspirations.

In the other countries considered in this volume, there are no counterparts to Quebec under the Parti Québécois government. Component units of federations at most sometimes use paradiplomacy to assert their political identity. A good example are the Jura's ties with the Seychelles, which Luzius Wildhaber (in Chapter 9) interprets to be an anomolous case for Switzerland, understandable as an attempt by the canton to firm up a nascent political profile. In Belgium, also, the two major communities seek to assert their new identity through contacts abroad (see Chapter 6). But élites even in long and firmly established subnational units may undertake paradiplomacy to 'show the flag'. Such motivations can be ascribed to some of the Bavarian government's paradiplomacy, as that *Land* also seeks ways to assert its distinctive status in the FRG and to highlight the profile of the CSU party.

Of course, paradiplomacy of practically any kind may be viewed in the international community as being a challenge to national governments. It is in part to forestall such general impressions and to mollify the Canadian federal government that, for example, Alberta officials abroad identify themselves as representing Alberta, *Canada*, and that the provincial government's materials printed for foreign distribution prominently display a red maple leaf. This does not mean, however, that Alberta's considerable pressure on the international scene (or that of other Canadian provinces) has not been used at times more or less subtly to underline Alberta's disagreement with federal government policies (especially when the hated Trudeau Liberals were in control of the national government) or even to seek to counteract such measures and hence to assert its identity internationally.

We have seen above that Quebec's efforts to assert itself politically led for a time to a concerted foreign policy aimed at carving out a separate international identity. Ethnic and cultural distinctiveness does not normally lead to such extreme manifestations of paradiplomacy, but, as Chapters 6, 7, and 9 demonstrate, they are the basis of a good deal of less dramatic international activity in component units of ethnically plural states. As the Feldmans point out, Quebec continues to further cultural ties with French-speaking states and subnational jurisdictions in Europe, Africa, the Caribbean region, and North America. The separate communities in Belgium have, as Yves Lejeune demonstrates, developed strong ties with their ethnic counterparts in adjacent France, the Netherlands,

and the FRG to solidify their cultural identities. In Switzerland, culturally motivated paradiplomacy as well as ties of good neighbourliness (see the discussion by Luzius Wildhaber in Chapter 9) are also facilitated by the fact that the largely linguistically and ethnically homogeneous cantons border on neighbouring states peopled by the ethnic counterparts of cantonal inhabitants — Italy bordering on the Tessin in the south, Austria and the FRG on the German-speaking Swiss cantons in the east and north, and France on the French–Swiss cantons in the west and north. In Austria, as Anton Pelinka shows in Chapter 5, ethnically based paradiplomacy is motivated not by a desire to strengthen ethnic/cultural communities within the country but to establish contacts with and strengthen a part of the historic Austrian ethnic community that was separated from Austria and became part of Italy as a consequence of war.

Culturally based paradiplomacy is not exclusively motivated by transborder ethnic identifications. More prosaically, subnational governments also become involved in international ties by virtue of their constitutional responsibility for education and culture. Hence they become involved in, for example, establishing student exchanges, devising regulations for attendance of foreign students in state-funded universities, and financing foreign students' education, and in organizing and funding visits by opera companies or groups of artists abroad. Such activities, many fostered in the context of broader agreements between subnational units and their counterparts abroad, such as the twinning agreements between Canadian and Chinese provinces or the special agreement between the FRG's Rhineland–Palatinate and Rwanda, others to complement the thrust towards the creation of economic ties with foreign jurisdictions, lead to numerous international contacts more or less on the subnational units' own initiatives and without a great deal of national-government involvement.

Foreign-student education also involves subnational governments in foreign aid, since education is a primary need in the developing world and since subnational governments are directly or indirectly the suppliers of educational services in the federations of the industrialized world. In many instances, the educational component of foreign aid is part of national governments' foreign policy, but, in some instances, component units of federal systems (for example, the West German *Länder*) take the initiative in this

regard. Further, subnational governments' foreign aid-efforts are not limited to the provision of educational services; Alberta and Quebec, as well as some other Canadian provinces, the Australian states, and the West German *Länder*, undertake additional aid projects, although these are clearly not of the same scope and scale as the efforts of national governments.

Finally, environmental concerns also play a role in paradiplomacy, a role that is becoming increasingly prominent. In North America, for example, the control of acid rain emissions, primarily produced in the US industrial states and blown by prevailing winds across the border into the central and eastern Canadian provinces, has been an ongoing irritant in the relations between Canada and the United States. Paradiplomacy became an important part of the relationship between the two countries because north-eastern states have also been affected by the effluent of industries in mid-western industrial states, and have formed a common front with the Canadian government as well as with the governments of Canadian provinces to lobby Washington for remedial measures. Similarly, the Ontario government has for many years engaged in paradiplomacy to push the New York state government and the US national government into action to remedy the heavy chemical pollution of the Niagara River and thus to help clean up the lower Great Lakes system, from which much of urban Ontario extracts its supplies of drinking water. The control of water-borne pollution has been a traditional concern of paradiplomacy in densely populated and highly polluted Europe. Given the increasing salience of environmental issues, such forms of paradiplomacy will undoubtedly increase.

FORMS OF PARADIPLOMACY

We now turn our attention more explicitly to forms of paradiplomacy, of which we have encountered a considerable variety in the previous chapters, and to the determinants of these forms. One obvious set of factors that tends to be forgotten, or at least not explicated frequently, is geographic or geopolitical. As Ivo Ducachek points out (in Chapter 1), much paradiplomatic activity in Europe takes the form of multi-member regional organization. This results in good part from the fact that the European space is very small, comparatively speaking, and hence the inclusiveness of multilateral organization is more efficient than bilateralism. In part it results

from the fact that, since at a number of important locations (e.g. the Regio Basiliensis or the Lake Constance region) there is an intersection of the borders of three states, this form of organization is almost imperative. On the other hand, it goes without saying that the isolation of Australian states from the rest of the world makes this form of paradiplomatic organization, or even transborder and transregional paradiplomacy, impossible 'down under', and mandates for Australian states what Ivo Ducachek has called global paradiplomacy.

But it is not only in the antipodes that geography makes transborder regional paradiplomacy impossible; many US states, for example those in the south-east, are far removed from an international frontier. In Europe, some Austrian and West German *Länder* border on socialist regimes whose domestic policies, perhaps with the exception of those in Hungary, have in the past made difficult or impossible any form of relaxed paradiplomacy with local governments in the neighbouring states. Thus, for instance, the boundary-spanning (e.g. ecological) concerns that are shared by Lower Saxony, Hessen, and Bavaria with border regions in the GDR and/or Czechoslovakia had in the past to be addressed, if at all, in the restrictive contexts of what amounted to international diplomatic fora carried on by central-government officials on both sides and local officials only as advisers or experts, because the East European authorities were unwilling to delegate such relations with their western neighbours to local officials. The contrast could not have been greater between this type of highly restrictive and formal procedure for regulating common concerns of neighbouring states and the free-wheeling, unencumbered transfrontier contacts between officials of subnational governments (and, of course, citizens) taking place on the FRG's western and northern borders with its EC partner states. Such contacts will become even more relaxed and more pervasive once the process of removing impediments to the functioning of the EC's internal market is completed in 1992. With the recent dramatic regime changes in the East European countries bordering on the FRG, the differences in the patterns of interactions between Germany and its long-time liberal democratic neighbours on the one hand, and those with its eastern neighbours on the other, are sure to diminish greatly as the flow of persons, goods, and ideas is liberalized over what was once known as the Iron Curtain.[3]

Our country chapters demonstrate that these transboundary

contacts between subnational governments in Western Europe and North America take a large number of forms. They vary from the formal structured and regularly scheduled interaction of meetings and task forces organized by such regional organizations as the Arge Alp (see Chapters 5 and 8), to *ad hoc* meetings of subnational executives of neighbouring states, bilaterally or multilaterally (for example, the meetings of Canadian premiers with US governors (Chapters 1, 7, and 10)), to the multitude of informal contacts over lunch or by telephone. Ongoing transborder co-operation of subnational governments' public servants are another, and unobtrusive, form of international activity that is pervasive in Western Europe and North America. Such activity is what is subsumed under the rubric of good neighbourliness in Luzius Wildhaber's discussion of Switzerland (and in the FRG) is aptly known as *kleiner Grenzverkehr* (petty cross-frontier relations)). It involves a wide span of activities: co-operation on maintaining frontier bridges and roads; organizing the sharing of health care or education services across frontiers; facilitating responses to emergencies when mobilization of resources on two sides of an international border is more effective than either resorting only to those on one or the other side, or the use of resources on both sides not properly co-ordinated; and making easier the lives of the increasing number of persons, especially in Western Europe, who daily commute to work from one country to another.

The country chapters also demonstrate that there is considerable variability in scope and intensity once we consider international activity beyond transborder regional paradiplomacy, even among states or provinces in the same federation with, for example, similar economic structures. As the Feldmans point out in their chapter on Canada, such variations can, in part, be explained in terms of the size and know-how of the civil-service apparatus and hence the institutional resources available to undertake functions that require a good deal of sophistication. In that sense, the larger, more wealthy units have an advantage over those, such as the Atlantic provinces in Canada, which are in even greater need of international commerce to strengthen and diversify economic activity, but whose institutional resources are more meagre because of their narrower tax base or because of problems of scale.[4]

The most visible forms of paradiplomacy have already been discussed above, namely visits by subnational political élites in

foreign states. One must add participation by these élites in international fora such as participation by Quebec and New Brunswick in the biennial meetings of *la Francophonie* and participation by these élites in the meetings of the UN agencies. Increasingly there is an equally visible but more institutionalized presence abroad of subnational governments: the growing number of delegations, contact bureaux and offices, as they are variously called. These allow subnational governments continually to monitor the relevant international environment and undertake everything, from promoting trade and investment, to inducing the immigration of wealthy Hong Kong entrepreneurs, to lobbying politicians and bureaucrats in the capitals of host states. This type of paradiplomacy is most characteristic of Canadian provinces, but is also a means used by Australian[5] and US states, by Belgian regions, as well as, recently for the first time, by the West German *Länder*, and it is a form of paradiplomacy that is likely to become even more prevalent as the web of international ties becomes ever more dense.

Finally, one must also take into account the wide variety of subnational government domestic laws, policies, and regulations that have an actual or potential impact on international transactions. As world trade and international investments continue to grow, these become more visible, as, for example, did the various restrictive practices of Canadian provinces that came to light in the Canada–US free-trade negotiations. These and similar legislative and policy enactments will have to be considerably curtailed if they are not to provoke substantial irritation in the North American free-trade area; similarly, analogous practices in the West German *Länder* will be limited by the higher degree of EC integration brought about by the completion of the EC domestic market.

THE CONSTITUTIONAL AND INSTITUTIONAL SETTINGS

We must briefly examine the domestic constitutional and institutional bases from which paradiplomatic activities are launched, since the legal/institutional context will substantially affect the nature and scope of what cantons, *Länder*, states, and provinces undertake on the international stage. From the country chapters it is possible to discern a continuum of what might be referred to as syndromes of constitutional and institutional arrangements pertaining to the conduct of paradiplomacy. At one extreme of this

continuum is Canada, which provides a very permissive context for provincial international activities, in part because of judicial interpretations providing the provinces strong powers in many fields of jurisdiction that have international ramifications and, also, because the turf has not been clearly demarcated with respect to what the two levels of government are or are not allowed to do internationally. Further, the Canadian Constitution does not provide a formal means whereby the provincial governments can participate in the shaping of Canadian foreign policy: the Canadian Senate (upper house) is weak and the provincial governments have no influence over its membership, because of the strength of the prerogative powers of the national executive, and the Westminster tradition of party-discipline-based responsible government. The consequent absence of leverage over shaping external-relations policy contributes to the propensity for some provinces to become very active internationally.

At the continuum's other extreme is the FRG, where, with characteristic thoroughness, the constitutional relationship between federation and the *Länder* with regard to international relations has been much more rigorously defined, and where the federal government is given the clearly superior powers with respect both to domestic legislative jurisdiction and to foreign relations. What is more, the Basic Law, as we have seen in Chapter 8, provides an arena, the Bundesrat, in which the *Länder* can participate in national legislation, and also gives the legislature a role in ratifying international agreements. Because the *Länder* are thus formally involved in the foreign-policy process, they have considerably less incentive to set out internationally on their own. Where there were constitutional uncertainties and disputes regarding the role of the *Länder*, particularly with respect to the international aspects of powers falling wholly or partly in *Länder* jurisdiction, the West Germans have the institutionalized Lindau Convention, which has provided the federal and *Länder* governments with a workable *modus operandi* with regard to the otherwise potentially vexing issues arising out of the respective rights and responsibilities for negotiating and implementing international agreements. In a similar fashion, the two levels of government have worked out a formalized procedure for dealing with disputatious matters arising out of West German membership in the EC.[6]

Our other cases fall between these two quite different models of

constitutionally regulating the relationship between federation and component units in the foreign-relations field. In each of our other countries, jurisdiction over foreign relations falls quite clearly under the powers of the central government. In Australia, moreover, the High Court has expanded the role of Canberra in this policy field, as it has given the Commonwealth powers to legislate for the implementation of international agreements, even if their subject-matter is in state jurisdiction. As in Canada, there is no formal constitutional mechanism for state participation in forging Australian foreign policy. In the United States, also, the power over international relations is predominantly in federal hands, but here, as in the FRG, there is a formal mechanism whereby, not state government representatives as in the FRG, but senators elected directly to represent the citizenry of their states, have a powerful influence over foreign relations, a constitutional feature which gives state governments fewer reasons for undertaking paradiplomacy on their own.

But sketches of federal constitutional arrangements in the field of international relations, even those much more complete than the present one, cannot by themselves adequately account for variations in the extent of international activities by the component units of modern federations. We have seen earlier in the country chapters that, in all federations, with the possible exception of Canada, national governments are given the predominant if not almost exclusive powers over international relations, but we have also seen that the impact of political and practical considerations has led to the toleration by central governments of a role by component units in international relations that would be quite difficult to discern from a mere perusal of legal and constitutional texts. This is so, as Earl Fry has noted, with respect to US states passing laws that handicap commerce in foreign goods or services, even if such legislation violates federal policies or US international obligations. It was also the case in Switzerland when the Jura undertook global paradiplomatic relations that were out of keeping with Swiss constitutional practices. Numerous other instances of legal grey areas in the conduct of component-unit–central-government relations regarding paradiplomacy could be cited. For example, the extent to which federal governments would be held responsible for international agreements of various types entered into by the governments of their component units is frequently also not clear, nor

does it appear necessary that a clear determination always be made, because these agreements, arising, as Ivo Duchacek points out in Chapter 1, from the mutual needs of the contracting parties, are almost always honoured.

It appears, then, that the pressing need for pragmatic solutions to jurisdictional problems that arise from the increasing globalization of human affairs and concomitant high levels of paradiplomacy in federations can be accommodated in most of these systems without protracted disputes. Even in the FRG, disagreements falling outside the scope of the clearly defined specialized mechanism for *Land*-federation interaction in international relations, the Lindau Convention, are resolved pragmatically, albeit normally with Bundesrat participation and hence in a comparatively structured context. In the much less structured Canadian system, compromises are reached in the normal, highly unpredictable give-and-take of federal–provincial interactions. The rather inchoate Belgian procedures may take a more regular form as that country's authorities devise procedures to deal with national–subnational relations in the foreign-policy field. In Australia, mechanisms for state concertation and state–Commonwealth interactions have come and gone, and in the United States John Kincaid advocates the use of 'soft laws' to regulate an area of interjurisdictional relations that is exceedingly complex and thus unlikely to be governed by any set of institutions or rules that can be set in concrete. These individual national experiences demonstrate rather vividly the flexibility and informality of federal–component-unit relations that appear to be necessary and permanent features of every democratic federal system, particularly with respect to foreign relations.

IMPLICATIONS FOR FEDERAL FOREIGN POLICIES

Chapters 1–3 outline theoretically, and the country chapters demonstrate collectively, that the state-centred view of international relations, in which actions and interactions in the international system emanate from and are directed towards nation-state actors almost exclusively, is a gross distortion of reality, in particular as it concerns the international relations of federal states. Earl Fry, Panayotis Soldatos, and especially John Kincaid argue that the multi-actor, multifaceted international relations in which liberal democratic federal states are engaged are essential for

the functioning of what are highly pluralistic polities, whose relations with actors outside national borders could not possibly be channelled exclusively through institutions dominated and controlled by national élites. An attempt by federal authorities thus to monopolize interactions with foreign entities would lead to bottlenecks in communications, inflexibility in reactions to commercial and other opportunities abroad in an era of instant communications, and ill-informed responses to international stimuli when the domestic expertise resides, as it not infrequently does, in public bureaucracies outside the national capital. Furthermore, component-unit international action can lead to increased citizen awareness of and even participation in international affairs because of the greater proximity to citizens of their political and policy-making institutions as compared to those of national governments.[7]

That is not to imply that the increasingly prevalent international activities of component units of federations do not lead to problems and strains in federal governments' foreign-policy-making. These have been discussed in Chapter 2, and examples of such strains are referred to in each of the country chapters. Among the more dramatic is the set of problems raised for the Canadian government by Quebec's *indépendantiste* approach to international relations during the days of the Parti Québécois and the difficulties facing the Australian Commonwealth authorities from divide-and-conquer strategies by Japanese multinationals bent on commercial gain by playing the states off against each other.

None the less, no country-chapter author concludes that the international activities of his federation's component units seriously threaten the foreign-policy prerogatives of the national government. This is in part the case because national sensitivities are greatest with respect to classical foreign-policy sectors such as defence security, and other 'high-politics' concerns that have been the essence of traditional foreign policy. These concerns have typically not been the object of component-unit forays on to the international scene. Theirs have been the 'low politics' objectives of economic, environmental, cultural, and scientific (academic) as well as day-to-day pragmatic boundary-spanning interactions that are not the stuff of threats to national sovereignty. In most federations, for example in Canada, Australia, Belgium, Austria, and the FRG, provisions have been made to include representatives of provinces, states, regions, or *Länder* on national negotiating teams when the

concerns of national and component units are jointly affected by international negotiations, and Canada has experimented with co-location of provincial representatives in embassies and consulates abroad. Less visible co-operation among representatives of both levels occurs when Canadian diplomats and officials from provincial delegations abroad co-operate in attempts to lure business to Canada.

Such co-operation, as Panayotis Soldatos argues in Chapter 2, can increase the overall effectiveness of federations' foreign policies because it serves to reinforce, augment, and make better informed their relations with their international partners. In that sense, the almost universally positive experience of federations in managing foreign relations that involve multiple domestic actors can serve as examples for unitary states and even the post-glasnost, post-perestroika socialist states as these face the challenges of an increasingly complex international system in which centralized foreign-policy decision-making in economic sectors, particularly, can lead to lack of competitiveness and, therefore, failure.

NOTES

1. Such suspicions are not limited to state and provincial governments. The international activities of cities, e.g. Calgary, Alberta, reflect similar unease that federal *and* provincial governments may not know the needs of local firms, or may choose to ignore their interests and further those of other regions in the province in international economic representational activity. For a detailed treatment of the international activities of cities see E. H. Fry (ed.), *The New International Cities Era: The North American Experience* (Provo, Utah, 1989).
2. Too much international travel, on the other hand, may lead to a backlash, as occurred in Alberta, Canada, towards the end of the Lougheed era in the mid-1980s, when, at a time of government restraint resulting from falling oil prices, the press became highly critical of the Premier's repeated journeys abroad for what critics called flimsy reasons.
3. In the case of the two Germanys, all frontier impediments have been removed as a consequence of economic unification.
4. Thus the Canadian province of Nova Scotia, for example, employed a West German consultant to undertake economic representation in continental Europe, while Quebec, Ontario, and even Saskatchewan, have had delegations there.
5. Although, as J. Ravenhill points out, Australian states appear to be de-emphasizing the use of offices abroad in the conduct of their paradiplomacy.
6. In another context, I have characterized these two patterns of federal government–component-unit interaction in international relations using the concept 'interstate federalism' to refer to Canada and 'intrastate federalism' to refer to the FRG (H. J. Michelmann, 'Federalism and International Relations in Canada and the Federal republic of Germany', *International Journal*, 41/3 (summer 1986), 539–71).

7. Hence, for example, the foreign-aid efforts of Alberta and Saskatchewan allowed for and even required co-operation between provincial officials and local organizations dedicated to third-world concerns, and the foreign-aid activities of the Späth government in Baden–Württemberg involved many persons not previously active in such matters.

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