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CANADIAN FEDERALISM AND FOREIGN POLICY

*George Anderson**

This conference brings a welcome focus to an issue, which many of us have been increasingly aware of for some time. This program indicates how much ground there is to explore in terms of the federal dimension of Canada-U.S. relations. This conference can contribute importantly to aiding our understanding of the current state of North American integration.

It is well known that, since the Canada-U.S. Free Trade Agreement (FTA), north-south trade between our two countries has grown tremendously. The impact, obviously, has been greater for Canada- our exports of goods to the United States last year exceeded four hundred billion dollars, which is equivalent to thirty-five percent of our gross domestic product (GDP). But despite these striking numbers, we are still not nearly as integrated north-south as we are east-west. Even now, more than a decade after the FTA, inter-provincial trade in Canada has been calculated to be more than ten times more intense than it would be between our provinces and American states of equivalent size and distance. There is no doubt that the border still matters. A vivid example, which a number of us coming to this conference have experienced, is the level of air service between Toronto and Cleveland- two of the major cities of the Great Lakes region. The traffic between the two cities must be a tiny fraction of that between Toronto and Montreal or between Cleveland and Chicago.

While the focus of this conference is on "cross-border" issues, I am going to interpret my mandate more broadly. I shall advance some reflections on the more general issue of how Canadian federalism has influenced Canadian foreign and trade policy, as well as the conduct of our international relations.

The famous expert on federalism, the late K.C. Wheare, once wrote "federalism and a spirited foreign policy go ill together." In general, I will argue that this has not been the case with Canada, though our federal character has given some special wrinkles to our foreign policy and is becoming an increasing challenge in managing parts of our new foreign policy agenda- particularly in Canada- U.S. relations and environmental policy.

Let me start with a few observations on the very long view.

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You could tell the story of Canadian foreign policy up to the mid-twentieth century with very little reference to our provinces. At one level this is something of a paradox because the creation of Canada as a federation in 1867 was very much an initiative of politicians in our founding provinces one of whose preoccupations was the perceived threat from the new military power of the United States. But once established the provinces had no role in foreign policy- and the federal government had only a little more. In fact, the only constitutional provision on the issues was section 132 of the British North American Act, giving the Federal Parliament all powers necessary for performing the obligations of Canada, or any province arising from any Imperial treaties. The actual conduct of Canada's foreign relations remained in London.

London's dominance gave rise to numerous tensions in Canada and other parts of the Empire. Eventually, they culminated in the statute of Westminster of 1931, which recognized the external independence of Canada and the other self-governing dominions.

Canadian diplomacy took off with World War II, and most especially in the period of post-war reconstruction, when Canada emerged greatly strengthened at a time when the traditional powers of Europe and Asia were much enfeebled. So Canada played a disproportionate role in helping shape the new multilateral order of the United Nations, the Bretton Woods institutions, the General Agreement on Tariffs and Trade (GATT) and the North Atlantic Treaty Organization (NATO).

Canada's provinces are largely absent from this story. The major issues of the cold war and international order were well beyond their interests.

The international agenda today is quite different. It has broadened and deepened, especially on trade and environmental issues, and we now talk about the "New Diplomacy" where domestic and foreign policy intermingles. Canada's federal character itself has evolved significantly, with our provinces becoming much more powerful. We have also seen the rise of Quebec nationalism, which includes a strong separatist movement. These external and international changes have had some impact on Canada's international agenda, and its approach to managing certain foreign policy issues.

I. FEDERALISM AND CANADA'S FOREIGN POLICY AGENDA

Canada's foreign policy agenda, like that of most countries, is very heavily a result of broader international forces around such issues as peace, human rights, trade, the environment and so on. Of course, there are a few issues- whether an offshore boundary dispute, a fisheries issue, or a trans-boundary environmental question, which do arise in very local circum-

stances, but Canada's foreign policy has always been strongly marked by its strongly global character. In part, this was our way of dealing with our slightly uncomfortable geopolitical position sharing a continent with a superpower: we sought broader alliances and clubs as a way to dilute and sometimes tame our good neighbor.

This broad foreign policy agenda has been little influenced by provincial governments or our federal structure as such. Of course, the diverse nature of our society spread over huge spaces meant that different parts of Canada often had quite different views on specific issues— from military engagements overseas to our trade policy priorities. But these were played out largely through federal politics and other pressures on the federal government with our provincial governments being very little engaged.

The major exception has to do with national unity and the place of Quebec within Canada and within the world.

Successive Quebec governments since the 1960s have sought to establish an international presence and personality for Quebec. At one level, this is not dissimilar to what is happening with many sub-national governments around the world – from Flanders, to Catalonia, to Bavaria. At another level, however, the Quebec case has been exceptional and this for three reasons.

First, Quebec governments have invested a level of resources into international relations which is unparalleled by any other sub-national government in any other federation. Earl Fry has calculated that Quebec's spending on its representation abroad and its international programs is greater than the combined spending of all fifty states of the United States. Quebec has a full-time Minister of International Relations, who presides over a large department, with an extensive network of delegations and some lesser offices around the world. The Quebec government sponsors a variety of international programs, notably in the area of cultural educational and scientific cooperation. Its ministers frequently travel on highly organized foreign missions and seek the highest level of political and business contacts.

Secondly, Quebec is exceptional because a major foreign government took a direct interest in its place in international relations. The world awoke to this reality when General de Gaulle uttered his famous cry of, "Vivre le Quebec libre" from the balcony of Montreal's city hall in 1967. The complexities, of what came to be known as "triangular diplomacy," between Ottawa, Paris and Quebec City was one of the greatest challenges of Canadian diplomacy from the 1960s until well into the 1980s at least. The Canadian government has accepted that the Quebec government has, in the official phrase, "direct and privileged" relationship with the government of France, which means they take place within a framework agreed between the Canadian and French governments but largely in the absence of a federal interme-

diary on a day-to-day basis. France treats Quebec as a unique case, including such a rare honor as regular reciprocal visits at the level of the Prime Minister and Premier.

Over time, Quebec's place in international diplomacy has extended beyond this trilateral context. A common objective of Canadian and French diplomacy through much of the 1970s and 1980s was the creation of an international francophone community analogous to the Commonwealth. This required a mutually satisfactory definition of Quebec's role in such a community. The ultimate solution was to make the Quebec government a "participating government" as opposed to a "member government" and by restricting its role to areas of technical and cultural cooperation as opposed to issues of foreign policy as such. New Brunswick, which is one third French speaking, was given a similar role. However, the Quebec government is constantly seeking to expand its role in international forums further as we have seen with their pronouncements about the Summit of the Americas in Quebec City right now.

Finally, and most delicate of all, the Quebec case is exceptional because Quebec governments since 1976 have frequently been formed by the Parti Quebecois, whose founding objective is Quebec independence. Even if such governments have acknowledged they had no mandate to seek to achieve this in the short-term, it is clear that the main objective of Quebec diplomacy under the Parti Quebecois has been to prepare the ground for the day when the Quebec government might seek international recognition of Quebec's independence.

As you may recall, under Premier Jacques Parizeau the Quebec government sponsored a referendum in 1995 that sought a mandate on what is called sovereignty-partnership. The question itself was confusing- polls showed a significant number of those voting yes did not understand that this could result in Quebec no longer being a province of Canada. But Mr. Parizeau stated that he would use a "yes" vote in such a referendum, by however small a margin, as a justification to proceed towards a unilateral declaration of independence.

After the extremely close result of the 1995 referendum, the Government of Canada determined there was a need to challenge such a view. The government asked our Supreme Court for its opinion on whether the Quebec government had any right in Canadian or international law to proceed with unilateral secession. The Court said there was no such right, but found that if a clear majority of Quebecers voted in favor of a clear question on succession then the other constitutional actors in Canada- the federal and provincial governments- would have an obligation to engage in negotiations on secession, though the outcome of such negotiations was in no way presumed.

Following this judgment, the Government of Canada introduced its so-called Clarity Law: this sets out the requirements and procedures for determining the clarity of a question and majority in a referendum held by a province that would be necessary before any negotiations could be engaged. The law reaffirms that secession itself could take place only as a result of a constitutional amendment following negotiations and it requires that the government of Canada may not enter such negotiations unless the House of Commons has found both the question and the majority in a referendum on succession to be clear.

Thus Canada's approach is not to deny the possibility of succession but to bring it clearly within a framework of law and democratic theory. Many thoroughly democratic countries, including your own- as well as France, Spain and Italy- constitutionally deny the possibility of secession. The Canadian approach is less categorical. Given the number of secession movements around the world, there has been a great deal of interest internationally in Canadian thinking. The Supreme Court opinion in the secession reference and the Clarity Act are widely studied around the world.

So I can summarize this section, by saying that the Quebec issue has had an important place in our foreign policy- and that our recent initiatives have broader implications for how secession might be dealt with in other parts of the world.

II. CANADA'S INVOLVEMENT OF PROVINCES IN FOREIGN AFFAIRS

Let me now turn to the less existential issues of the day-to-day management of Canada's foreign relations. As I said earlier, the lead on foreign policy remains very much with the federal government. At the same time, there has been growing provincial interest in selected areas of foreign policy- most notably in trade and environmental issues. This has required adjustments to include provinces more fully in certain negotiations and international procedures. I was asked also to touch on the provinces and human rights issues: the provinces have played a minor role here, though in two interesting cases they have been on the receiving end of international opinion in this area. I shall review each of these in turn.

(a) Trade

Trade issues have traditionally been the major foreign policy interest of our provinces. That said, for many years, they played a very modest role indeed. For example, Michael Hart's excellent history of Canada's relations with the GATT, tells the story of fifty years without a single reference to a

province or a provincial politician. A specialist would recognize a provincial issue from the passing references to certain non-tariff barriers- items such as wine and liquor marketing and government procurement- but there were far enough from the main story not to require serious attention.

That chapter of our trade history is essentially closed. I cannot imagine a history of the next fifty years of trade relations not paying significant attention to the provinces. Some of our provinces now have developed real expertise on certain aspects of trade policy, reflecting their own distinct interests. The new trade policy agenda reflects past success in addressing tariffs and border measures so that non-tariffs barriers, often at the provincial level, are frequently in play. And finally, with exports now representing over forty percent of our GDP, trade is too important for provinces not to have a view.

Patrick Monihan has addressed this conference on the constitutional arrangements around treaty making and foreign policy in Canada. The Canadian constitutional framework means that the federal government has a clear interest in working with the provinces on many trade treaties, especially because provinces can play a determining role in whether certain provisions are respected.

This need to involve the provinces was first recognized in a significant way in the Tokyo Round of the GATT, when federal officials went to great lengths to keep provincial counterparts informed. But it was the Canada-U.S. free trade negotiations, which marked a quantum shift in how we manage such negotiations. The federal government was keen to have the provinces on side, both to have the political support on a very decisive issue and because they had direct responsibilities touching many issues. The federal government was only partly successful in having the support of provincial governments- Ontario became a notable critic of the deal. But it did succeed in working through all the issues with the provinces at numerous federal-provincial meetings between officials.

While happy to be extensively consulted, some provinces had hoped that the federal negotiators would take instruction jointly from the federal and provincial governments. The federal government has not been prepared to go this far. It does not seek the formal agreement of the provinces but it tries to understand their positions and to develop a broad consensus consistent with the major objectives it has set for the negotiations. It also has to recognize that on points where the provinces are most relevant, a foreign government may seek assurance that the province will honor an undertaking.

The provinces can also become heavily involved in particular disputes, such as the current cases of PEI potatoes and softwood lumber. We make every effort to involve provinces closely in our management of these. Of

course a complex issue like softwood lumber involves conflicting views between provinces as well as in our industry, and this complexity is equally reflected on the U.S. side of the border. The federal government has the lead, but it is managing a multilevel game, both internally and externally.

The openness of the U.S. system requires very effective representation of Canadian interests in Washington, including on Capitol Hill. Our embassy works hard at doing this in a way, which serves all Canadian interests, including those of provincial governments. Provincial officials come frequently to Washington and there is a full-time provincial relations officer in the embassy. However, the federal government has not approved provinces opening separate representation in Washington because it is convinced we are better with a strong and coordinated voice.

On balance, Canada's federal arrangements have worked reasonably well in dealing with our trade and investment policy concerns. Of course, there have been points of federal-provincial dispute, but they have been far less frequent than the points of agreement. Canadian negotiations would almost certainly say that our internal challenge is less than that in your country, where you have both a federal-state dimension and the division of powers between the administration and the Congress.

(b) Environment

Let me turn briefly to the environment. This was not a head of power under our constitution drafted one hundred thirty-four years ago. It is effectively a concurrent jurisdiction because of the impacts of a variety of federal and provincial responsibilities, such as provincial powers over property and resources and federal responsibilities for fisheries and the criminal law. Thus, the provinces are even more important in international environmental agreements than they are in the trade area.

International environmental law is much less developed than international trade law, so we have a shorter track record to evaluate.

Canada's approach to managing important environmental negotiations is essentially the same as for trade negotiations; we involve the provinces intensively, but the federal government retains its ultimate prerogative to enter into agreements. This can lead to large Canadian delegations. At the Kyoto and the Hague meetings on climate change, for example, all provinces were represented, frequently by a Minister. They were kept closely apprised of all developments, though they were not always in the room when key negotiations were being conducted.

There is perhaps less consensus on certain major trade policy issues. For example, the very different energy interests of our provinces means that tensions amongst the provinces risk being pronounced on an issue like climate

change. That said, Canada has had an effective environmental foreign policy. It has lead on certain multilateral agreements on such issues as bio-safety, species at risk, and ozone, and has played a full part on climate change. Canada first undertook its Kyoto commitments without the active support of most of our provinces, thought they did not renounce the commitment either.

In Canada-U.S. relations, we have important bilateral agreements on Great Lakes water quality, boundary waters, the Columbia River and on acid rain. All have involved the provinces' cooperation. We also have occasional frictions between neighboring states and provinces on the environmental impacts of projects such as a mine in British Columbia or a river diversion in North Dakota, which can be difficult for both our federal governments to manage.

These brief observations on both the greater importance of provinces on environmental questions and the lower degree of consensus on some issues suggests that managing environmental foreign policy may prove an even greater challenge than trade policy.

(c) Human Rights

Let me touch briefly on one other area of foreign policy, namely human rights. There has been considerable progress in recent years in developing more considerable progress in recent years in developing more robust international agreements on a wide range of human rights issues- from war crimes, to refugees, to child labor, to women. Canada has played a leading role in these developments, some of which bear on areas of provincial jurisdiction. We have involved our provinces in this, largely through a regular federal-provincial committee that meets twice a year. In general, the standards in an advanced democracy like Canada are such that substantive difficulties with proposed international agreements are rare.

Given this, it is somewhat surprising that our provinces have been the objects of international scrutiny on at least two occasions in relation to their compliance with international human rights covenants.

First, in 1993 a Quebec law, which prohibited external commercial signs in languages other than French, was challenged before the United Nations Committee on Human Rights. The United Nations Committee on Human Rights found this a violation of the guarantee of freedom of expression under the International Covenant on Civil and Political Rights provisions. While the finding was not binding, it played an important role in influencing the Quebec government's decision to amend its law.

More recently, in 1999, the same United Nations Committee on Human Rights found the Ontario government in non-compliance with the Covenant's

freedom of religion provisions because the Catholic schools are the only denominational schools, which can be funded through taxes. The federal and Ontario governments had both strongly defended Ontario's practice. Ontario has indicated it will not comply with this opinion, which has not had much public attention in Canada.

III. CONCLUSION

In conclusion, I suggest that Canada's federal character has not prevent its having a spirited foreign policy. For many years the provinces had little role in any aspect of foreign and trade policy. Even today, most classic "foreign policy" issues are of little interest to them.

Canadian federalism has given rise to one special foreign policy challenge around the place of Quebec in the world. This has involved accommodations and has been achieved without undermining Canada's place and effectiveness internationally.

The New Diplomacy also presents challenges, not just for Canada, but also for all federations and perhaps for all countries. The extent to which the international agenda is penetrating more deeply into areas of domestic law goes to the heart of the role of governments. The government of Canada has largely embraced this agenda and is working much more closely with our provinces to achieve it. Fortunately, there has been enough consensus in the country to permit Canada to be an effective voice and partner on most issues, so far.

