



# Federations

## What's new in federalism worldwide

Vol. 3, No. 2 / May 2003

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This publication is also available in French under the title *Fédérations – Le fédéralisme de par le monde, quoi de neuf.*

## From the Editors

"In a speech earlier today President Bush said . . . he will help the Iraqi people with food, medicine, supplies, housing, education, anything that's needed. Isn't that amazing? He finally comes up with a domestic agenda – and it's for Iraq. Maybe we could bring that here if it works out." - U.S. late night television comedian Jay Leno

**I**t is hard to escape the Iraq War these days. There is even a federal angle.

Many have pointed to a federal or quasi-federal arrangement as the best way to accommodate the diverse groups in post-conflict Iraq. For Iraqis and others interested in multi-level and federal options there are many models they could look at that accommodate a variety of ethnic, linguistic and religious groups within a single country. These include Switzerland, Belgium, Spain, Ethiopia, Canada, Great Britain, South Africa and India. Each of these countries has developed particular ways and means to deal with the fact of multiple "nationalities" in one nation-state. In almost all of these cases the geographic divisions of the country mirror, to some extent, the ethno-linguistic divisions. But many also recognize that the various ethnic and religious groups are not each confined to a delimited territory.

This complexity often requires constitutional provisions that recognize the need to assure rights for diverse groups throughout the territory of the country, and not merely in one region. Canada - to cite just one example - has provisions for both French and English education rights in all parts of the country, even though French speakers are only a majority in one province. If the conditions in Iraq are ever favorable for the consideration of federal options, these are the sort of questions that might be worth considering.

But Jay Leno's sarcastic comment reveals a way in which the war has had an impact on the practice of federalism in the United States itself.

In the last issue of *Federations*, William Fox reported on the decline in the corporate tax revenues of American states, partly as a result of federal government policies. In this issue, Robert Agranoff discusses the states' fiscal difficulties in a more general way. He points out that federal fiscal policies and the pressures of war spending are putting almost all of the 50 U.S. states into a tight financial squeeze.

Of particular interest are Agranoff's observations on the way the American states and federal government deal with each other – compared to the way that happens in other federations, such as Canada and Spain. In Canada, dialogue, disagreement, negotiation and compromise between the provinces and federal government are a big part of the daily political menu. In the United States, state-federal relations take a far back seat to negotiation and accommodation between the two houses of Congress, between the Congress and the president, and between the two main political parties.

At the time of this writing, Africa's most populous federation, Nigeria, has just held parliamentary and presidential elections. In the legislative vote President Obasanjo's People's Democratic Party made a strong showing (while the opposition parties cried foul!). President Obasanjo, himself, is

the apparent victor of the presidential election - again with loud protests from the losing candidates, buttressed by concerns on the part of international observers. But, however the current situation is resolved, Nigeria faces major challenges in the organization of its still-young federal democracy. One of these challenges relates to the matter of how wealth is shared between the central government and the state and local governments. Nigerian journalist Kingsley Kubeyinje examines that nagging question in this issue.

In the former Yugoslavia, the new hydra-headed "Serbia and Montenegro" looks less and less like a federation, as our article in this issue reports. And the political assassination of a beloved leader has not helped.


We have two articles on asymmetric arrangements in very different circumstances.

In Great Britain, one of the major world economic and military powers, the policy of devolving responsibility to regional assemblies (in Scotland and Wales, for instance) is still very much a work in progress. One of the main sticking points: what to do about England? Charlie Jeffery has a progress report.

Meanwhile, in tiny St. Kitts and Nevis (population 45,000) the asymmetric structure that gives a provincial government to Nevis but none to St. Kitts may have created centrifugal forces that cannot be stopped. Terry Nisbett has the story on the dangers of secession in the small Caribbean nation, *Federations'* first-ever report from that region.

We round out the issue with a critical analysis of an over-centralizing Venezuelan constitution by Allan R. Brewer-Carías, and our Practitioner Bertus De Villier's account of the creation of a "visa-free" zone in nature parks that straddle borders in southern Africa.

Not too long ago the Forum inaugurated its newly-redesigned web site. Among the new site's features is an online research library giving access to reports and presentations from Forum conferences and events, articles from this and other publications, and much other valuable information related to the practice of federalism worldwide.

We would be very interested in feedback on this new feature. In fact, we hope you will find all of our new site's navigation devices and its enhanced resources of value in your work or studies. Please let us know what you like and what you don't like! 

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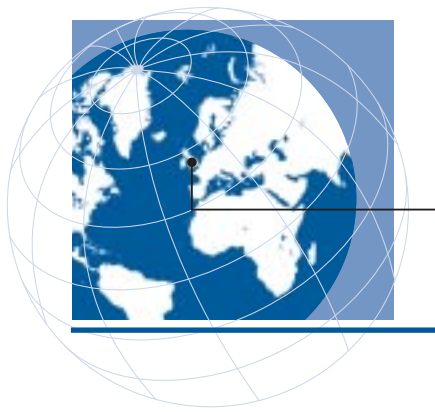
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# The UK continues to devolve

But has the centre sufficiently defined a role for itself?

BY CHARLIE JEFFERY

**Any** day now the British Deputy Prime Minister will announce which regions in England will hold the first referendums on establishing elected regional government. The hot tips are the North East and Yorkshire regions, possibly also the North West around Manchester and Liverpool.

The referendums will then go ahead in 2004, and if there are “yes” majorities the first elected regional assemblies in England should be at work by 2006.

## The “English question”

The new English regional assemblies throw a spotlight onto two of the unusual features of the UK devolution process.

First and foremost they are a shot at answering the “English question”. Whenever devolution has been up for debate in the UK, the main focus has been on Scotland, Wales and Ireland. Devolution has always been about how to reflect Scottish, Welsh and Irish distinctiveness better in a union state dominated by England and the English.

In all of this, no one has ever really known what to do with England itself. But once you start devolving significant powers, the problem of equity gets raised. If the Scots and the rest get devolved powers, then so should the English. But the idea of a devolved parliament for England is just as problematic. The English account for over 80 per cent of the UK population and even more of its economic clout. An English parliament would look like a bull in a china shop: too powerful and in all likelihood too clumsy to avoid trampling over the very different sensitivities and needs of the other UK nations. For many, an English parliament could alienate the rest and even lead to the break-up of the UK.

So are English regions the answer? Will they deal with the equity problem? They might well. Opinion polls show limited support for an English parliament. Most of the English seem to feel the Westminster Parliament does a good enough job in looking after their interests. Those who don't are typically those furthest away from Westminster in the English north. But then they are likely to get their own regional assemblies in the next few years. The assemblies will give them the voice they feel they lack at Westminster.

## Not one-size-fits-all

However, the first English regional assemblies will also make more complex a second unusual feature of devolution: its radical “asymmetry”. When the first English regional

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*Statue of Donald Dewar, the father of devolution and Scotland’s first First Minister.*

assemblies are established, there will be six different forms of devolved government, ranging from the Scottish Parliament with its very extensive legislative autonomy, to the modest administrative devolution to English regions without elected assemblies.

Asymmetry has noble objectives. It is an attempt to meet special territorial needs. Northern Ireland’s devolution is tailored to the circumstances of a divided society groping its way to peace. In Scotland, devolution is meant to give expression to a strong sense of national identity – and to buy off separatist pressures. In the southern English regions, where there is minimal demand for self-government, it is about the better administrative coordination of central government policies at the regional level.

But this kind of “tailored” regional government tends to lack a stable equilibrium. As other markedly asymmetric systems such as Spain show, asymmetry opens up the ground for further tinkering to provide an even more finely tailored solution or for regions with lesser powers to try to ‘catch up’ with the rest. In each part of the UK, there are clear signs of this missing equilibrium:

- In Wales, a Commission was established in September 2002 under the former leader of the Labour Party in the House of Lords, Lord Richard of Ammanford, to review the powers of the Welsh National Assembly. The establishment of the Richard Commission reflects the widespread dissatisfaction in Wales with a limited and complex form of devolution. When it reports in later 2003 the Commission seems likely to recommend that Wales move towards the more extensive powers of the Scottish Parliament.
- In Scotland, the establishment of the parliament in 1999 was supposed to close down constitutional debate. As the first Scottish Premier, the late Donald Dewar, put it, the parliament represented the “settled will” of the Scottish people. But in Scotland, the Scottish National Party (the second biggest party after Labour) is committed to Scottish independence and naturally enough wants to keep the Scottish “will” unsettled for as long as Scotland is part of the UK. So it has tried to put further devolution reforms on the agenda - reforms that include greater tax-raising powers for the Scottish Parliament. “Fiscal autonomy” was one of the key themes in the last Westminster election in Scotland. And it will no doubt raise its head again in the campaign

for Scottish election on May 1, 2003. The Scottish will is certainly not settled yet.

- **Northern Ireland** was never seen as a settled situation. Right from the start it was planned that further powers – for example on policing – could be devolved once the political situation there stabilized. Accordingly, an official review of the Northern Ireland Assembly is set to take place at the end of 2003. But even that could be pre-empted by the dynamics of an ongoing negotiation process designed to bring the Assembly out of ‘suspension’ before elections scheduled for May 22, 2003. Amid these negotiations, the powers and even the form of devolution in Northern Ireland are in principle “on the table”.
- And then there is **England**. English regionalization is in two ways a fluid process. First, regional assemblies will be created in waves. The initial, northern referendums in 2004 are likely to be followed by a second wave, possibly in 2006, addressed at regions like the West Midlands and the South West which feel distant from Westminster, but where an active “demand” for devolution is not yet so evident. The implicit assumption is that the establishment of assemblies in the north will let loose a “domino effect”, with other regions unable to resist toppling to the regionalization momentum. Second, the May 2002 UK government White Paper on policy for the English regions also made clear (but without giving any detail) that additional powers may at a later stage be up for grabs by the regional assemblies.

### “Tell us what it’s all for”

UK devolution is, in all these ways, a moving target.

This may not be a disadvantage in a transition from what was a highly centralized system of government. It may well be sensible to leave scope for modifications to initial reforms as different regions – with clearly different backgrounds and sensitivities – come to terms with the practice and possibilities of devolved government.

As one of the architects of devolution, the former UK cabinet Minister for Wales Ron Davies, famously put it: devolution is “a process, not an event”. But, one thing that a flexible and nuanced *process* of devolution needs is clarity of purpose at the centre. Asymmetric and dynamic devolution is a challenge for intergovernmental coordination, for striking the balance between UK-wide policies and needs, and those in the various nations and regions of the UK.

Striking that balance is a matter on which central government has to lead. Asymmetrical devolution limits the scope for meaningful coordination among devolved governments, because they do not necessarily have the same sets of powers to address those issues that affect them in common. Instead, asymmetry favours a set of bilateral coordination arrangements between a central government “hub” and devolved “spokes”. There is little evidence that the centre has thought through that “hub” role.

When a UK minister was once asked how academic research might inform policy on devolution his answer was: “We want you to tell us what it is all for”.

Indeed, nobody has yet expressed what the UK *as a whole*, in its new, radically changed format is *for*, what the role of the centre should be, how the centre should relate to the territories, how the parts combine to make the whole. Asymmetrical devolution may be ‘tailored’ devolution; but in the UK it has

## Asymmetric devolution in the UK: Six forms of devolved government

- **Scotland:** 129-member parliament with full legislative powers in most fields of domestic policy, including health, education, policing, environment and regional economy.
- **Northern Ireland:** 108-member assembly with full legislative powers in most fields of domestic policy, though with some powers (e.g. policing) retained by Westminster until political situation stabilizes. Complex power-sharing constitution designed to secure cross-community consensus in a divided society. Periodically “suspended” (most recently in October 2002) due to unstable political situation.
- **Wales:** 60-member assembly with “secondary” legislative powers extending across most fields of domestic policy, but dependent on case-by-case empowerment by Westminster.
- **London:** Directly elected mayor held to account by 25-member Greater London Assembly. Executive powers in fields of transport, policing, fire and emergency services and economic development. Powers are “strategic”, which means the mayor and assembly lack a delivery capacity and rely on other bodies to implement strategies.
- **English Regions I:** 25-35 member regional assemblies with “strategic” powers in economic development, planning, housing, transport and culture. First assemblies likely to be established in northern regions in 2006.
- **English Regions II:** Administrative decentralization of central government responsibilities in economic development, planning etc. Carried out by regional government offices, business-led regional development agencies and appointed regional chambers of “stakeholders” from local government, business and other regional interests. Remains the default option until regional electorates vote for elected assemblies in a referendum.

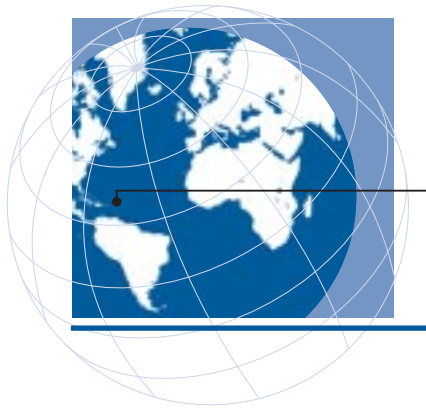
also been piecemeal devolution, with different reforms prepared by different ministries with little overarching coordination, little in the way of overall rationale.

The centre could articulate what the common loyalties are that bind all parts of the UK together. It could try to define what all citizens of the UK should enjoy as common public services, and why parts of the UK should now have the capacity to shape their own public services in certain fields. In other words, it could not just open up possibilities for devolution, but also set their limits.

It is not doing that at present. Instead it is taking a largely laissez-faire role, dealing with issues as they arise, relying on the capacity of civil servants to “muddle through” problems on a case-by-case basis.

In the conditions of asymmetric devolution this strategy is risky. It leaves the field open to the centrifugal pressures of emulation and *un*-settled will. If there was a central purpose to devolution it was to rebalance the UK and make it better capable of accommodating territorial difference.

The UK government seems to have overlooked the fact that rebalancing also needs the *counterbalance* of a centre that knows where it is going. ☺



# St. Kitts and Nevis: Constitutional reform or separation?

A Caribbean federation with a population of 45,000 – about the size of Chartres, France – might split in two.

BY *TERRY NISBETT*

**The** unity of the federation of St. Kitts and Nevis is under threat; its political future is shaky and uncertain at best. This crisis comes in the light of public statements by the Premier of Nevis, Vance Amory and the leader of the opposition in the Nevis Island Administration, Joseph Parry.

In the two-island Federation of St. Kitts and Nevis, the two political parties on the smaller island of Nevis have declared that they would prefer not to participate in future federal elections. Ironically, this declaration comes even while the two islands have been forming a committee to begin constitutional reform. This peculiar situation stems from the unique federal structure of St. Kitts and Nevis, as well as the special rights given to Nevis by the federal constitution.

On September 19, 1983, St. Kitts and Nevis achieved full independence from Great Britain. Prior to this, from 1967, the two Caribbean islands had operated under a semi-autonomous status called Associated Statehood with Britain. This associated state was comprised of three islands: St. Kitts, Nevis, and Anguilla – an island 75 kilometres north of St. Kitts. Shortly after, Anguilla unilaterally declared itself independent and Britain hastily instituted measures to return it to full colonial status.



*Prime Minister Denzil Douglas (at right) and other ministers answer questions at a country-wide public meeting in St. Kitts and Nevis.*

## **Ties and tensions**

There are strong ties between the islands of St. Kitts and Nevis. With only three kilometers separating the islands, there is inter-island migration and the majority of the population of each has relatives on the other island. There is a brisk, traditional trade of vegetables, fruit, fish and livestock mainly going from Nevis to St. Kitts. Three ferries make daily trips between the islands taking citizens to work, school or college or shopping on either island. The fishermen share the waters and everyone co-exists peacefully.

Still, the political relationship between St. Kitts and Nevis has always been shaky and the independence constitution given by the UK legalizes that uncertainty.

The constitution provides for a provincial-style government for the island of Nevis with an assembly and a cabinet headed by a premier. This administration runs the affairs of Nevis in areas outlined by the constitution. The Nevis legislature makes its own laws necessary for the government of their island. Nevis runs its own schools, hospital and health care system, tourism structure, agricultural ministry and manages its own roads, airport and seaport. Some of the areas outside its responsibility are national security, foreign affairs and international trade.

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## **No local assembly on St. Kitts**

Strangely, however, the other part of the federation, the island of St. Kitts, has no corresponding island legislature. Observers on both islands have called this a rather inequitable situation. Each province in Canada has a provincial government. Each state in the United States of America has a state legislature. Every German *Land* has a *Landtag*. Only in countries that are decentralizing - but have not adopted a federal system - does one see a constituent unit with no government of its own. (The lack of an assembly for England in the UK is the most striking example - See the article by Charlie Jeffery in this issue of *Federations*.) The dilemma for the prime minister of St. Kitts and Nevis is knowing when to be the

“premier” of St. Kitts and when to be the prime minister of the federation. This anomaly has been one of the major reasons for the call for constitutional reform in recent times. It is certainly partly to blame for the present delicate constitutional and political situation.

The constitution provides for a national assembly, which, since the nation is a federation, one would logically assume is a federal assembly. But whether by intent or default, this legislative body also functions as the St. Kitts island assembly. While the constitution provides for local elections in Nevis, the electorate in St. Kitts can only participate in general elections to elect members of the National Assembly. This imbalance may well explain the reluctance of the Nevisian politicians to participate in future federal elections.

## **Elections and the future**

General elections in the federation are usually contested in an insular way. No political party in Nevis contests seats in St. Kitts. In the past, the St. Kitts-Nevis Labour Party has contested federal seats in Nevis but has never been successful and no longer makes the effort. The other political party in St. Kitts, the People's Action Movement, has never fielded candidates for general elections in Nevis. And because of the allocation of constituencies, eight to St. Kitts and three to Nevis, a national government can be formed without the inclusion of any elected representative from Nevis.

The stated reluctance of the politicians in Nevis to contest federal elections is their way of forcing a constitutional change. Yet even without their participation, a prime minister can be appointed, a cabinet selected and the governing of the country may not even be legally affected.

A constitutional change seems unavoidable to most people. The decisions on what form of federal government to adopt and on whether to create a local government for St. Kitts are likely to be hotly debated.

## St. Kitts and Nevis in Brief

Official Name	St. Christopher and Nevis, or St. Kitts and Nevis
Location	North-eastern Caribbean
Area	St. Kitts: 176 sq.km - Nevis: 93 sq.km
Population	45,000
Key dates	1624 - St. Kitts colonized by British 1628 - Nevis colonized by British 1967 - Associated Statehood, autonomous except for foreign relations and defence 1983 - Independence
Regional organizations	Member of Organization of Eastern Caribbean States (OECS) Member of CARICOM, a free trade grouping of fourteen Caribbean states
Economic sectors	light manufacturing, sugar, tourism, financial services

### Constitutional change promised

The government is aware of the urgency of the situation and has formed a Parliamentary Select Committee on Constitutional Reform. Its members are government and opposition parliamentarians. They will hold a series of consultations on both islands with civil society groups, the private sector, the churches and members of all political parties. They will also hold town hall meetings with the general public. This is about the closest the country has come to doing anything about reforming the constitution, although groups and individuals in the country have expressed their dissatisfaction and certainly have pointed out its flaws.

Calls for constitutional reform were heard in 1993 after the general elections resulted in a tie in St. Kitts. Both parties won four seats each. The Nevis parties did not wish to form a coalition and the governor general asked the incumbent party of the People's Action Movement to form the government. Much tension ensued and the solution was early general elections and pressure for the constitution to be reformed. The elections in 1995 saw a landslide victory for the former opposition party, the St. Kitts-Nevis Labour Party. There was no need for a coalition. The crisis had passed and the constitution remained the same. Today there is a new crisis.

The united stance of the the two political parties in Nevis – the Concerned Citizens Movement and the Nevis Reformation Party - precipitated a joint meeting of the St. Kitts and Nevis National Assembly and the Nevis Island Assembly. It is a beginning, and both sides will have to listen to the people.

To compound the present issue, the Nevis government and opposition are also asking for greater autonomy for the island of Nevis. It is not clear yet whether this means increasing the responsibilities of the Nevis Island Administration or full and complete independence as a state separate and apart from St. Kitts. However, speaking at the joint parliamentary meeting, the Premier of Nevis, Vance Amory, hoped for a solution that “will prevent us from splitting up a country, but which will enable us to create entities which are mutually supported.”

### A call for secession

At other times however, Nevis Premier Amory talks of independence for Nevis. This is a distinct possibility and one facilitated by the constitution, which allows for the secession of Nevis in Section 113: “The Nevis Island Legislature may provide that the island of Nevis shall cease to be federated with the island

of St. Christopher and accordingly that this constitution shall no longer have effect in the island of Nevis.” St. Kitts, however, cannot secede from Nevis.

Once before and as recently as 1996, the Nevis Administration evoked the famous Section 113 and passed the secession bill in 1997. The required referendum was held in 1998, but the governing party led by the present premier did not get the two-thirds majority of the votes to proceed.

Secession is a popular rallying cry for Nevisian politicians. The people of Nevis have always felt that even as St. Kitts prospered Nevis was neglected. Infrastructure in St. Kitts developed to include a deep-water port and an international airport. Nevis, on the other hand, lagged behind even in basic infrastructure such as roads and adequate water supply. Unfortunately for the St. Kitts-Nevis Labour Party, the people of Nevis cannot seem to forget that all of this occurred during that party's thirty-year term in office.

Ironically it may have been the taste of autonomy that has led to the recent attempt at secession. Increased autonomy has helped to improve the Nevisian economy and standard of living. Tourism and financial services are the major revenue earners. Yet the Nevis politicians seem to feel that crucial decisions affecting the federation are made without their input. The Nevis Island Administration seems confident that they have governed successfully and can take on the added responsibilities not yet entrusted to them and achieve the goal of Nevisians managing their own affairs.

### Political Parties

**Concerned Citizens Movement (CCM)** Leader - Premier Vance Amory. It has retained its majority in the Nevis Island Assembly since June 1992. It holds four of the five seats in the assembly and with two seats is the opposition party in the national parliament.

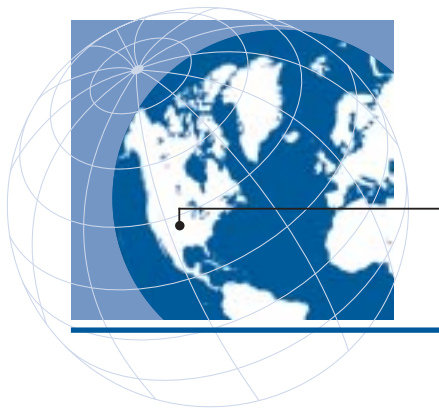
**Nevis Reformation Party (NRP)** Leader - Joseph Parry. It currently holds one seat in the federal parliament and one seat in the Nevis Island Assembly. This party was the major proponent of secession but it did not support the secession referendum of 1998.

**People's Action Movement (PAM)** Leader - Lindsey Grant. It held power from 1980 to 1995 but currently holds no seat in parliament. It was formed in 1965 with middle-class support. It was the party that formed the first government at independence.

**St. Kitts-Nevis Labour Party (SKNLP)** Leader - Prime Minister Dr Denzil Douglas. It holds eight of the 11 seats in the national parliament. The oldest party in the federation, it grew out of a movement among sugar industry workers, but is now more broadly based.

If independence is what the premier is seeking, he is likely to succeed the next time he invokes Section 113. The two parties in Nevis are united in their resolve to refrain from participating in federal elections. This new solidarity is unusual and seems to predict a united front regarding independence for Nevis or “full autonomy”, as they prefer to say.

The relevance or timeliness of the Parliamentary Select Committee on Constitutional Reform seems questionable in light of all this. What exactly will it achieve and which constitution will it reform? If swift action is not taken, St. Kitts may find itself with a federal constitution but no federation, and Nevis will be looking for its own constitution. ☺



# Fiscal policies and a weak economy fray U.S. federal fabric

When the federal government tries to both cut taxes and wage war it squeezes the states.

BY ROBERT AGRANOFF

**The** war with Iraq and the “war” against terrorism internationally have lowered the visibility of a domestic economic situation that cuts at the very core of the United States federal system.

At the federal level, the Bush Administration has proposed large tax cuts to stimulate the economy, a return to deficit spending and revamping of health care programs. The states are facing a combined \$30 billion shortfall this fiscal year, and an anticipated combined deficit of \$82 billion in the fiscal year that begins in July. Since virtually all states are constitutionally prohibited from running non-capital fund deficits, their only recourse is to reduce services and raise taxes.

State fiscal policies are closely tied to federal actions in taxing and spending and state governments have to meet the costs of federal program requirements. And so state governors have sought federal help.

To date, the Bush administration has chosen a different route.

The basics of President Bush’s economic stimulus plan involve a ten-year \$695 billion tax cut, which includes eliminating taxes on dividend earnings, accelerating already enacted tax rate reductions, and making the “temporary” 2001 tax cuts permanent. The administration estimates that federal revenue would shrink about \$1.8 trillion through the year 2013. Historically about one-third of the federal budget pays for all domestic discretionary programs (education, disability services, housing, transportation); one-third so-called “entitlement” programs (social security, Medicare, Medicaid) and one-third is allocated for defense spending. Given the current international situation defense spending cuts are unlikely so the federal government is

**The Bush administration is hoping that the combination of low interest rates and large budget deficits will provide a huge boost to a slow economy.**

**Robert Agranoff** is Professor and Associate Dean Emeritus, School of Public and Environmental Affairs, Indiana University - Bloomington and is Chairperson, Research Committee on Comparative Federalism, International Political Science Association.



Governor Paul Patton (D-Kentucky) makes a point as Gov. Dirk Kempthorn (R-Idaho) and Mike Johanns (R-Nebraska) listen at the governors’ conference. (Evan Vucci – AP)



Michigan Governor Jennifer Granholm: tough times, hard choices.

seeking reductions in other areas, along with deficit spending. The Bush administration is hoping that the combination of low interest rates and large budget deficits will provide a huge boost to a slow economy.

## Federal tax changes hit states

Among recent federal actions that have had a big fiscal impact on the states was the repeal of the federal estate tax. About 35 states have been using a “pick-up” provision where their tax on estates or inheritance is a payment taken as a credit against the federal payment, a revenue source for the states of about \$6 billion in 2000. Federal repeal means that states must

“decouple” their receipts and pass new tax laws or these receipts will disappear by 2004.

Most states with an income tax use the federal definition of adjusted gross income for purposes of simplification. The proposed elimination of federal taxes on capital gains would automatically eliminate state taxes in that arena. State and local bonds are exempt from federal taxation, which allows the states to borrow for capital programs at low rates. If corporate capital gains income taxes are



Governor Gray Davis (California): “Recession has forced us into the red.”

eliminated, there will be less advantage in investing in state bonds, and state borrowing rates will increase. The well-respected Center on Budget and Policy Priorities estimates that 11 of the administration’s tax cut proposals will cost the states up to \$64 billion in revenues over the next 10 years.

Between 1990 and 2001, a booming economy led to annual state general fund spending increases of over 5 per cent, twice the rate of inflation and faster than federal spending. States expanded big-ticket programs such as education and Medicaid options, and broadened eligibility for many social programs while enacting tax cuts. The current deficit situation is triggered not only by the economic slowdown, but by the collapse of the stock-market peak and rising health care costs. State tax revenues in the fiscal year ending June 30, 2002, proved to be far lower than estimates: sales tax, \$147.6 billion, 3.2 per cent lower than projections; personal income tax, \$187.7 billion, down 12.8 per cent and corporate income tax \$21.6 billion, at 21.5 per cent lower than expected.

The first round of relatively easy one-time spending cuts and funding shifts have already been made, and the “rainy day” reserve and tobacco settlement trust funds are virtually depleted. As is the situation with most states, after California meets its obligations to school districts, colleges and universities, local governments, and health care providers, it has committed about three-quarters of its budgets. In its fiscal year 2003 budget of \$79 billion, California has only \$18 billion to fund state agencies and programs other than its obligated funds according to Governor Gray Davis. The state is facing a \$35 billion deficit, which obviously cannot be met by marginal cuts here and there. In fact, only three states – New Mexico, Arkansas and Wyoming – expect their fiscal ledgers to balance next year.

### ***Kids with disabilities and defending the homeland***

State responses have mainly come in the form of across-the-board spending reductions. Some 30 states have cut spending, targeting health care, education and prisons. Kentucky has released lesser-offense prisoners up to one year early. Oregon cut their school year by one month. Forty-nine states

## ***The Medicaid Monster***

Medicaid, the program that funds health care for the poor, has been referred to as “the PAC-MAN of state budgets,” taking up increased portions of spending, now at an average of around 20 per cent of all state spending, and up to one-third of all expenditures in some states. As a federal-state program, the federal government sets minimum requirements for benefits, eligibility, and reimbursement of health care providers, and establishes administrative rules that states must follow. States can expand those eligible to include the “medically needy,” i.e. those just over the poverty line. Elderly people comprise just 15 per cent of the recipients but use up nearly 60 per cent of expenditures, primarily in nursing home and hospital care. States can also offer a number of additional services from a federally provided list of optional services. While Medicaid costs increased by about 5 per cent per year in the early 1990s, cost increases in fiscal year 2002 were at 13 per cent. In fiscal year 2004, Medicaid will approach \$230 billion in federal and state spending.

In early 2003 the Bush administration proposed a basic change to the Medicaid program. States would have the option to enter into a new flexibility agreement. Although mandatory recipient coverage would remain, states would have broader powers to expand, reduce, or eliminate benefits for the other recipients. States would be given flexibility to design private health plan “buy-ins” for Medicaid eligible recipients. Funding for those states that opt in to the reform would be increased by a total of \$3.25 billion for fiscal year 2004, and a total of \$12.7 billion over seven years. These amounts would be tied to a fixed state allocation. If costs go down, the states would benefit from the added payments. However, states would have to give up the existing open-ended funding allocations to meet their spending.

At the National Governors Association Winter Meeting in Washington, D.C. in February 2003 there was not great enthusiasm for the Bush proposal. Governors estimated that the long sought after flexibility to reduce costs would only affect about 15 million of 45 million Medicaid recipients. They expressed concern that the proposal would eventually cap federal Medicaid contributions.

Medicaid costs, it was pointed out, are unlikely to go down, because of the rising costs of prescription drugs, medical technology and increasing costs of elderly and disabled care. It could also lead to large financial burdens for the states at the end of the seven-year period. Republican governors argued that more recognition should be given to the fact that every dollar in state cuts will save the federal treasury one to two dollars and as a result, flexibility should be handed over now. A Republican governor suggested that the federal government should allow the states to keep the federal money they save, and that Medicare, a social insurance program primarily for the elderly, should assume the entire cost of health care for those elderly that are on Medicaid (about six million people). Some Democratic governors, and members of the Congress and Senate, have called for temporary increases in the federal share of Medicaid. On the other hand, the House majority is working on a \$92 billion, ten-year *reduction* in Medicaid spending.

The governors could not agree on a Medicaid reform position at the meeting, so they established a committee of eight governors – with both Democrats and Republicans – to negotiate with the administration and Congress on Medicaid revisions.



**The well-respected Center on Budget and Policy Priorities estimates that 11 of the administration's tax cut proposals will cost the states up to \$64 billion in revenues over the next 10 years.**

and the District of Columbia have reduced Medicaid benefits, including restricting or eliminating dental coverage, occupational or physical therapy, and decreasing spending on

**"E**conomic and job growth will come when consumers buy more goods and services from businesses such as your own. And the best and fairest way to make sure Americans can do that is to grant them immediate tax relief so they have more of their own money to spend or save.

"In 2001, the Congress passed broad tax reductions in income taxes. And promised much of this tax relief for future years. With the economy as it is, the American people need that relief right away. The tax cuts are good enough for the American taxpayers three or five or seven years from now, they are even better today."

*U.S. President George W. Bush, addressing small business people at the White House, April 2003*

**"M**uch of what we've built is being threatened by a struggling national economy and declining stock market. Personal income is down. Employment is down. Retail sales and manufacturing are down. This national recession has forced nearly every state in America into the red. These are tough times. On Friday, I will send you one of the toughest budgets ever presented. It will make significant cuts in nearly every program. My budget will erase the \$35-billion shortfall and eliminate the structural deficit. Already, my Administration has begun the hard work. We've frozen hiring and spending. Eliminated more than 10,000 positions. Identified more than \$10 billion in reductions."

*From State budget presentation by California Governor Gray Davis*

**"T**he problem we face in Michigan today is one that any family in our state can understand. You simply can't spend more than you make, month after month, year after year, without digging yourself into a deep hole. But, that is exactly what we've done in Michigan, and together we must fix it.

"The days of spending beyond our means are over. As long as I am your Governor, this state will live within its means."

*From State budget presentation by Michigan Governor Jennifer Granholm*

long-term care services. About half of the states are considering higher taxes, particularly on cigarettes and alcohol.

Medicaid was not the only federal concern on the governors' minds at their midwinter meeting. They focused on three additional federally mandated programs that they say present significant underfunding challenges. First is the cost of homeland security programs, for which state and local governments bear the bulk of implementation costs. The \$3.5 billion proposed by the administration will cover only a small fraction of the actual costs. Second are special education requirements for children with disabilities. The federal government has committed itself to paying 40 per cent of the cost of these programs, but have actually provided only 17 per cent. Third is the "No Child Left Behind" education law, for which the governors claim that only half the promised amount of money is budgeted. The states report great frustration with federal rules for testing and accountability, which have constrained state policies along with driving up costs. Combined, the cost of these three program requests is \$21 billion. The governors hope the federal Congress will agree to fund at least half of that amount.

### **Do the states get relief?**

Several proposals to provide tax relief to the states are on the congressional agenda. Democrats in both houses have introduced around \$140 billion in tax cuts and aid to state and local governments for the current fiscal year and \$112 billion more over the next ten years. A "State and Local Aid and Economic Stimulus Act of 2003," introduced in the Senate provides \$40 billion in direct, no-strings-attached federal aid to the states and local government. Both Democrat and Republican sponsors are pushing a "State Budget Relief Act of 2003" in both houses that provides temporary boosts of money for Medicaid and the Social Service Block Grant program. The Bush economic plan proposes no funds for state relief. After an unusual two-hour working meeting with President Bush at their Winter National Governors Association Conference (normally presidents only speak before the group and answer questions), the president asked for support for his tax cut proposals and pledged cooperation but not more money. Tax cuts, Bush said, will help restore economic growth, which is the best long-term financial help the federal government can provide to the states.

### **Getting on Bush's agenda**

Federally-mandated and program-generated costs, particularly the Medicaid behemoth and the impact of federal fiscal policies, increasingly bring the governors and other associations of state and local officials to the president and Congress for redress. Normally the governors do not meet in formal negotiation sessions with the president, like the first ministers conferences in Canada and Australia. Also, unlike Spain, where the regional presidents periodically testify before

***The Bush tax and spending cuts, which are sure to be somewhat modified by congressional action, once again raise the issue that governments may be in different boats, but are subject to the same tides.***

the Cortes on matters of autonomous community concern, and have powers of legislative introduction, United States governors rely on the National Governors Association, other associations of state officials, and staff members and lobbyists.

There have been two attempts at “Federalism Summits” of governors and state legislative associations. The first, in 1995, focused on ways for states to control and even block federal actions and to enforce the Tenth Amendment to the Constitution, which reserves powers to the states. The second, held in 1997, focused on federal mandates and preemptions. An eleven-point plan, designed to enhance the idea of federal-state partnership, included recommendations calling for Congress to justify its constitutional authority to enact a given bill, limit and clarify federal preemption of state law and federal regulations, streamline block-grant funding, and prohibit conditions of federal aid not tied to the aid purposes.

***The states may have created some of their own problems by their tax cutting and spending decisions of the 1990s, but the federal government bears a large share of the culpability, for which the states want fiscal redress.***

This intergovernmental agenda calls attention to the grievances that the states feel, and forms the strategic backdrop for their national meetings and lobbying. The Bush tax and spending cuts, which are sure to be somewhat modified by congressional action, once again raise the issue that governments may be in different boats, but are subject to the same tides. The states want recognition and relief regarding the increasing number of national actions that impact them in financing and in programs, many of which were originally parachuted on them by Washington.

## ***Underfunded federal programs***

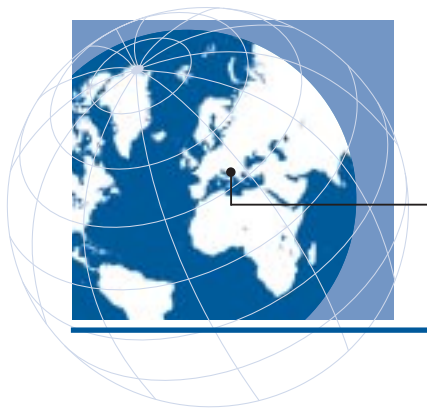
As is the case with many federal countries, the United States has a highly “intergovernmentalized” system of programs that are joined despite constitutional and legal divisions of responsibilities. These ties are often woefully financed, as the case with services for the disabled, homeland security, and education, all of which partially preempt preexisting state or state-local programs and regulations. Education is a prime example where the federal government funds under 10 per cent of all costs, but influences state-local programs with its equality of opportunity and disadvantaged population requirements. Often program mandates go underfunded or completely unfunded. For example, the 1996 Congress enacted what is popularly known as “Megan’s Law” which requires states to keep records of the location of freed rapists and child molesters, and to make those lists available to the public. With this unfunded mandate, failure to comply means federal crime funds to the states can be reduced. The United States Conference of Mayors estimates that cities are spending \$2.6 billion on new security measures without receiving any federal assistance. Congress passed legislation in January 2003 to upgrade equipment and train election poll workers. These new federal voting standards are superimposed on election procedures that are constitutionally state administered. Only \$1.5 billion of the \$4 billion authorized for the states to comply with the election law has been appropriated.

## ***Hard times plus underfunding and nonfunding***

These conditions hardly threaten the existence of the United States as a federation, but they shake at its core. As is the case for the majority of the world’s federations, the combined forces of communication, industrialization, welfare state programs, and global and international connections have brought state and local governments closer together with the United States government.

It is also true that like most federations, degrees of centralization in the general government are coupled with forms of decentralization throughout the system. However, when times are difficult, such as with the current threats to internal security and economic downturn, along with the need to finance war efforts, their attendant costs put inevitable strains on multi-level systems. The states may have created some of their own problems by their tax cutting and spending decisions of the 1990s, but the federal government bears a large share of the culpability, for which the states want fiscal redress.

The situation of underfunding and nonfunding in hard economic times poses a real test of the federal-state relationship, weakens the “bargain” related to federal movement into state policy arenas, and threatens the states’ ability to meet their requirements and produce constitutionally required balanced budgets. If these conditions continue for some time, it is possible that some federal “reweaving” will occur through changes that reposition the states in the American federal system. ☺



# Birth of a Frankenstein federation?

Even before the assassination of Prime Minister Zoran Djindjic, the union of Serbia and Montenegro was on shaky ground.

BY MIHAILO CRNOBRNJA

**On** February 4, 2003, after the adoption of the Constitutional Charter, the new state union of Serbia and Montenegro was officially inaugurated. There was no champagne or fanfare on that occasion. Rather, the birth of the newest state in the world community of states was welcomed with comments like: “A State for Guinness”; “The Frankenstein State”; “An imbecile that will die within three years”. These comments did not come from those in Serbia or Montenegro who fiercely opposed the creation of the new state union, but from non-partisan observers and professional analysts.

Nine months ago (see *Federations* Vol. 2, No. 4) we reported on the initial mood after the signing of the Accord on Principles on Future Relations (the Belgrade Accord). At that time the European Union (EU) was jubilant, while the Serbs and Montenegrins were skeptical. The Belgrade Accord was the document that was supposed to set the principles for the Constitutional Charter of the future state. It was a typical political document. Quite a few of the principles were formulated in such a vague way that each party could claim to have an authentic reading of the “letter and spirit” of the Accord, and do it with a straight face. At the time, the officials of the EU and the optimists among Serbs and Montenegrins, believed that the vagueness would be overcome through the Constitutional Charter and that, ultimately, a functional state union would be created.

## **A Charter delayed**

Over the last nine months, lots of things went wrong and very few went right. The new state union (or union of states, federation, confederation – nobody is quite sure how to label it) is now a reality but it is far from being a functional state. As a consequence, the skepticism of the Serbs and the Montenegrins has increased, and the triumphant feeling of the EU has all but disappeared.

The first thing that went wrong was the time it took to adopt the Constitutional Charter. Instead of three months, envisaged in the Belgrade Accord, the adoption of the basic legal document of the new state took almost a full year. This was a direct consequence of the large gap between the interests of

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**The EU all but forced the signatures of the reluctant parties.**



*A month before his assassination, Serbian Prime Minister Zoran Djindjic (left) met with the EU's Javier Solana (centre)*

## **The Assassination of Djindjic**

The tragic assassination of the Serbian Prime Minister Zoran Djindjic will have a dual effect on the further development of the state union. On the positive side, there is a constructive atmosphere that translates into a “lets get things done” attitude. How long that will last no one knows, but it is almost impossible for it to last as long as is necessary (three years) to firm up the state union. Also on the positive side: the EU is again focusing much more attention on events in Serbia and Montenegro. On the negative side, the loss of Prime Minister Djindjic is the loss of the most influential and effective negotiator with the Montenegrins. No one can effectively step into his shoes when it comes to dealing with the Montenegrin Prime Minister, Milo Djukanovic. That is bound to have a negative effect on the amount of time it will take to come up with the action plan, and the content to which the two parties will agree.

Serbia and those of Montenegro, a gap which was clearly underestimated at the beginning of the negotiating process. Each side thought of the other as deliberately exaggerating their positions for tactical reasons. It came as a bit of a surprise to all sides when it transpired that these were actual positions and that there was very little to negotiate.

During the time of negotiations, political developments both in Serbia and Montenegro were destabilizing, rather than stabilizing. Montenegro had a government in resignation for six of the nine months; there were three failed presidential elections in Serbia and two in Montenegro. This could not

bode well for the creation of a common state, since the process of its creation was handed over to the political elites of the two states. Never once was there any talk of checking the creation through a popular, democratic mechanism such as a referendum.

### **The EU stands aside**

The role of the EU *after* the signing of the Belgrade Accord was not very helpful either. In fact, the opposite could be said. The EU had taken a very active role in preparing the Belgrade Accord. The EU all but forced the signatures of the reluctant parties, claiming that the signing was a major achievement of its foreign policy in the Balkans. But after the Belgrade Accord the EU acted much less forcefully, expecting that the Serbs and Montenegrins would hammer out a solution while the EU stood by as an interested observer.

The position of Javier Solana, the High Representative of the EU for Security, was that an agreement, *any agreement*, was what the EU would welcome and reward by opening negotiations for a stabilization and association agreement. He was, in effect, the “midwife” of the new state union - so much so that there were half-serious suggestions that the new state be called “Solania”.

The end result of the above factors was an agreement on the lowest common denominator to which the parties could agree. And that produced a weak, non-functional state.

The first obvious weakness is that the new state union does not have a constitution, but a Constitutional Charter. The Charter reads more like a legal-political document, than a legal-constitutional document. It defines general political objectives and the way in which common institutions are organized.

### **No federal ministries?**

The common institutions are defined as coordinating mechanisms, rather than institutions of a state. The two functions authentically performed at the level of the union are defense and foreign policy. That, however, did not stop Montenegro from having a Ministry for Foreign Affairs.

Other state functions are substantively performed at the level of the two states. Some of them are coordinated at the level of the union through the ministry for internal economic relations, and the ministry for external economic relations. The “federal” state has no property and no independent fiscal source of revenue. The elections for the Parliament of Serbia and Montenegro will be indirect during the first two years and only after that, if the state union survives, direct elections for the union parliament would be held in the two constituent states.

For a federal judiciary, the Supreme Court has no source authority and independent functions, but only the job of coordinating the two judicial systems in the two states. And, of course, the whole arrangement is only for a trial period of three years, after which time each side has the right to hold a referendum on the withdrawal from the union.

## **Four constitutions in 60 years**

The Constitutional Charter of Serbia and Montenegro is the fourth legal-constitutional document that the two states have lived in. In other words, the average sixty-year old Serb or Montenegrin has outlived three state forms, and is now living in the fourth one. And, if their health holds, in three years time they could yet be living in a fifth version of their respective states.

Curiously, the very same EU that was so instrumental in the signing of the Belgrade Agreement and the Constitutional Charter, now complains that the “federal” state it helped to create is non-functional. Serbia and Montenegro were given notice that the EU has no intentions of entering into any type of negotiations with a state that does not have a common foreign trade policy, a unified customs regime and procedure, central statistics, a unified anti-monopoly law, unified standards and intellectual rights protection, and a few other functions, none of which were envisaged by the Constitutional Charter.

### **Delays for the action plan?**

At the time of this writing the Serbs and Montenegrins are involved in yet another round of negotiations. After the Accord and the Charter, the current round of negotiations is about the action plan for harmonizing the two economic systems. The implementation of the action plan, if successfully negotiated, would provide for the substance that the EU wants to see

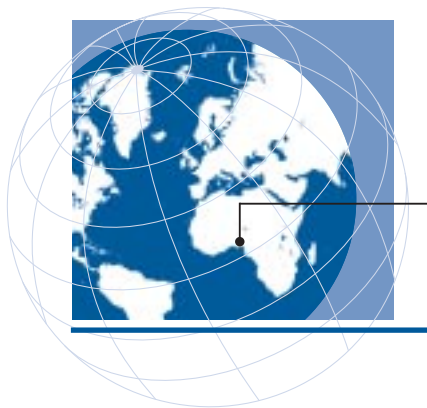
before it recognizes Serbia and Montenegro as a valid candidate for negotiations of the stabilization and association agreement.

These negotiations are as tough, perhaps even tougher than the previous two rounds. That makes sense since the wrangling now is not over principles and institutions, but over dollars and cents. And again, the EU is not bringing its full weight to bear, preferring to use softer forms of persuasion. The initial deadline of producing an action plan by March 31 was postponed by a month after the tragic assassination of the Serbian prime minister.

Crunch time is rapidly approaching. The new state union makes or breaks over the next few months. Neither side seems willing to make major concessions that are necessary to agree on an action plan. And the EU, with all its recent outpouring of sympathy and support, is standing firm in refusing to open negotiations with Serbia and Montenegro without an action plan in place and *implemented*.

Will the two sides muster the strength and wisdom to view their respective and joint future from a longer-term perspective, rather than the calculus of immediate, short-term interest? Will the EU decide that its creation in the proverbially instable Balkans is important enough to step in, financially and politically, to bridge the gap between Serbia and Montenegro? No one has definite answers to these fundamental questions. But one thing certain: as time passes by, more and more mention is made of “Plan B”. And that is the final dissolution of the state even before the trial three years are over. ☹

**... the average sixty-year old Serb or Montenegrin has outlived three state forms, and is now living in the fourth.**



# Nigeria: Does the center keep too much of the cash?

BY *KINGSLEY KUBEYINJE*

**Nigeria** is yet to have a nationally-accepted revenue sharing formula among the three tiers of government, 57 years after the first attempt and almost 43 years after attaining independence in 1960.

A new bill, seeking to share federally-collected revenues among the federal, state and local governments, is before the upper chamber of the bicameral National Assembly, as the federal parliament is officially known.

If eventually passed, Nigeria would be getting its tenth sharing formula. Yearly, some \$5 billion (US) is shared between the various governments.

The bill proposes to allocate a little less than half of total revenue to the federal government, a third to the 36 state governments and the new federal capital territory (Abuja) and a fifth to the 774 constitutionally-recognized local governments in the country.

## **The Supreme Court rules**

Revenue sharing, euphemistically referred to as the “national cake,” is a contentious and highly-politicized issue in Nigeria. Under the soon-to-be discarded formula, the federal government receives almost 55 per cent, states get about a quarter and the local councils a fifth. Indeed, this sharing formula was hurriedly packaged in July 2002, after the Supreme Court, in a landmark judgment four months earlier, scrapped the then sharing formula, which was put together by the country’s erstwhile military dictators in 1992.

Delivering judgment in the resource control suit between the federal government and the 36 states, the Supreme Court abolished “first line charges” contained in the 1992 formula. The charges totalled 7.5 per cent and made up the Special Fund. This fund, administered by the federal government, was shared out to some projects and institutions, including the Niger Delta Development Commission (NDDC).

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The NDDC, a body set up to fast track the development in the resource-rich but highly-impooverished oil communities got 3 per cent, while Abuja, the Federal Capital Territory got 1 per cent. The Ecological Fund was allocated 2 per cent; derivation, 1 per cent; and statutory stabilization, 0.5 per cent.

The resource control suit was itself a result of the persistent and strident cries by some states, especially the oil-producing ones, that there is injustice in the sharing of petroleum

revenue. The states have always demanded that since oil revenue constitutes more than 90 per cent of the nation’s foreign exchange earnings and about 32 per cent of its the GDP, they should get much more than non-oil-producing states. The suit was instituted by the federal government in 2001 to settle once and for all what should be the legitimate entitlements of oil-producing states from petroleum revenue.



*Aso Rock, symbol of the Nigerian federal capital, Abuja.*

## **Tension between federal government and states**

Besides the Special Fund, the 1992 sharing formula allocated 48.5 per cent of federally collected revenues to the federal government, while the states and local governments got 24 per cent and 20 per cent respectively.

Working out an acceptable sharing formula has always posed a major problem and constituted a constant source of conflict and tension between the federal government and states on the one hand and between the well-endowed states and the less-endowed ones on the other hand. The rows sometimes put a question mark on the unity of the federation.

For instance, following the Supreme Court ruling, which threw the 1992 sharing formula into disarray, President Obasanjo tried to increase the federal government share of federally collected revenues to 56 per cent, up from the previous 48.5 per cent, leaving the states and local governments with 24 per cent and 20 per cent respectively. Obasanjo also attempted to add the 7.5 per cent Special Fund to the federal government’s share.

State finance commissioners rejected the presidential “amendment” and threatened to challenge it in court. The sharp disagreement became a national embarrassment and

caused deep tension in the country. For the period it lasted, the country's more than 1.5 million public servants could not get their salaries.

The 366-member House of Representatives, the lower chamber of the National Assembly, stoutly resisted the unilateral amendment by the federal government, describing the move as unconstitutional.

"State governors should go to court to prove the unconstitutionality of the new revenue formula. The president has no right to unilaterally embark on the revenue formula," the house advised the 36 states in a well-publicized statement.

"We cannot take it, he (the president) cannot do it. We are not going to allow the president to make law on revenue allocation for Nigeria, it is the duty of the National Assembly," said Adebisi Akande, Governor of the southwest state of Osun. He spoke on behalf of his other 35 colleagues.

### ***Tempting the military?***

In 2001, Nigeria had an unanticipated windfall of \$1.2 billion from oil, which the federal government kept in a special account. The state governments promptly called for the immediate sharing of the fund and when the federal government attempted to dilly-dally, the states threatened to go to court, on the grounds that the federal government had acted unconstitutionally.

For a nation living under the shadow of its power-hungry military, which only reluctantly handed over power after some 15 straight years, these are indeed worrisome developments. The Nigerian military has always used the flimsiest of excuses to truncate democracy and has ruled the country for 30 of the 43 years of nationhood.

The state and local governments have always felt that the federal government has been too powerful because of the enormous resources at its disposal. They believe that the federal government is getting more than its fair share of federally collected revenues and that they have always been at its mercy. The perceived lopsidedness in the revenue sharing formula, which had always made the constituent states go cap in hand for assistance from the federal government, had caused many political actors and activists to call for "fiscal federalism", as well as the devolution of more powers and resources to the constituent states.

Proponents of "fiscal federalism" are of the view that Nigeria, as it is constituted at present, is a federation only in name and that it is not practicing true federalism.

Indeed, political scientists and historians such as Prof. Kunle Lawal of Lagos State University trace the instability in the Nigerian polity to the enormous wealth at the disposal of the federal government. It is generally believed that if the revenue sharing formula were to be skewed in favour of the state and local governments the country would be more stable for it.

### ***Strong regions at the outset***

Indeed, in the First Republic (October 1, 1960 - January 15, 1966), the then-existing four regional governments in the country were quite powerful and they controlled more resources than the federal government. The regions (later

subdivided into states) were fully in charge of the resources derived from their areas and merely paid royalties and taxes to the federal government for common services.

Developments were in full swing in the regions, enabling each of them to develop at its own pace. The Western region government under the late Chief Obafemi Awolowo, became a pacesetter, introduced the first television station in Black Africa, opened up industrial estates, provided free education programs and more. The three other regional governments embarked on development projects of their own.

Political observers, concerned about the weak fiscal situation of the current Nigerian states, still regard the defunct regional setup as the best for Nigeria, describing the period as the country's golden era.

Not a few Nigerians have been calling for a return to the regional setup, which they see as the only way to sustain a tottering federation.

Indeed, the call for resource control in Nigeria - which will make each state take full charge of the natural resources within its precincts - is a protest in itself against what some richly-endowed but politically underrated states regard as the injustice in the revenue sharing formula.

The three biggest ethnic groups, the Hausa/Fulani, Igbo and Yoruba, have always been favoured in the revenue sharing, as well as other largesse in the country, irrespective of their contributions to the national coffers. Indeed, while the "Big Three" constitute the focal point of major decisions in the country, the bulk of the wealth is derived from oil-producing states, inhabited by those officially and constitutionally regarded as the "minorities". Five of the seven oil producing states - Delta, Rivers, Bayelsa, Cross River and Akwa Ibom - are populated by the minorities.

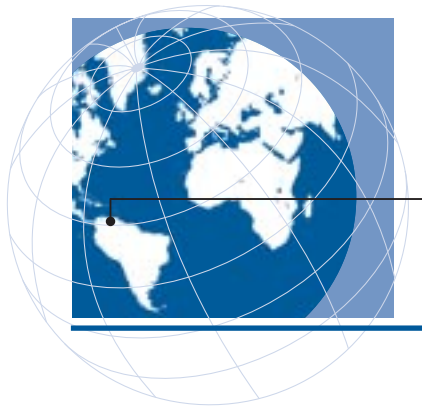
Nigeria's minority ethnic groups constantly complain of being shortchanged. They insist that long before oil was discovered in commercial quantities in their backyards and when the "Big Three" had exportable natural resources (cocoa, cotton, peanut, palm oil and coal), the criteria for revenue sharing formulas were skewed in favour of the "big three", as the principle of derivation was a major determinant.

The minority ethnic groups want a return to that era, which would allow them to take full control of the resources in their area and merely pay royalties and taxes to the federal government.

### ***Rebalance the federation?***

The current call for the convocation of a sovereign national conference by a section of the Nigerian federation is partly attributable to what some see as the unfairness in the sharing of federally-collected revenues. Proponents of the conference are of the view that it will help to redress the numerous imbalances in the operation of the federation, redesign it, redefine the relationships between the various ethnic nationalities and put the country on a sound footing.

Opponents - including the federal government and the states less endowed with natural resources - see the call for convocation of a national conference as a ploy to dismember the federation. (6)



## VIEWPOINT

# The Venezuelan centralized federation: A political contradiction?

BY ALLAN R. BREWER-CARÍAS

Allan Brewer-Carías is a professor at the Central University of Venezuela who specializes in administrative and constitutional law. He was a Minister of State for Decentralization in a previous Venezuelan government. His opinions and views expressed here are his own and not those of the Forum of Federations. He wrote the chapter on Venezuela in the *Handbook of Federal Countries 2002*, published by McGill-Queen's University Press.

**A** federation, above all, is a decentralized form of government in which public power is territorially distributed among the federal order of government, the constituent units and local governments. It is not simply a constitutional framework in order to decentralize power, a goal that also can be achieved through other regional forms of government

But federation and political decentralization are intimately related concepts, to the extent that a “centralized federation” is a contradictory term politically and constitutionally.

In spite of having a federal form of government since 1811, particularly after the sanctioning of the December 1999 Constitution, political power in Venezuela has been centralized, leaving the general principles of federation in the shadows.

A strong argument can be made that in federation, constituent units should have a significant measure of political equality. Because they are different in economic development and population, one of the few institutions in which constituent units can be equally treated is a federal second chamber or Senate in which each unit has the same representation and participation in national affairs. But in Venezuela, for the first time in all its constitutional history, the 1999 Constitution eliminated the Senate and the bicameral organization of legislative power. The Constitution replaced the Congress by a national assembly in which the most populated states have a shocking predominance, breaking the principle of equality.

Thus, in a federation, constituent units must have the opportunity to participate directly in the conduct of national affairs, particularly when they affect the constituent units' interest. That is the main reason for the existence of second chambers or Senates. But in the absence of a Senate, the Venezuelan 1999 Constitution expressly establishes one means of direct state participation in the process of discussion and approval of national legislation by the National Assembly.

The constitution obliges the National Assembly to formally consult with the states through their legislative councils prior to the approval of legislation, which may affect the states' interest. But in spite of this explicit constitutional provision, during the last three years, the National Assembly has ignored

the states when it has enacted national laws that could affect the states' interests. In particular, during the last three years, very important laws have been adopted concerning the states' interest without any political participation whatsoever of state authorities.

### *National Assembly regulates state legislatures*

Federalism also implies the existence of a constitutional guarantee of the autonomy of the constituent units vis-a-vis the federal order of government and normally should prevent interference in the exercise of the states' legal powers by federal bodies.

This autonomy implies the power of the constituent units to organize and exercise their powers within the frame of the federal constitution without interference by the federal order, except through judicial review by the Supreme or Constitutional Court. That is why the constituent units are often empowered to amend their own constitutions and to pass legislation in order to regulate the organization and functioning of their own legislative, executive and judicial powers.

In Venezuela judicial power has always been centralized at the federal level, and since the 1999 Constitution, the states' power to organize their legislative processes (legislative councils) has been limited. For the first time in Venezuelan constitutional history, the 1999 Constitution empowered the National Assembly to pass a national law in order to regulate the organization and functioning of the state legislatures. This limits the states' constitutional power to organize their own affairs. Additionally, the National Assembly has approved a federal law regulating the nomination of the head of State Audit Offices, which are part of the state constitutional structures. The autonomy of the constituent units, which is one of the key principles of federation, has been thus considerably reduced.

### *When it comes to money. . .*

Finally, the essence of viability of a federal government lies in the constitutional distribution of taxation powers between federal and state levels, in order to guarantee a basic minimum level of state income and reduce the state's dependence on the federal government from the budgetary point on view.

That is why in federations, constituent units almost always have some taxation powers.

In contrast, according to the 1999 Constitution, states do not have any taxation powers of their own. They only have limited

## Venezuela: Key Facts & Figures

Capital city	Caracas
Number and type of constituent units	23 States, 1 Federal District, 1 Federal Dependency
Official language(s)	Spanish
Area	912,050 km <sup>2</sup>
Area - Largest constituent unit	Bolívar (238,000 km <sup>2</sup> )
Area - Smallest constituent unit	Federal District - Caracas (1,930 km <sup>2</sup> )
Total population	24,287,670 (July 2002 est.)
Political system	Federal Republic
Head of state	President Hugo Rafael Chávez Frías (1999/2000), Movimiento Quinta República – MVR (Movement for the Fifth Republic). Directly elected for a 6-year term (limit: 2 consecutive terms)
Head of government	President Hugo Rafael Chávez Frías (1999/2000), Movimiento Quinta República – MVR. President appoints cabinet (Council of Ministers).
Federal government	Unicameral: Under the 1999 Constitution, the bicameral Congress of the Republic was replaced by the unicameral National Assembly, which has 165 seats. Members are directly elected through proportional representation (a combination of party list and single-member constituencies) to serve 5-year terms.

governing unit: how many people are there per constituent unit. In France, for instance, the ratio between democratically elected local governments and the population of the country is approximately 1,614 inhabitants per local government (communes or municipalities); in Spain, it is 4,825; in Germany, 5,086; in Switzerland, 2,333; in Italy, 7,156; in the U.S.A, 3,872; and in Canada, 6,878. And we should bear in mind that the total number of elected local governments in those countries varies as follows: 36,559 in France; 8,082 in Spain; 16,121 in Germany; 2,333 in Switzerland; 8,104 in Italy; 70,500 in the U.S.A and 4,507 in Canada.

This ratio between local government and population is a central issue for federations.

taxation powers if and when the federal government chooses to assign to the states some taxation authority, which so far has not happened. Thus, the states depend entirely on revenue allocations from the federal government, some of which are established in the Constitution in a relatively fixed manner and notionally directed toward the states. Despite that, the actual transfer of the due amount has frequently been delayed as a measure of political retaliation against some states with governors who are not in the president's party.

In addition, without the authority to do so, the federal government has also disposed of some amounts of incomes that were to be kept in a macroeconomic national fund – a fund which belongs to the states.

### Democratic deficit?

Federation and decentralization are also concepts substantially related to democracy. All democracies in the Western world, in one way or another, are politically and constitutionally organized in a decentralized form of government (federal or regional). Decentralization is a practice of democracies - there are no decentralized autocracies. Thus, all intent to centralize power in a federation where a democratic regime exists, must be considered as an anti-democratic policy. Unfortunately, this has been the general trend of the political action developed in Venezuela during the last three years, in which centralization has been the main course of action led by the federal government, without any effective possibility of political participation.

In addition to consulting the electorate through referenda and other means of direct democracy, decentralization is the most effective instrument to guarantee the effective participation of the electorate in the political process. In this context, there must be effective, representative instruments of local government. One measure of that is the ratio of population to

When more local entities exist in a country they are usually closer to the citizens and their communal organizations. The consequences of this are not only that democracy will be more real and effective as a mean of political participation, but also that the “intermediate” level of government (states, provinces, etc.) will tend to be stronger and more responsible to its citizens.

In contrast to the general situation of local decentralization in federations with solid democratic regimes, in Venezuela – in spite of the constitutional commitment – local government is so far from citizens and their communal organizations that it does not work as a tool for political participation and for strengthening democratic participation. Just to compare, in Venezuela with a territory double that of France, only 338 elected municipalities exist, with an average of 71, 006 inhabitants per local government!

This situation strongly mitigates any real possibility for grass-roots political participation, which, as a rule, can best be developed at the local level.

The 1999 Constitution expressly defines decentralization as a “national policy devoted to strengthening democracy by means of approaching power to the population and of the creation of better conditions for the exercise of democracy and for the efficient accomplishment of public tasks” (Art. 158). In contrast, the political praxis of the last three years has shown that the national policy that has been characterized by progressive centralization of government, without any real local government developments.

Consequently, in Venezuela, federalism has been postponed, and in a contradictory framework of a centralized federation, democracy has been weakened. ☹





# the Practitioner's page

## Bertus de Villiers of South Africa Peace Parks – A vehicle for regional integration of Southern Africa?

**Bertus de Villiers** was previously General Manager, Legal Services of South African National Parks and was co-responsible for the drafting of the treaty leading to the Kgalagadi peace park. His background is in constitutional law and he headed the Centre for Constitutional Analysis for six years. He is currently the Manager, Native Title and Legal Section of the Goldfields Land Council in Australia. He teaches constitutional law on a part-time basis at the University of Western Australia. His areas of specialisation are federalism, protection of human rights and restoration of land rights.

### Introduction

Regional integration of Southern Africa was recently taken a step further with the signing of the Kgalagadi Treaty between the governments of South Africa and Botswana. The treaty paves the way for the formal integration of two national parks that straddle international borders – the Kalahari-Gemsbok National Park on the side of South Africa and the Kalahari Park on the side of Botswana. The treaty to establish an international peace park is the first of its kind in Africa.

The establishment of the peace park is an interesting experiment for the ability of states in Southern Africa to cooperate and for the provinces of South Africa to be consulted in matters of regional affairs. Although it is too early to talk about a “union” of states along the same lines as the European Union (EU), the fact is that states within southern Africa are moving to closer regional integration in a number of areas. The South African provinces with their guaranteed constitutional powers and close relationship with neighbouring states, have a crucial role to fulfil in regional integration. Various non-binding “protocols” and “memoranda of understanding” have been concluded between provinces and neighbouring states in recent years. In short, within the context of southern Africa, the provinces have become important role players in foreign policy.

One area where the provinces have participated is in environmental matters in general and management of conservation areas such as parks and reserves in particular.

Proposals to establish an international peace park between South Africa and Botswana have been in circulation for many years. With conservation areas being scattered along many borders of African states, peace parks are seen as a very practical way to involve states, local communities, and local and provincial governments into a single-policy framework

dedicated to conservation issues. Peace parks are also seen as a basis upon which the regional economies could be re-built after many years of civil war and instability.

The role that tourism and wildlife experiences can play as “engines” for economic growth and empowerment in Southern Africa, is widely recognized. Hence the support that has come from various governments for the establishment of trans-frontier peace parks.

### Kgalagadi - new peace park

The two Kalahari's situated in South Africa and Botswana together constitute one of the largest conservation areas in the world. The Gemsbok National Park in Botswana is 28,400 km<sup>2</sup> in size and the Kalahari Gemsbok National Park in South Africa is 9,591 km<sup>2</sup>. Together the peace park will comprise three million hectares. They share a common border of approximately 300 km and since 1948 have been functioning as a *de facto* integrated ecological unit. There is no fence separating the two parks which means that it is one of the few places in Southern Africa where wildlife can move uninhibited as the seasons change and weather conditions change. The northern park of the Botswana part is also not fenced, which increases the total area available for game movements.

The conservation agencies of the two countries and the staff of the respective parks, have been cooperating on the basis of a “gentlemen's agreement” on a range of matters since 1948 when an informal agreement was reached between South Africa and Botswana to cooperate on matters of mutual concern. Cooperation was taken a step further in 1964 when the park warden and some senior staff became honorary rangers in Botswana - hence allowing them easy access into the park and facilitating joint activities such as anti-poaching programs and conducting an annual game census. A Trans-frontier Management Committee was formed in 1992 to investigate options for further cooperation between the parks with the aim of establishing a joint management plan for the peace park together with a monitoring institution, which could provide general guidance to the respective park authorities.

### Legal arrangements

The establishment of the peace park took place against the background of a newly adopted constitution for South Africa, a provincial system with federal characteristics, and political antagonism that has characterised southern African relations

for many years. On the side of Botswana the process was relatively simple as Botswana is a unitary state and conservation matters are the responsibility of a government department. On the South African side a more complex picture arose due to the federal nature of its constitution.

The legal arrangements to provide for the establishment of the Kgalagadi therefore had to take account of a few complexities on the South Africa side, for example:

- South African national parks are managed and controlled by an autonomous statutory body, South African National Parks (SANP), and not by a government department. The national government therefore could not simply prescribe or direct SANP to undertake certain activities;
- The provinces of South Africa have constitutionally guaranteed powers in respect of tourism, conservation, roads and infrastructure, and therefore have a direct interest in the matters arising from any proposed peace park; and
- The South African Constitution reserves the right to conclude treaties to the national government and parliament. SANP could therefore not in its own right engage in the joint management arrangements with foreign states.

These issues were addressed in the following ways:

#### *SANP as an "organ" of state*

While the SANP had the managerial experience and expertise required for the co-management of the peace park, it did not have the legal basis to engage in activities outside of South Africa or to conclude a treaty with a neighbouring country. Recourse was taken to the South African Constitution, which provides in Section 238 as follows:

*An executive organ of state in any sphere of government may -  
(b) exercise any power or perform any function for any other executive organ of state on an agency or delegation basis.*

The SANP qualifies as an "organ of state" in that it is an "institution exercising a public power in terms of legislation..." As a result, the South African government could, through a national department such as the Department of Foreign Affairs, conclude the bilateral treaty and subsequently appoint the SANP as agent in terms of the constitution to fulfil the responsibilities on behalf of the government.

The treaty, which was signed by the two heads of State in 2000, sets out the legal basis on which the SANP and the Department of Conservation in Botswana could interact.

#### *Agreement between conservation agencies*

The treaty provides that the respective conservation agencies shall conclude a "record of understanding" as the primary agents responsible for the implementation of the treaty. The two agencies will therefore continue their operations in their respective parks in terms of their own national legislation although their actions are coordinated. A joint management agency is established to coordinate and integrate policy.

All management activities in the peace park are directed by a joint management plan for the entire area. The management plan deals with all aspects of conservation and tourism affecting the peace park. The agency meets on a regular basis and the park management on a weekly basis to discuss their activities.

#### *Creating a "visa-free zone"*

One of the most unique aspects of the peace park is that the area can be accessed by visitors from both the countries - South Africa and Botswana *without* any visa requirements when the

international border within the park is crossed. It is also envisaged that a third country, Namibia, would in time become part of the arrangement.

In essence, the park is therefore a "visa-free" zone provided that if a person wants to exit the park at another gate from which entrance was gained, a visa for that country will be required. This is one of the first, if not *the first*, arrangement in the world where a visa-free zone is created for the purposes of a national park.

#### *Involvement of the province of Northern Cape*

As national parks are a responsibility of the national government, the provinces do not have a direct role in the management and control of national parks. During the negotiations to establish the peace park, the province of the Northern Cape was consulted but did not play an active part in the negotiations. The province did however support the initiative at provincial and parliamentary levels.

In the daily management and implementation of the treaty the following are examples of close interaction with the province:

- Tourism is a provincial competency. SANP coordinates its tourism plan for the peace park with the activities of the Northern Cape to ensure maximum benefit is achieved.
- Roads and transport are provincial competencies. Although the infrastructure within the park is the responsibility of the conservation bodies, getting tourism to the park falls within the domain of the province. The upgrading and maintenance of the road leading to the park as well as other traffic concerns are the responsibility of the province.
- Environmental impact of new developments is a shared power between the national and provincial governments. All new developments within the park that may impact on the environment require an environmental impact analysis in accordance with national and provincial legislation. This includes the opening of rest camps for tourists, the establishment of a 4-wheel drive tour through the Kalahari dunes and the opening of new roads and tracks.

#### **Other peace parks in Southern Africa**

The second and third peace parks between South Africa and neighbouring countries are in the process of being developed. The Limpopo Park which includes the Kruger National Park and conservation areas in Mozambique, is creating the most interest as it could establish the world's largest wildlife park. In a similar vein as the Kgalagadi Park, the proposed Limpopo Park requires close co-operation with the Limpopo Province.

#### **In summary**

The establishment of peace parks in southern Africa provides an interesting example of provincial-federal interaction. On the side of South Africa, the legal arrangements in the constitution recognize the powers of the provinces in national matters including the conclusion of treaties, while they also guarantee provincial legislative powers. Within the domain of political interaction, some provinces have very close relationships with neighbouring states due to historical, ethnic and economic ties.

In the establishment of the Kgalagadi Peace Park, a fine balance had to be maintained between South African domestic legal arrangements, political relations between provinces and neighbouring states and the role of a statutory body (SANP) as the organ to implement an international treaty. 



# Briefs & Updates

## **Cyprus federation proposal rejected; EU membership approved**

A proposal for Cyprus by UN Secretary General Kofi Annan was rejected by the Greek Cypriot and Turkish Cypriot leaders in The Hague on March 11. Plans for a federal solution for Cyprus (see *Federations* Vol. 2, No. 5) have been put on hold. Both sides failed to compromise on two issues: a Turkish Cypriot proposal that their breakaway Cypriot state win full recognition and a Greek Cypriot proposal that refugees be allowed to return to their homes in northern Cyprus.

However, on April 14, the European Council of Ministers approved a statement to allow the signing of a treaty admitting Cyprus and nine other states to the EU next year.

## **Serbian prime minister victim of assassin's bullet**

After the assassination of Serbian Prime Minister Zoran Djindjic on March 12, the Serbian government put the blame on an organized crime group, the so-called Zemun Group. Djindjic's determination to crack down on organized crime was cited by the government as a move that sealed his fate. The late prime minister was instrumental in the replacement of Yugoslavia by the union of Serbia and Montenegro in February (see *Federations*, Vol. 2, No. 3 and pages 11-12 of the current issue). Djindjic was a former philosophy professor who led demonstrations that toppled the government of Slobodan Milosovic in October 2000. On March 13, Zarko Korac, Serbia's deputy prime minister was named as Djindjic's temporary replacement.

## **Québec voters replace Parti Québécois with Liberals**

On April 14, the Liberal Party defeated the secessionist Parti Québécois to form a new government led by Jean Charest in elections in the predominantly French-speaking Canadian province of Québec. Though only in his forties, Charest has had a long career in politics. He started as a Progressive Conservative member of the federal parliament while still in his twenties. Conservative Prime Minister Brian Mulroney named him to a number of important cabinet positions, including Minister of the Environment. In 1993, at the age of 34, Charest contested the leadership of the Progressive Conservative Party. He was the runner-up, but later led the party after it had suffered a disastrous election defeat. He took over leadership of the Québec Liberals after the 1995 secession referendum in Québec which came within a few thousand votes of splitting up



*Jean Charest, new Premier of Québec, led his Liberal Party to victory in recent elections.*

Canada. In 1998, Charest's Liberals failed to unseat Lucien Bouchard's Parti Québécois in the provincial election, though the Liberals won the popular vote. After Charest's recent victory, he promised to put an end to threats of separation while vigorously pursuing Québec's interests within the Canadian federation, particularly on the question of fiscal arrangements (See *Federations*, Vol. 2, No. 5 and Vol. Swiss Conference).

## **New Austrian government reduces role of far right**

On February 28, Austrian Federal President Thomas Klestil swore in a new government following long negotiations between the conservative People's Party and the far-right Freedom Party. Wolfgang Schüssel, the big winner in the elections (See *Federations*, Vol. 3, No. 1) heads the new government. The Freedom Party was reduced to one-third the number of seats they held in the last parliament. In the new government, they were given only three of nine ministries and three of five state secretary positions.

## **Pakistan opposes Iraq war**

On April 8, shopkeepers in Peshawar and other cities in northwest Pakistan closed their stores in protest against the US-led war in Iraq. The shutdowns were organized by business groups and backed by some Islamic groups. The same day, Najam Sethi, editor of the independent weekly newspaper *Friday Times* in Lahore, was quoted as saying that if a poll were held today, "... more people would be more inclined to vote for religious parties than six months ago."

On March 10, nearly two weeks before the war began, Prime Minister Mir Zafarullah Khan Jamali (see *Federations*, Vol. 3, No. 1) told parliament, "... Pakistan will not become a party to any decision which leads to bloodshed in Iraq". During the war, Pakistan's government refused to join the US-led coalition and remained critical of the war.

## **Kashmir slowly showing signs of peace**

The election of Mufti Mohammed Sayeed as Chief Minister of Kashmir promised changes and a new chance for peace (see *Federations*, Vol. 3, No. 1). On April 14, BBC correspondent, Jill McGivering, reported that life was "less tense" and "people feel more easy to move about the streets."

However, on April 11, Pakistan claimed that four Pakistanis were killed in shelling by Indian troops across the line of control in Jammu and Kashmir, and an Indian newspaper reported a massacre of Hindus at Nadimarg.

Despite the uncertainty, Bollywood filmmakers were considering shooting films in the state as a choice location that was "better than Switzerland". ☺

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