Federalism in Burma: A Special Issue

This is a special issue of Legal Issues on Burma Journal about federalism, while federalism itself is a special issue for Burma. This publication is intended to be a contribution to a broad-ranging discussion on governance options for the country. During the last century, Burma has undergone several regime changes: from British colonial rule and Japanese fascist rule to constitutional rule and military rule. However, unfortunately, misrule has eventually been the common fate of the people of Burma. The search for good governance continues but has yielded no results. A new consciousness over the years has grown in the feasibility of federal options.

Legal Issues on Burma Journal has invited a group of authors with expertise on Burma—and on good governance—to examine the question of federalism from various points of view. The historical circumstances, the dominance of ethnicity models of federalism that might apply to the preconditions for a valid democratization process, are all discussed in this issue. Our purpose is to pave the way for international understanding in facilitating a viable constitution for Burma. Hopefully the present articles will stimulate further discussion to help foster a stable, democratic governing structure. The people of Burma, after too many generations of misrule and abuse of power, are in desperate need of a way to govern themselves in a constitutionally decentralized structure that will take into account the needs for both local and ethnic autonomy.

Legal Issues on Burma Journal is bringing this special issue on federalism at a time when historical talks have been going on for democratic transition. Dialogue should be promoted, while at the same time the moment for a new constitution has come. Notwithstanding Burma’s ethnic diversity, there is an enduring sense of Burmese identity. The attempt to exercise centralized power associated with the Burman ethnic majority has created an atmosphere of dissidence and resistance. This has been heightened by four decades of military rule, as the armed forces are heavily
dominated by the Burman ethnic group.

Federalism may be an effective instrument for the management of ethnic and other cleavages. It disperses conflicts, promotes empowerment to local level, and unleashes the forces locked in prejudice and mistrust. The released forces can become creative forces to rebuild the Burmese society. Federalism will generate a consensual process of constitution-making, involving the main interested parties. It will play a critical role in the construction of a new constitutional order in Burma. Hopefully this special issue of the Journal will provide a balanced perception on the core issue facing Burma’s transition.
Federalism as a Solution to the Ethnic Problem in Burma

Josef Silverstein*

From January 4, 1948, the day the Union of Burma came into existence as an independent nation, the people and their leaders have been divided over how to achieve national unity and structure their state. Until 1988, it was federal in name and theory, but unitary in practice. After five decades of political discussion, peaceful movements for secession or autonomy and warfare, the majority Burmans and most of the ethnic minorities remain disunited. From time to time efforts have been made by the Government of Burma and the minorities, either alone or in groups, to end revolt and disunity, but none have succeeded.

Today, the basic problem is the same as the one the nation’s founding fathers faced fifty years ago: how to construct a political system wherein diverse peoples feel free and equal, able to govern themselves in their own areas, protect and preserve their languages, cultures and traditions, while at the same time give their political loyalty to the nation-state.

But today’s political conditions are different than they were when the state was created. In 1947, the Burman leaders made a sincere effort to win the participation of the minorities in a common political union. Both at the Panglong Conference and, later, at the constitutional convention, the participants came as equals, seeking each other’s help and agreement. The participants thought they found the answer in the idea of a federal union. However, the state they erected was soon challenged by misunderstandings and mistrust as faulty draftsmanship, fundamental disagreements about how power was divided, the degree of local authority and
the threat of Burmanization led to disunity, discontent and rebellion. In 1962, the military overthrew the government, arguing that the move was necessary because the minorities were bent on breaking up the union and creating independent states. The coup leaders set aside the constitution and, under their decrees, created a centralized state with all power located in Rangoon. Twelve years later, in 1974, they institutionalized the unitary state in a new constitution while retaining a nominal federal form. Under the principle of democratic centralism, they concentrated authority at the apex, made all subunits of government subordinate and placed the whole system under a single political party created and controlled by the military. The new constitution did not bring peace and national unity. Instead, it brought wider revolution and new demands by some minorities for the right to leave the Union.

In September 1988, the Burmese military leaders seized power from the government they created fourteen years earlier, abrogated the constitution they wrote and set the nation on a new course. Following their dissatisfaction with the outcome of a free and fair election in 1990, which would have handed power to the representatives of the people, the soldier-rulers wrote a charter (State Law and Order Restoration Council Declaration No. 1/90) empowering themselves to govern by martial law and began erecting a new state structure. Through force and negotiations, they created the illusion of peace by crushing all opposition in the Burmese heartland and by signing ceasefire agreements with fifteen ethnic groups, leaving only two in open revolt.

Today, the military rulers of the State Peace and Development Council (SPDC) are in the process of imposing their ideas about how to solve Burma’s long-festering national unity problem. While the soldier-rulers have given the appearance of consulting some of the minorities and have brought them into the formal process, the majority of ethnic groups who have been at war with the state and have entered into ceasefire agreements have not been included. The ethnic minorities have been working since the early 1990s to develop their ideas about a state structure based on the principles of equality, federalism, democracy and human rights. They look to the future when a constitution-making process, on the order of 1947, will emerge that will enable them to participate and engage in full and open discussion with the leaders of the military and the peoples of Burma. Together, they hope a new constitution will be written which all will support, making it possible for the peoples of Burma to live peacefully together and solve problems by parliamentary means.

Since 1990, the military has slowly revealed its ideas about the constitution and the political structure of Burma it wants to put in place. From its
several statements about why it seized power and what it wants to see established before it transfers power, there are a number of implied as well as expressed assumptions:

1. **There must be an end to social and political disunity and the threat to the integrity of the state.** The SPDC never tires of reminding the people that its primary purpose in taking and holding power stemmed from the “Three Causes”: prevention of the disintegration of the Union, prevention of the disintegration of national unity, and perpetuation of sovereignty. The military leaders speak frequently of the threats to Burma posed by the rebellions of the Burma Communist Party (BCP), the ethnic minorities, the invasion of foreign forces, the breakdown in law and order in 1988, and the interference in internal affairs by foreign governments. With the demise of the BCP, the end of the threat of foreign invasion, the reestablishment of law and order in the heartland, and the ceasefires with most of the minorities, the military is now putting all its energies into writing a constitution which will eliminate forever the Three Causes and establish permanent peace and unity in the nation.

2. **There must be recognition of the rights and interests of the several minorities and they must approve of the constitution before it can be implemented.** Under the two previous constitutions, the rights and interests of several minorities, especially the smaller ones, were not clearly stated and this led to misunderstanding, discontent and revolt. The military wants all minority groups recognized, their participation in the drafting of the constitution and approval of the final draft. In the past, the larger ethnic minorities spoke for the smaller ones living amongst them, but for many, this was unsatisfactory. To avoid a repetition of the past, the military is determined to win minority support by granting of nominal control of local administration in their areas and allowing them to preserve their cultures and traditions.

3. **The future constitution must be based on a multiparty political system.** After fulfilling a promise, to hold multiparty elections, the military talks about the creation of a “multiparty democratic system” as a goal for the new constitution. It makes no mention of a federal union. It is clear that the SPDC, rather than establish democracy on the Western model used in the past, intends to create a directed state in which elected representatives will be able to ratify the policies, legislation and actions of the leaders. The SPDC looks to the military-led polity of Soeharto’s Indonesia as one model.

4. **The military must be given a permanent role in governing the future state of Burma.** In the past, when national and territorial unity and sovereignty...
were threatened, the military, as a last resort, was called upon to save the situation. The SPDC argues that it paid a heavy price in personnel losses as it fought to save the nation in the face of opposition forces which had been allowed to grow strong and entrenched. The SPDC believes that this cycle can be broken only if the military has a leading role in the government during normal times and can shape national policies which will settle disputes before any threat matures.

Acting under the authority it has given itself in Declaration No. 1/90, the military created a National Convention to draw up the principles for the new constitution. It began its work in January 1993 following the selection and invitation of 702 delegates representing political parties, the ethnic minorities, social classes and distinguished individuals, to carry out the task under its guidance. With the exception of delegates who were elected in 1990 to the national parliament, the others neither have a popular mandate nor do they head groups for whom they are authorized to speak. Amongst the minorities invited, there are none from those who entered into ceasefires after the Convention began. The members of the National Convention are restricted in discussing the meetings with people outside; they are also restricted in discussing the issues under consideration in the meeting with other delegates except in accordance with the narrow rules imposed by the conveners. Some of the delegates, dissatisfied with the process, left and sought refuge either among the minorities still outside the military’s control or have gone abroad. Others have been arrested and imprisoned. After more than nine years, the National Convention still has not completed its mission.

On two important issues, the National Convention has finished its work, namely the state structure and the role of the military in the political leadership of the nation. The National Convention has agreed that there will be a nominal federal union consisting of a national government and fourteen states and regions. Within the states and regions, there will be self-administered areas for the ethnic groups. The larger of these areas will be designated as self-administered divisions and the smaller as self-administered zones. Although it remains for the constitutional convention to define the powers and limits of these divisions and zones, it is agreed that they should be able to practice and preserve their traditions and cultures while the State will have responsibility for helping develop local languages and literature, fine arts and cultures of the national races. The State also shall help promote social-economic development. One representative from each of the self-administered divisions and zones will be sent to the National Parliament.

Thus far, the National Convention has adopted no principles to guide the
authors of the future constitution on how the states and regions, the self-administered divisions and areas will finance their governments and programs. Since the land and economic resources have been designated as belonging to the State, the power to tax residents and businesses, if granted, will provide limited income, especially in the smaller and poorer subdivisions. Thus, as under the previous two constitutions, the subunits of government will be dependent upon the national government for most funding and this will open the door for interference in local affairs.

The principles adopted regarding a leading role for the military reflect a great concern for the security of the state from enemies both inside and outside. The military’s draft constitution stipulates that the future president of the nation must have extensive military experience and have resided in Burma continuously for twenty years. Also, the two houses of the legislature must reserve 25 percent of seats to the military representatives chosen by the Minister of Defense. Moreover, the budget and administration of the military will be under the control of the Minister of Defense and beyond the scrutiny of the civilian-dominated legislature. In times of national emergency, the chief of the armed forces can take all state power and exercise it “for as long as necessary”.

In this blueprint for the garrison state that the National Convention is planning to build up, the military will have a permanent role in the subunits of the State through participation in the administration at all levels and responsibility for defense, security, and border administration. In times of national emergency, it will have the same powers in the subunits as it will have at national level.

If it is the military’s objective to create a multiparty democratic system, it is hard to see what powers and responsibilities remain for the people to exercise. If the adopted principles for the new constitution are compared with the structure of the government and the powers of the Burma Socialist Programme Party (BSPP) under the 1974 constitution, it is clear that the SPDC intends to recreate the earlier model. Only, this time it replaced the party with the military and has given it all powers necessary to overcome popular opposition wherever and whenever it occurs.

There is an alternative set of principles for the organization of state and society developed by the Democratic Alliance of Burma (DAB). This is an enlarged coalition of the National Democratic Front (NDF, an organization of the minorities), Burman students, monks and other individuals. Drawn up by a small committee of the DAB, the authors began their work by studying various federal systems. They mixed borrowed ideas with their own to produce a constitutional solution for Burma’s long-
standing problem of national unity. The committee produced three drafts under its original Kachin chairman, and a final draft after the Kachins withdrew from the NDF and DAB. The third draft was reviewed and discussed at a seminar of international experts. The final draft, reflecting the criticisms and comments made at the seminar, was adopted by the first Congress of the DAB in July 1993.

The object of the study/drafting committee was to find a way to end a state of warfare and disunity in Burma and to create a federal system where all parties could preserve and protect their cultures and traditions. Anticipating the day when representatives, freely chosen by the people, would be able to sit together to exchange ideas and arrive at a common acceptable consensus, the committee hoped to prepare its future representatives so that they could articulate the interests of their groups and contribute to erecting a lasting political structure all could accept and defend.

At the heart of the DAB proposals is the idea that the source of power resides in the people. The people must be free, equal, and enjoy the rights of self-determination. They must have rights and freedoms as set forth in the constitution and the political process must be democratic. The society must be organized as a federal union in which the constituent units are based on the principles of equality and self-determination. The territory of Burma will be divided into National States and Nationalities States. Under conditions set forth in the proposed constitution, the States will be subdivided further into National Autonomous Regions and Special National Territories. National States will be based on the existence of a large national group, representing two thirds of the population and recognized as a historical group, with a common territory, language, customs, culture, and a viable economy. Nationalities States will be composed of two or more ethnic groups, none of which have two thirds of the population, a common territory and a viable economy. National Autonomous Regions will be formed inside States among nationalities, making up one fourth of the State population, living on historic lands, each having a separate language, literature and culture. Special National Territories will be formed in areas where the nationalities have a majority in the territory, a separate language, culture, and customs.

Recognizing that the military in the past abrogated the constitutions, changed the political configurations and usurped the power of the people, the DAB proposals set forth the idea of civilian supremacy with the military subordinate to the elected government and not an independent actor. According to the DAB, the military shall never interfere in political matters and it shall have no place in the national legislature or administration and have no role in the subunits of government. The armed forces are to
be commanded by the Minister of Defense and no active member of the
defense forces shall be appointed as Minister. Defense policy will be set
by the Defense Minister and the Federal Cabinet. The armed forces shall
be formed from troops drawn proportionally from the member states.
Each State will send a proportionate number of candidates to the military
academies for training as officers. The President shall appoint, upon the
recommendation of the Prime Minister, the Commander-in-Chief; the of-

cine shall be rotated among the military commanders from each State
who together will form a Board of Commanders. The constitutional draft
of the DAB also would restrict members of the armed forces, at any time,
from interfering in political matters, involving themselves in business and
from declaring a state of emergency, a military administration or martial
law.

A careful reading of the DAB constitutional proposals makes clear how
differently its authors view the problems and solutions of Burma’s dis-
unity and civil war. By the solutions the minorities offer, in the way of a
new basic law, the problems are seen as stemming from an absence of hu-
man rights and the existence of a true federal union. The most important
denial has been the right of the people to rule themselves. It was taken
from them by the military coup of 1962 and was not returned under the
1974 constitution, and it is not granted in the proposals of the National
Convention. In the past, the national army misused its arms against the
people and usurped what little power they had. Because the minority-
written constitution starts from assumptions the other will not acknowl-
edge and offers solutions the other has not even considered, there seems
to be no way to resolve the problem of disunity. There is a strong prob-
ability that there will be a renewal of warfare in the future.

With the two sides so far apart and with the military determined to im-
pose its solution, an outside voice, to offer a third way, may be the an-
swer.

At the 1994 United Nations General Assembly meeting, the assembly
adopted a Burma resolution which included a request to the Secretary-
General to help the Government of Burma achieve national reconcilia-
tion. In the same year, his deputies made efforts to speak to the members
of the SLORC and to the minorities—both in revolt and in ceasefire
agreements with the armed forces. The fact that the world body asked the
Secretary-General to offer assistance in solving the problem of national
unity reflected the belief in the General Assembly that a third party was
necessary to move the issue forward in a positive way. It remains to be
seen if the military will depart from its previous position (that the issue is
an internal matter and not the concern of the world body) and allow the

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Secretary-General to contribute to a lasting solution.

If the Burmese military acknowledges the request in the General Assembly resolution, the Secretary-General will find the DAB constitutional proposals a good starting point. With their emphasis upon human rights, popular rule and federalism, they offer the outlines for the only solution likely to succeed. It should be clear to the Secretary-General that the military proposals for a unitary state cloaked in federal dress was intended to disguise the real outcome of its National Convention’s principles and will not provide a lasting solution. The Secretary-General should know from the talks his deputies had with the minorities that the people do not want a “Potemkin Village”, they want a real federal union. The Secretary-General also should know that if the SPDC is to surrender its power to popular rule peacefully, there must be some kind of role in government offered to the military. Here the creativity and wisdom of the Secretary-General will prove invaluable. There is a useful model for this problem in Chile which he might want to consider.

Finally, the Secretary-General knows that, after five decades of struggle, the minorities have been willing to sacrifice life and property to achieve what they were promised in 1947 and there is little likelihood that they will accept anything less now or in the foreseeable future. A careful reading of Burma’s history will show that long before the British arrived, the minorities lived under their own leaders, spoke their own languages, and developed and passed along their culture and traditions. Only in 1947 did the minorities voluntarily accept the Burman invitation to join in forming an independent union. It was the promise of that union the minorities sought to achieve and still desire. They stand ready today to form a union with the Burmans provided that it is based on the principles they fought for and enunciated in the several DAB constitutional proposals. They are ready to discuss their proposals alongside those offered from other quarters. They will accept refinement and further elaboration when they are discussed in a future constitutional assembly and will leave it to the elected representatives of the people to decide.

Today, the SPDC has the power to solve the problem and end the threat of war and disunity forever. With the help of the Secretary-General, the SPDC may be convinced that a peaceful federal union under democratic civilian rule is better than a permanently hostile population and the threat of renewed internal war.

In 1997, there were important name and personnel changes in the military ruling group. The name, State Law and Order Restoration Council (SLORC) was changed to State Peace and Development Council
(SPDC). The membership of the ruling group was enlarged to include all military regional commanders and raising their military rank. A few of the original ruling group were dropped because of corruption and taking advantage of their power to enrich themselves. While these changes were important, especially by including all regional commanders at the highest level, their local authority increased informally as the areas they commanded became the equivalent of private fiefdoms. During the next few years there was no rotation of field commanders and several acted with unbridled power.

These personnel changes and the powers they wielded had different impacts upon the people under their rule. But in no case did the changes benefit the ethnic minorities who lived under their authority. Forced labor continued and was widely reported by the UNHCR, was acknowledged in the annual Burma resolutions unanimously adopted by the UNGA and in the detailed 1988 study of the problem by the ILO.

There is no evidence that the SPDC made any effort in the years it has ruled Burma to reach out and talk with the leaders of the minorities about the content of a new constitution. Their spokespeople continue to say that work on a new constitution is going forward, but they have produced no evidence or documents which affirm such action. Meanwhile the ethnic minorities continue to discuss amongst themselves the content of a future basic law for Burma, but their words and speeches fall upon deaf ears amongst the rulers.

In the Fall of 2000, following an incident wherein Daw Aung San Suu Kyi was returned to house arrest following her attempt to leave Rangoon and visit party headquarters outside, the military intercepted and forcefully returned her to her home. In this new atmosphere of heightened tensions, Am. Razali Ismail of Malaysia, was appointed as the special representative of the Secretary-General of the United Nations to Burma to help find a lasting solution to the present impasse. Following discussions with the military leaders and Daw Aung San Suu Kyi, direction discussion between the two, called, “confidence building” led to a reduction in verbal attacks upon her in the newspapers, the beginning of the release of political prisoners and the opening of a few party headquarters. While these steps were views as progress in the stalemate between the rivals for power in Burma, there were no three-way talks between the SPDC, NLD and the ethnic minorities as a first step in a discussion by the key leaders who will one day have to agree upon the content of a new constitution.

A new federal constitution is a long way off; there is no sign that the military will agree to one which it does not dictate and there is no sign that
the NLD leaders and ethnic minorities will agree to a basic law which is not federal and reflects their goals and aspirations. Thus, as the days of 2002 pass, the struggle for a new constitution remains deadlocked, the chief protagonists still are not talking and the world leaders still are unable to find a way to bring about real change in Burma.

**Endnote**

* Professor Josef Silverstein is an academic from the United States of America. He is a well-known Burma expert with a long history of involvement in the issues of Burma. The Professor witnessed political changes in Burma from democratic regime to dictatorship in 1962, as he was teaching at Mandalay University in central Burma during that period. He has written and edited several books and articles on Burma. His book entitled “Burma: Military Rule and the Politics of Stagnation” (Cornell University Press, 1977) is a well-known text.
In Search of a Constitution for Burma

Aung Htoo*

Constitution can be a strong foundation for every country to be established as a just, free, peaceful and developed society. Burma is in the process of producing a new constitution. By amalgamating lessons from previous historical experiences and current practical situation of the country, it is hoped that a proper constitution for future Burma might be produced.

Major concern is that without finding ways and means to resolve the underlying issues of a country, production of constitution superficially is meaningless and constitution might not be effective from positive aspect in our future society. In this account, the constitution making process or the way, how a constitution will be produced, is of paramount importance. In attempting to produce a constitution, one-sided or un-proper guidance to the people should be avoided. In a genuine constitution making process, the people, regardless of race, social origin, gender and etc, should be allowed to uncover their sufferings frankly, propose possible solutions positively, and express their will to restructure the society freely thereby leading the process to be more and more participatory. Any kind of discrimination should not be exercised within a genuine constitution making process whether be it federal or state constitution making processes.

A genuine constitution making process will be able to create a venue wherein all democratic opposition as well as the various ethnic nationalities can establish understanding, coordination and cooperation through the dialogue processes on constitutional issues resulting in establishment of foundation for national reconciliation in our future society. Such a process will certainly create a pressure over the ruling military junta in or-
order to hold a genuine political dialogue with the democratic and ethnic oppositions. Furthermore, in the case of Burma, production of proposed Federal or State Constitutions (drafts), not as blue-prints, might be applicable as a reference in our future Constituent Assembly.

This report is compiled to share with the readers, in respect of the experiences and knowledge that we have gained in a study tour to Germany. Moreover, it will also reflect the reporter's personal concern regarding with current constitution-making processes as well as some controversial perspectives on national reconciliation issue, among various ethnic nationalities including majority Burman people, with reference to the experiences before and during that trip.

My sincere thanks will go to all the responsible leaders, from NDF, UNLD (LA), Burma Project, Burma Bureau and Friedrich Ebert Stiftung (FES), who made our trip a success.

A Study Tour

A study tour to Federal Republic of Germany was arranged jointly by the National democratic Front and the Union Nationalities League for Democracy (Liberated Area) under the sponsorship of the National Reconciliation Programme, which is supported by Friedrich Ebert Stiftung. The Tour commenced on the 4th of December and concluded on 16 December 2001. The Study Group was constituted with representatives from state constitution drafting committees of all Nationality States and from these ethnic communities which are in the process of forming their own constitution Drafting Committees in majority. They are Saw Hla Henry (Karen), Ko Gaung Di (Kachin), Ko Shwe Myo Thant, (Karenni), Naing Sun Htaung (Mon), Ma Chin Chin (Chin), Daw Shirley (Shan) and Khaing Myo Khaing (Rakhine). Ma Nan Yin (alias) Ma Hnaung, Daw C Phora and Ma Htay Htay Lwin from Women League of Burma, Tzao Zan Yawnghwe (a) Dr Eugene Thaik and Dr Salaing Lian Mong from UNLD(LA), U Thein U and myself from the Burma Lawyers’ Council.

Burma Project and Burma Bureau

Berlin Based ‘Burma Project’ is an organisation founded by the Burmese
pro democracy exiles in Germany and German friends. On the arrival of our study Group at Berlin, President U Khin Maung Yin and secretary U Ye Myint of Burma project called on our Study Group at the Hotel and hosted a dinner to us. We also shared views on drafting of the constitution. Burma Bureau was founded by Cologne based pro democracy Burmese exiles. U Nwe Aung is the president of Burma Bureau.

Federalism: A German-Burmese Dialogue

Our study Group attended the workshop titled 'Federalism: A German-Burmese Dialogue' jointly sponsored by the Burma Project, FES and Burma Bureau. Some German scholars, Friends from Burma Project and Burma Bureau, Prime Minister Dr Sein Win of National Coalition Government of the Union of Burma and Han Yawngwae of Euro–Burma office also attended the workshop. Mr Detlef Dzem Britzki, member of the German parliament addressed the gathering and welcomed the participants of the workshop. Some leading scholars raised following four points and questions with utmost concern: (1) What is the mechanism the constitution drafting committees apply to contact and coordinate among themselves? (2) What are the basic principles of the state constitutions (draft)? (3) Are there state constitutions (drafts) based on the principle of establishment of independent states? (4) Are there constitution drafts based on the principle of Federation of states wherein states will remain constituent of the Federal Republic?

Dr Wagner, a professor and research scholar in Bonn University was specially invited to the workshop. According to Dr Wagner, as far as ‘federalism’ is concerned, there is no standard ‘Federal Structure’ which is universally accepted. Even those countries which share common historical background differ in the way they establish their respective nation-state. India and Pakistan are examples. Every country has its specific characteristics. Burma is not an exception. Despite their specific characteristics, problems faced by these countries are same. Burma is now confronted with the task of establishment of a democratic Government. At the same time, just social and political order is to be established for the entire people of all ethnic nationalities. Integration of these two missions constitutes a practical challenge. Therefore the cardinal question is how to build a Federal structure in conjunction with democracy. The idea of Federalism is merely a method to fulfill our aspirations. The essence of ‘Federalism’ is a mechanism to reconcile the different interests. Some of the Federal states are very good on the paper but not practically feasible.
Due to paucity of time, I shall only focus on important and controversial aspects. I shall discuss only weaknesses of your Federal constitution (Draft). I shall focus those points which can breed controversies. Our objective is to help Federal Constitution Drafting process progressing in right direction. Firstly, in your Federal Constitution (Draft) I found only two lists of legislations. One is Federal list of subjects handled by the Federal legislature and another is concurrent list, i.e. the subjects which are handled by the Federal legislature as well as the state legislatures. List of State subjects i.e. the subjects which are solely dealt by the State legislature is absent in your draft constitution. These should be specifically mentioned. This is to prevent the Federal Government from interfering with the functioning of the State Governments. In fact the Federal Government can meddle with the functioning of State Governments with reference to those subjects of ‘Concurrent list’. Therefore a separate Legislation Index should be put in place for the states to prevent the interference of the Federal government.

Burmese language, and English language are prescribed as an Official languages of the Federal Republic. Then it is prescribed in Article (6)(a) that “In the Member States, the native languages may be used as official languages”. I think this can breed controversy. Because, under this Article, there will be at least three official languages in a state. It will be a heavy burden on the state Government to use three official languages. Present economy of Burma is not strong enough to sustain three official languages. Without a strong financial support it will be difficult to use three official languages in a state. Under the ‘Three Language Formula’ all documents of the state will have to be translated into three languages. Legal matters, State Government administrative matters and all matters pertaining to all ministries of the State Government have to be conducted and recorded in three languages. As ‘Right to Information’ is a constitutional right of the people, translation into three languages is an unavoidable task. Therefore I feel that the more the number of official languages the heavier the financial burden.

Article (6), which I have discussed, should be read with Article (26). In Article (26), the description ‘National Language’ is given. This description of ‘National Language’ is vague. The descriptions like ‘National’, ‘Citizen’ etc are not clearly defined in this draft constitution. They need clear definition in the constitution. What does “Language and literature of His Nationality” mean in the provision “Every citizen is free to promote his language and literature based on his nationality”. In this connection, I also want to refer Article (24). As per Article (24), every citizen has the right to promote culture, customs and traditions of his ethnic race and the Federal Government and the State Government shall support
and assist in promoting this traditional culture and customs of the ethnic community. In my opinion, the second part of the statement is confusing. It implies that whenever assistance for promotion of a particular language and literature, distinct from the Federal Official Language and state Official Language is demanded, under this article, both Federal Government and State Government will have to accommodate such demands. It also means the Federal Government and the State Government have to work jointly in such cases. Financial assistance will be given whenever an ethnic community seeks to promote their distinct language. I think that this is not feasible. Problems can arise when the constitution comes into force.

Professor Dr Wagner invited questions pertaining to his views on language issue. Ko Shwe Myo Thant said, “Even though previous constitutions granted every citizen the right to learn his or her own language, the people in ethnic states are not allowed to learn their own languages in practice. Therefore, this provision has been included in the draft constitution”. Dr Wagner: Finance is an important factor in considering problems. Who will provide finance? How to manage? Will the local people mobilize financial resources to meet the expenditure to be incurred for this cause? As an example, Sikh community in India mobilizes financial resources on their own to promote their language. As Ko Shwe Myo Thant has said, incorporating the right to promote own distinct language in the constitution is very good. But it will be found that implementation is not practically feasible. Because many such demands will come up when the time comes for a state to implement this provision. The state will be confronted with numerous demands and will have to do a lot to fulfill them. I appreciate the historic reasons pointed out by my friends. But it is very important to foresee practical problems which can arise in future and to consider preventive mechanisms fundamentally while drafting a constitution. If you go by this provision, consider, you will have to open schools, compile university syllabus and train the teachers accordingly. Who will finance these tasks? We should consider, right now, the enormous financial burden of promoting all distinct languages.

Mr. Norbert von Hoffmann discussed this matter from a different point of view. General features of the constitution need to be discussed in the context of ‘Globalization’. One can find that movements to promote national languages are taking place. Mongolia is an example. The main issue to be addressed is ‘National Identity’. What are the requisite provisions of the constitution to bring out ‘National Identity’? It should be considered. Promotion of Language and Culture is the essential component of promotion of National Identity. Compelling the Federal Government and the State Governments to accomplish this task is an important step in the
direction of promoting ‘National Identity’. Therefore, in my opinion, this right should be granted. Technicalities such as, ‘How to teach the language?’, ‘How to open the school?’ and ‘How to train the teachers?’ are the problems encountered all over the world. If this issue is to be prescribed in the constitution, it should be considered fundamentally and the constitutional provision should be drafted in such a way that no language problem will arise in future.

Dr Wagner: I also want to discuss Article 34 and Article 37 wherein definition of a ‘constituent State of the Federal Republic’ is given. The definition prescribed in the commentary is not clear. It is mentioned that “A National State is a State where one ethnic nationality has a clear majority”. It is not clear how to determine ‘Majority’. Is a community which constitutes more than 50% of the population in a specific region the ‘majority’? This should be clearly defined. I want to suggest that all articles of the constitution should be clearly drafted otherwise there will be disputes settlement for which will have to be sought in the court. Referring the constitutional disputes to the court will cause delay in implementation and the country will suffer. I shall continue to discuss in “Armed Forces”. This subject is covered by Article 111. Main controversial point in this article is “The Federal Armed Forces shall be drawn from the Member States on proportional basis”. What does ‘Proportional basis’ mean? It should be clearly defined. In which proportion, enrollment in the Army and police will be made on the ‘Proportional basis’? What will be the difference between the Army and the police? In the absence of accurate census, (which is yet to be conducted), establishment of the Armed Forces on the proportional basis will raise controversies and disputes. In my opinion, ethnic minorities will suffer in this arrangement. As per the policy of proportionate basis, recruitment for both military and police force is to be carried out on this basis only. I wonder, how to consider ‘proportional basis’ principle for police force in a particular state. Once the ‘proportional basis’ principle is considered in the federal, it should also be considered in the state level. All these points should be clearly defined in the constitution.

Chao-Tzang Yawngwe: People of Burma including ethnic Burmans do not have any say or power in this regard so far. Therefore, we want to enshrine this right in the constitution for the benefit of people. We have been suffering because indigenous people of all nationalities of the country do not have any say in matters relating with the military. People have no say in the establishment of the Armed Forces. Articles 112 and 114 are meant to confer these rights to the people and we believe that the fully autonomous regional administration set up can solve this problem. As an example, in Canada where fully autonomous regional administrations are
in existence, there are Federal police as well as provincial police and even local police. Local police force is raised from the local people and it functions under the local administration. This example can solve the problem of how to raise our police force. In my opinion, we should study more about ‘Local Administration’. Since we do not have much knowledge and experience in respect of ‘Local Administration’ I feel the need of workshops and training programmes on this subject.

One leader of this Study Group: There may not be any problem, if the Armed Forces (Army, Navy and Air Force) are raised in the form of Federal Armed Forces. In the Federal Army there will be Kachin Rifles, Chin Rifles, Shan Rifles, etc. So I feel there will not be any problem. At present, there is a big problem regarding the Armed Forces. Now the present strength of the Military is over five lakhs. It is a Herculean task to reduce this military strength.

Ko Shwe Myo Thant: The Term ‘Proportional Basis’ is not clear. It needs to review the strength and structure of the military. When the troops arrive at an area of ethnic minorities, their activities are seen more as ethnic persecution than anti-revolutionaries campaign because 95% of the troops are constituted with Burman. It assumed the form of racial conflict. Since 95% of the troops are Burman, a person who belongs to an ethnic minority can hardly hold the rank higher than Lieutenant Colonel. What I understand about the term ‘Proportionate’ is when the Federal Republic is established, armed forces of the constituent states will proportionately merge into the Federal Armed Forces. Thus it can defend ethnic races of the states from any danger. I think this is proper. Armed Forces of the different ethnic communities, historically, have not been fighting to grab the sovereignty of ‘Burma’. They have been fighting only in defence of their respective ethnic race. Against this backdrop, the need of the Armed Forces for defence of the states is considered in the ‘State Constitution’.

Dr Wagner: In Germany, Federal police which is under the control of the Federal Government takes care of the security of the border areas. State police forces are meant to maintain security of States. There are two types of police forces. Therefore raising of police forces for each ethnic group like Mon, Kachin, Chin etc should be considered. In the Indian Army, there are regiments based on ethnicity. Indian Army is made up of regiments representing different regions and different ethnic communities. There are Sikh Regiment, Madras Regiment etc. At the same time there are forces under the direct control of the Federal Government. Despite the fact that India has numerous problems, the Indian Army never staged military coup during the last fifty years. Even when Prime Minister Indira Gandhi declared ‘State of Emergency’, (Mr. Fakhruddin Ali Ahmed,
President of India, as advised by Mrs. Indira Gandhi, Prime Minister of India, promulgated state of Emergency on 26 June 1975 and lifted in January 1977), she did not use the Army. Army did not take part in the administration. She only used Para Military Forces. The moot point is ‘sharing of responsibilities’. States should determine the type and responsibilities of their security forces. Our friends have discussed proposals regarding the establishment of the Federal Armed Forces on ‘proportional basis’. This principal of ‘proportional basis’ principle is suggested not only in the federal level but also in the state level. Because in a particular state, the state government generally represents a particular ethnic race. There is a possibility of the majority community suppress minorities. Therefore when state level security forces and police forces are raised, proportionate enrollment policy should be adopted. Since the provisions regarding armed forces in the Federal Constitution are not clearly written, in my opinion, this subject should be dealt in separate laws other than the constitution. How to raise the armed forces and which type of armed forces should be raised ought not be prescribed in the constitution. Military, Police Force and Border Security Force should be raised on the basis of voluntary Enrollment. I am not sure whether this subject should be prescribed in the constitution. But I am sure that this subject should be given due importance. I wish to advise that a separate law is the best approach to this subject.

U Khin Maung Yin: In Burma, is it wise to maintain a huge Army which is a financial burden of the country? In Germany, the Army is maintained by the Centre. Voluntary enrolment policy is adopted and no military take-over ever takes place.

Professor Dr Wagner expressed his views on Article 114 of the constitution. For the leadership of the Armed Forces, each of the constituent states will have to send one commander to form the Supreme Command. He discussed two points. The first point is ‘the reason of drafting this article’ and the second point is ‘the objective of this article’. This article is meant to guarantee the representation of ethnic minorities in the leadership of Federal Armed Forces. The Second point is to give representative character to the Armed Forces. Dr Wagner further observed as follows: The structure of the constitution of a constituent state should be made in consonance with the structure of the Federal Constitution. Since each constituent state has specific characters, it should have powers specific to its characters. Therefore these should be prescribed in the state constitution. But these important subjects which are common to entire Federal Republic, should be prescribed in the Federal Constitution through consensus. Therefore whilst drafting the constitutions of the states, cooperation and interactions among the different state constitution drafting com-
mittees are essential to bring out this consensus. If each and every state constitution drafting committee drafts respective constitution in total isolation, it will be difficult to find any commonality among the different state constitutions. It will create problems for the economic, social and political lives of the citizens of the Federal Republic in the long run. To date, I have stayed in four different states of Germany. As far as administrative system, education system and judicial systems are concerned, there is no much difference between these states. Therefore I never faced problems. If you consider on this basis, if possible, common linkages in some administrative aspects between the state constitution and the Federal constitution should be explored without prejudice to the existing specific character of the state concerned. Therefore I suggest coordination and cooperation among the different state constitution drafting committees. I think for some common matters in the field like education, and common matters concerning all police forces, inter-drafting committees or working groups should be formed to cooperate and coordinate to define terms like Nationality, Ethnic Race, etc.

Ma Nan Yin: We women are exerting more pressures on state constitution drafting committees to guarantee ‘Gender Equality’, ‘Gender Balance’ etc. as participation of women in the constitution drafting process is inadequate.

Professor Dr Wagner: I am not quite satisfied with the Federal Constitution (Draft) because there is no provision pertaining to Electoral system or Election Commission. I believe, quantum of reservation of seats for women in local bodies can be worked out through negotiations among various groups and it can ensure promotion of women’s rights to some extent.

Article 141 is on declaration of the State of Emergency. According to the original provision, on request of the Federal Government, the Federal President, shall declare the State of Emergency for the territory either of the whole Federal Union or part of it. Here it is found that declaration of the State of Emergency is entirely in the hands of the Federal Government and states have no role in this regard. It can be said that India is more unitary than federal. I accept this assumption. Here the Federal Government is entrusted with more powers and state Governments have no role to play. In this respect it is similar to the relevant provision of the Indian constitution. It should be prescribed “Acting upon the advice of the Federal Government based on the request of the state government facing emergency, the President of the Federal Republic shall declare State of Emergency” to ensure the role of the states in this step taken by the Federal Government. Important point is if declaration of the state of
Emergency is preceded by consultations between the Federal Government and the state concerned, there will not be any dispute or crisis. In my opinion, declaration of the state of Emergency by the Federal Government or the State Government, creates a potential for suspicion between one ethnic community and the other. In order to avoid such a problem, there should be consultations between the state government concerned and the Federal Government whenever emergency situation arises. In India, some states are in turmoil. In some cases although the situation demands declaration of the state of Emergency, the state concerned claims that it is under control. In some cases, state of emergency is declared unnecessarily. In such a situation, redress is available in India. If the state concerned does not concur with the state of Emergency declared by the Federal Government, it can go to the Supreme Court. The Supreme Court can be approached on the ground that the State of Emergency declared by the Federal Government is not warranted by the ground situation and hence unconstitutional. In this way State governments can act for redress in the Supreme Court.

U Ye Myint: In your opinion constitution of which country should be studied? Professor Dr Wagner: Experience of South East Asian countries should be studied from economic point of view. Some of these countries have made remarkable achievements in economy. But from a political point of view, India is the best model. India is the country which has been most successful in maintaining the unity and integrity of the nation during the last 50 years. It is unparalleled not only in Asia but also in the world. India is also the largest democracy. This is the most remarkable achievement of India. The kind of situation which Indonesia is facing today had been overcome by India, 30 years ago. In India political guarantees are given to fulfill the aspirations of the minorities and to ensure their participation in the national mainstream. This type of political guarantees are hardly found in the South East Asian countries. One cannot find such political rights in Pakistan which is an Islamic country. Her eastern wing had seceded and emerged as Bangladesh. I do not think Pakistan is successful in this regard. Sri Lanka is a Buddhist country. Problems of this country are similar to ours. In Sri Lanka the minority’s question poses the greatest challenge. This problem of Sri Lanka evades solution so far. Administration in Sri Lanka finds it difficult to hold the country together. This crisis originated from the Constitution. It is similar to Burma’s problems. Language issues, problems relating to the constitution and functioning of local governments, disputes between the Central Government and provincial governments etc., are yet to be solved in Sri Lanka. Central Government can exercise little authority over Northern and Eastern parts of the island. These areas are still under the control of Tamil rebels. Sri Lanka is not able to bring the minorities into the national mainstream.
But the northeastern states of India, in pursuit of national integration, have been delegated more powers. As an example, Mizoram has been granted more autonomy than before. In spite of being one of the poorest countries in the world, India is most successful in consolidating democracy. A country of great diversity, India is still united. Therefore India is the most suitable country to study from a political point of view.

Sayama C. Phora: In the constitution drafting process, which constitution should be drafted first? Federal constitution or state constitution? What is your suggestion on the basis of German experience?

Professor Dr Wagner: “This question is like seeking to fix the origin between hen and egg. If state constitution drafting process precedes Federal constitution drafting process, states without considering the position of the Federal Republic, will prescribe whatever they want in the state constitutions. Then what will happen? Some provisions prescribed in the state constitutions will create confusions vis-à-vis Federal constitution. If drafting of Federal constitution follows completion of drafting of state constitution, the former may find it difficult to accommodate each and every aspiration of all constituent states. Therefore Federal constitution should be drafted first. If the constitution of the states are drafted on the basis of the provisions of Federal constitution, the entire constitution drafting exercise will be smooth. First, joint working groups should be formed to find answers to common problems. Then, I think, it is practical to form joint working groups to find answers to common problems first and then start the process of drafting both Federal and state constitutions”.

Meeting with Prof. Dr Schneider and Dr Kramer

On 10-12-2001, our study group left Berlin for Hannover in a mini bus. President of Burma project U Ngwe Aung performed as our interpreter and guide in this tour. In Hannover we called on Professor Dr Hans Peter Schneider and Dr Jutta Kramer who are experts in Federalism on the faculty of Hannover University. Dr Schneider, who is one of the most prominent scholars on Federalism in Germany briefed us about the history of Germany. His team has been doing research on three topics: (1) Unification of Germany following the collapse of the Berlin Wall. Complex situations arose thereof and changes developed in the Federal structure; (2) How to converge German Federation with European Union. As EU is also taking the shape of Federal structure, a research is being un-
dertaken to study the differences between these two systems; and (3) Constitutions of the countries, especially Georgia, Russia and Yugoslavia.

The professor gave a brief on the history of Federal Republic of Germany. Aftermath of Napoleon's wars in the 19th century, Holy Roman Empire collapsed. Consequently, the concept of national Independence gained currency and ‘confederations’ in place of ‘Federation' took shape. Then Federal system was introduced for the second time through contacts among the dukes and princes. In those days Prussia was the biggest constituent state of this Federation. Prussia constituted two thirds of the entire Federation in which there were 30 to 35 smaller states. In the Federal Council, voting strength was not equitable because of the huge difference between Prussia and smaller states. When Prussia owned 17 votes, each of the other states owned only one vote. Germany became the Weimar Republic after the First World War in 1919. The Weimar Republic was neither a Federation nor a Confederation. It was a unitary state. It had overturned the Federal system. This happened because of three factors: (1) Socialist party rule was established; (2) A strong Central Government was put in place; (3) The Central Government controlled the treasury and distributed the money among the states.

Then the Nazis came to power and the Weimar Republic fell apart. After the Second World War a new Germany emerged. In 1948, Germany had 14 states. When reorganization of the Federation was discussed, the Socialists favoured a Federation with a strong Central Government. In these deliberations, conservatives argued that Germany should have a weak Centre. In course of debates on this issue they found a solution. It is two-tier Government system. Both tiers enjoy three powers. Both Federal Government and the state Government would be conferred the three powers. In practice only the Federal Council exercises the powers and the states have no power. It is remarkable that ‘concurrent legislative power’ is exercised only by the Federal Council. The State only implements the laws concurred by the Federal Council which is constituted by representatives of the states. Almost entire legislative power is conferred to the Federal Council of Germany. In interpreting the law, laws of the Federal Council and Central Governments are given broad interpretation on the basis of codified law and Roman law. Laws of the states are given limited interpretation. Difference between the U.S.A. and Germany is that in the U.S.A. every state has legislative power whereas a German state has very little legislative power. In Germany, states are only to implement the law made by the Federal Council. Even in implementation, the states have to bear the expenditure.

Federation is not to grab interests of the states, but only to promote the interests of the states. It is not a standard formula. Leaders and politicians should honestly and objectively discuss and decide what is best for the country, whether or not in a Federal setup, to ensure unity.
Professor Dr Schneider emphasized that Civil Society should be the basis for sustenance of the Federal Republic. Lack of Civil Society is one of the major causes of the collapse of the Soviet Union. Public Associations, Unions and Social Welfare Organizations are part of the Civil Society which can check dictatorship tendencies at all levels of Government, i.e. Central, State and local. Professor Dr Schneider gifted a copy of his paper read at the seminar ‘Federalism and Civil Societies’ held in 1996. His paper concludes with an interesting observation. According to the paper, there are tendencies of reverting to former narrow groupings on the basis of common culture, common territory, neighbourhood and kinship when the communities face with complexities and uncertainties in the ‘Nation Building’. The professor uses the term ‘Tribalisation’ in describing such tendencies towards narrow groupings. This is one extreme, he remarked. Another extreme is giving priority to Globalization wherein worldwide networking is emphasized. Federalism is to bridge the two extremes, i.e. Tribalization and Globalization and thus contribute to the progress of Human Society. The professor’s remarks underline many facts to consider in connection with our National building.

Our Study Group left for Mainz, Capital of Rheinland Pfalz, on 12 Dec 2001. There we visited the Legislative Assembly Building. Professor Dr Klaus- Echert Gebauer, Advisor to the Prime Minister of Rheinland Pfalz, explained us about the functions of State Legislature and State Government in the Federal setup. Professor Dr Klaus-Echert Gebauer: “When difference of opinion arises between the Federal Government and a State Government or among the State Governments, there must be some mechanisms to maintain the unity. Such mechanisms should be considered. How can the Federal Government and State Governments conduct foreign relations in this setup? The essence of Federalism is reconciliation between the states which function on the basis of their respective culture and heritage and the Federal Government which has to take care of the overall interest of the Federation.

In this regard, three interesting points are: (1) Article 79 of the German Constitution deals with amendments to the constitution and the Federal Structure. As per this article, Federal structure is absolute. Federal structure is un-amendable. Similarly, ‘Federal Basic Law’ cannot be altered. It is clearly prescribed in paragraph 3 of Article 79; (2) Constitution of a state encompasses expenditure of the state, administration, appointment of civil servants, distribution of funds, etc. Although there are various administrative systems all over the world, rights and responsibilities in consonance with specific character of the land should be prescribed within the state; (3) Effective participation of the state in the Federalism should be duly considered. How do the states send their represen-
tatives to the Federal Council? In Germany, representatives of the states take up all matters concerning their respective state at the Federal Council. In the U.S.A., Senators represent their respective state at the Senate.

There are three kinds of disputes within a state and disputes within the Federation. First, disputes among various ethnic communities out of ethnic diversity and difference of opinion. Second, disputes over river water, road communication and pipe line connections between the contiguous neighbouring states. Third, how do the Federation and the constituent states conduct their foreign relations? How will the disputes between Germany and European Union be solved? Burma and other Asian countries can also face similar disputes when a constituent state seeks to conduct foreign relations such as partnership in business and cultural exchange programs with foreign countries. Such exchanges can solve conflicts out of varied cultures within the Federation. Negotiations and dialogue are the means to find solution to disputes. As an example, education policies may be varied among the states. In such situations, state Chief Ministers attempt to get an agreement through negotiations in Chief Ministers’ conferences.

Question: What will happen if no agreement is reached? Answer: They usually try to achieve an agreement. If efforts to reach an agreement fails, the states continue their respective system. In Germany, an agreement has been signed to the effect that there is a uniform University Education system. Secondly, Police, Roadways and Transport differ from state to state. Every state continues its own system. All 16 states of Germany try to compromise. If they fail, they go to the Constitutional Court to find a solution. The Constitutional Court and the Supreme Court are different.

Ko Aung Htoo: “How do the states share the funds and Revenues?” Answer: “There are many kinds of Taxation. They are clearly described in the constitution”. Question: “Why is there Inheritance Tax? We do not have such tax in Burma”. Answer: “On getting inheritance, one has to pay tax on this to the State. The larger the inheritance, the heavier the tax”. Question: “What is property tax?” Answer: “Property tax is levied on land, house, etc. The collection is shared between the State Government and the Federal Government. This is the largest earning tax. For example, tax collected from eight lakh population of Rheinland Pfalz is shared between the State Government and the Federal Government. At the Chief Ministers conference, the amounts of money to be allocated to which state are discussed and decided upon. As amounts of revenue vary among the states, Taxation Adjustment is made. This is necessary to ensure that there will be no disparity in living standard between the people of rich states and those of poor states. Such efforts are made through ne-
negotiation between one state and another, and the Federal Government also makes adjustments of Finance. In case state level negotiations fail, the Federal Government bridges the financial gap up to 85 per cent. For instance, financially better-off states may offer to provide funds to financially poorer states to remove disparity. If this fails to bridge the entire gap, the Federal Government bridges up to 85 per cent. The standard of living in East Germany is lower than in West Germany. Therefore, tax rates are lower in East Germany. The Federal Government transfers 85 per cent of Tax revenue collected in West Germany to East Germany”.

Visit to European Parliament (13 December)

Following is the presentation by Mr. Edward Steen, spokesperson of Europe People’s Party: “One cannot expect that every problem will be solved the moment the Federal Republic is established”. He explained that Federation is not to grab interests of the states, Federation is only to promote the interests of the states. Mr. Edward Steen emphasized the importance of honesty of politicians and leaders, and stressed that, “Federalism is not a standard formula”. According to him, the leaders and politicians should honestly and objectively discuss and decide what is best for the country, whether the setup is Unitary or Federal, to ensure unity. They should be honest enough and ready to compromise and adopt the attitude of ‘give and take’ in negotiations for unity.

There is also Dishonest Federalism. Yugoslavia is the example. It was under communist rule. After the collapse of the Austro-Hungarian Empire, Yugoslavia was founded. It became a Federal Republic under one-party communist dictatorship. Therefore this type of Federal setup is dishonest. Without finding solutions to the nationalities question, a Federal Republic was founded. Once the communist rule collapsed, all old problems came to the fore. Therefore, honesty is essential. Honest negotiations to find solutions to the problems can ensure emergence of a stable and prosperous nation. Federalism does not necessarily solve all problems automatically. Consultations and cooperation can only ensure prosperity for all. In establishing Federal status, one very important point is that the Federal Government should not incline to rule the states. The Federal Government is to facilitate the states to progress. The Federal Government should not oppress the states and extract benefits from them.

We draw lessons from the collapse of Yugoslavia. The Federal Republic
of Yugoslavia was founded without finding solutions to the basic nationalities questions. This is the main cause of its collapse. Therefore, important issues pertaining to nationalities of Burma should be solved from the beginning and or understanding on the issues should be built up.

**National Reconciliation and Accountability Issues**

(Discussions on the tour bus traveling from Berlin to Bonn). One non-Burman member of the Study Group said that German Chancellor Willy Brandt had apologized for the slaughtering of Jews by Germans during the Second World War. In Burma, non-Burman nationalities have been subjected to atrocities throughout the period. Therefore the Burmans should make soul searching whether they have practiced chauvinism and whether or not they are responsible for atrocities amongst the nationalities. Another non-Burman member strongly said that if the Burmans do not accept their responsibility for such atrocities, national reconciliation may not be possible. One more non-Burman member said that the Burmans should admit their responsibility for what happened in history. The Burmans will possibly accept this if they are given suggestions to review whether they had practiced chauvinism knowingly or unknowingly. But suggesting that the Burmans are responsible means that Burmans as an ethnic race should be held responsible for all mistakes committed and sufferings caused in the past. Especially, when a parallel is drawn between the slaughtering of Jews by the Germans and Burman responsibilities for suffering of non-Burman ethnic races, Burman members of the Study Group had to counter such arguments. Do assertions that national reconciliation may not be possible so long as the Burmans fail to accept their responsibility for the atrocities in the past really contribute to the present collective struggle for human rights and democracy? And is the establishment of a Federal Structure questionable? As such type of observations can arise in other forums, we decided to take this opportunity to discuss this matter frankly.

Non-Burmans as well as Burmans have been subjected to persecution under the dictatorship. The dictatorship does not spare Burmans. It is true that Burmans constitute a majority among the oppressors. But there are also non-Burmans among the oppressors. The Director-General of Military Intelligence, Brigadier Tin U, was a Mon who was very powerful during the reign of the Burma Socialist Programme Party. Brigadier L Konfán was a Kachin. Colonel Tun Yin Law is a Pa-O. There are many people from various ethnic minorities in the leadership as well as in the
other ranks of the Burma Army. Now let us see the sufferers. Thousands of people were killed in the 8-8-88 uprising alone. They were Burmans. The number of Burmans slain in this single uprising is more than the total number of non-Burmans killed during the fifty years of civil war. The majority of 1600 political prisoners still languishing in jails are Burmans. So why should the Burmans as an ethnic race be blamed for oppressions? This kind of accusation can push a majority of Burmans towards the ruling military junta, the SPDC. Then how will genuine reconciliation between Burman and non-Burman ethnic nationalities be possible? This kind of notions can create suspicion in the mind of leaders and organizations of non-Burman nationalities against those Burmans who are fighting for Democracy. In such a scenario, the Burmans who are honestly engaged in the anti-junta struggle from the areas of ethnic minorities can not be happy to be looked at with suspicion by the leaders and organizations of the ethnic nationalities. This will not contribute to the cause of democracy and Federalism. In fact, oppressions stem from the system. Burmans are not culprits. It is not disputed that there should be a review to determine whether Burman have practiced chauvinism. The same goes for non-Burman ethnic nationalities whose population number is relatively larger than any minority group. The entire Burman community should not be blamed for atrocities committed by the leaders. The Burman community as a whole never takes part in any oppressive measures. In every ethnic community there are good elements as well as bad elements. No ethnic race or community should be blamed while identifying those who are responsible for atrocities. Blaming a race simply without well-founded ground will not serve the purpose of national reconciliation. Criminals are the generals who usurped the state power. Although the majority of them are Burmans, innocent downtrodden Burmans should not be blamed.

One Karen member said that he had swung into the revolution to fight for the rights of Karens, not to fight the Burmans. Successive Karen leaders also taught that their enemy is the oppressive government, not the Burmans.

Another member pointed out that no parallel can be drawn between atrocities committed by Nazi Germans on Jews in Germany and what has been happening in Burma. In Germany, the Nazis committed the atrocities against Jews with racial hatred. But in Burma, this was not the case. I am a Burman. If I am asked to confess the crime which I did not commit, I will not accept.

In 1994, the Hutus, the majority community of Rwanda, slaughtered nearly one million Tutsis with racial hatred. After the Tutsis successfully
resisted and took over power, they did not take the course of revenge. Instead, they strived for national reconciliation. There were some Tutsis who had collaborated with Hutus in committing the genocide. The new government adopted the policy of bringing the individuals (both Hutu and Tutsi) to justice instead of blaming the Hutu community as a whole. The perpetrators were tried in national and international courts. In the case of Burma, regarding previous human rights abuses, one should not rush to the conclusion that one particular race should be blamed.

Visit to Belgium Parliament

In the afternoon, we visited the Parliament of Belgium. Belgium is also a Federal State. Responsible persons of the Belgian Parliament gave a presentation with the help of a video on ‘The Power of Belgium’s Parliament’ and explained to us the role of civil society and NGOs in parliamentary control over the Government. We were taken to the halls and offices of MPs inside the Parliament Building, which is the symbol of the people’s power. In our country we lost a genuine Parliament in 1962. The Parliament that came into existence in 1974 was sham. There was not even a single session of genuine people’s representatives in that so-called parliament. After 1988, even that sham parliament disappeared. The Parliament Building of Burma has become an abode for rodents and cockroaches and has lost all its grace. The condition of our people has deteriorated in all respects. I yearn for the day when genuine representatives of the people sit together in the Federal Parliament and State Legislative councils to make decisions through debates and consultation on affairs of the state. Our Study Group left Germany on 16 December for the return journey, with a strong determination to strive for a constitution which will fulfill our aspiration.

Endnote

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Federalism With A New Twist: 
Burma’s Only Option

B.K. Sen*

The author of the article “The Panglong Spirit Lives On” (Chao-Tzang Yawnghwe in The Irrawaddy, July 2001) argued that the guiding principle of the Panglong Accord is “unity in diversity”. He raised the question as to whether there is a formula for ending Burma's decades of ethnic strife, and answered it himself with “Yes, and it is none other than the political vision that brought modern Burma into existence half a century ago”.

This is begging the question: what is this political vision, which is abstract in terms of people's understanding? The meaning of terminology such as “unity in diversity” is academically attractive, but in the understanding of the activists it helps little. However, Yawnghwe retrieved much of the ground lost in the struggle evolving a viable concept for the establishment of a stable Burma by stating that the major goal is the establishment of a democratic, federal Union of Burma, to be composed of self-determining states living together in equality and peace. It is argued that core issues must be addressed, and the debate has to be brought to a fruitful end.

The vagueness of the Panglong Accord has to be admitted. An accord, as for any law, cannot be ambiguous or vague. The Panglong Accord has two diametrically opposite theories: the formation of a Union, and the right to secession enshrined in Article 100 of the 1947 Constitution. How to interpret these two parts in constitutional terms? It could be argued that secession is the core issue which enabled the birth of the Union and other ethnic nationalities joining it. If that argument is accepted, then the secession part becomes the dominant element in the Constitution. If how-
ever it is argued that the part was only a tactical/technical clause to enable the birth of the Union, it will deepen distrust and the vicious cycle of animosity and disharmony will continue.

It is not disputed that the Panglong Accord has become the rock-bottom of the concept of the right of self-determination. If the Accord is read together with its deliberations in the Constitutional Assembly in June 1947, more light is thrown on the issue. If you go back further, the speeches of U Aung San (the architect of Burma’s independence) made in relation to that issue confuse many in the present day. From there it appears that the right of secession was the operative part of the Accord.

It is argued that this right was a right corollary to the determinant constituent of the Accord. This was to create one country and anything done in derogation of that, be it secession or sovereignty of states, cannot destroy the spirit of this Accord. In the given historical context, when the Accord was made in 1947, the understanding of the word ‘secession’ was limited. With the passage of time, events of world history, the functioning of the United Nations, and the long arm that international law has developed, the word ‘secession’ has undergone a realistic change of meaning. And whatever one may say about the sanctity of the Accord, its meaning as given internationally has to be accepted. The Accord should not be equated with holistic perceptions. It is negotiable—as all Accords in history have proved.

Burma’s junta has thrown an unprecedented challenge to human rights activists, political analysts, and democracy protagonists to evolve a strategy to end its authoritarian regime. For four decades it has ruled without constitution, parliament, elections, political parties or civil society. However, a sustained political opposition has hopefully confronted the challenge. This opposition has meaningfully emerged from the blood and sweat of the activists and has reached the stage of consolidation. The junta has technically and also politically retreated from the position of strength. The retreat began when the May 1990 elections under its aegis were held. The verdict of the people, to end the military rule with a landslide victory for the opposition led by Daw Aung San Suu Kyi, further fortified its retreat. The transfer of power became a stark reality and retreat was about to become a rout. The junta had no option but to refuse transfer of power on the silly excuse that a Constitution had to be drawn out first. A constitution drafting process was initiated with the participation of all concerned forces, including the winning party in the elections. This was a return to the constitutional path, however fake it might have been.
The arrogance of the junta, dubbing it suffered in the hands of opposition at the hustings and fear of losing power, dictated the constitution process. Its domineering role and hidden agenda finally surfaced. The result was that the entire opposition withdrew from the trap. Nevertheless, the junta gave birth to the SPDC National Convention Constitution in 1996, but it is a stillborn child.

It is interesting to note that in its history of more than a century, the Constitution has been the crucial/critical factor in Burmese politics. Three phases of Anglo-Burmese wars were legalized by acts of British Parliament and laws passed and administered by the Colonial administration. The authority was derived from an unwritten Constitution evolved by the mother of Parliament. Ironically, to demonstrate its sovereignty, an Act of Parliament with a one-line notification turned the country into a colony. The Burmese patriots learnt their first lessons in constitutionalism in the school of nationalism. The 1919 Government of India Act, applicable to Burma at that time, placated self-government in the form of diarchy. It took no time for the Burmese patriots to see through the game. Then, in 1937, came the Government of India Act with limited self-government and elections for the first time. Separation from India was made a big constitutional issue, as if it amounted to independence or self-determination.

The Second World War saw Burma under Japanese rule and the people had another taste of Independence, which the Japanese rulers pretended to give. Right at the threshold of ending colonial rule and ushering a democratic sovereign Burma, conflicts both between Burmans and Burmans, and between Burmans and ethnic Nationalities, created obstacles to Burma’s transition to an Independent sovereign state. A sovereign state has to have a Constitution. However the Panglong Conference provided the accord, out of which the 1947 constitution emerged. Sooner or later it had to become a bone of contention. The Karen and Karenni ethnic nationalities felt that there was Burman domination. Among the Burmans themselves, there were a major split. The Burma Communist Party dubbed Independence which the Constitution symbolized as fake. The constitution again became the focus in Burmese politics. In 1958, when the caretaker government headed by General Ne Win was installed by the then Prime Minister, U Nu, in complete violation of the constitution, the issue of constitutionality of installing the caretaker government became a hot issue. When General Ne Win seized power in 1962, the first thing he did was to put aside the constitution on the ground that there was a danger of disintegration. This was an oblique reference to the constitutional provision of the right of succession. The truth was that all the ethnic leaders and the then Prime Minister in a conclave (at Taunggyi in
1962, just one day before the coup) came to a consensus that the Constitution needed amendments to include equality and greater autonomy to the ethnic states. In other words, the country was poised for a transition toward a genuine federalism. General Ne Win pre-empted it, suspended the Constitution and set up a rule by the Revolutionary Council headed by him.

In 1974, Ne Win floated the Burma Socialist Party, drafted a Constitution, put it to a fake referendum and promulgated the 1974 Constitution. It was a one-party rule composed of retired army officers. It was an unashamed attempt to constitutionalize an illegal seizure of power. Important was that it had to wear a constitutional coat. The 1974 constitution was a fraud, and totally disempowered the people. However, a facade of constitutional rule was imposed on the people. The historical 8-8-88 uprising exposed its bankruptcy and resulted in its collapse. Paradoxically, it did not lead to restoration of constitutional rule although the junta learnt a lesson that it could not risk, even with a fake constitution. It needed a constitution tainted, sugar-coated with peoples’ representation, but with the core being in military hands. It would serve two purposes. It would appease the people and divide their ranks. And it would help to hoodwink the international community so that it will serve to woo investors.

It is argued that (1) Constitution has been the fulcrum of Burmese politics for decades; (2) The democrats failed to remove the deficits of 1947 constitution in time; (3) The democrats failed because they wrangled in power politics and corruption; (4) The politicians’ invitation, in 1958, to Ne Win to rule, giving parliamentary sanction, was the beginning of the end of constitutional rule; (5) The ethnic leaders failed to ride on the democratic wave released in the aftermath of Independence and capitalize on the divisions amongst Burman elites; (6) That the constitutional rule, never mind the defects, never reached the grassroots or resulted in empowerment of the people as the elites among all the players dominated politics; (7) The failure of the constitutional rule was the cause of the rise of military rule. The junta outsmarted the political leaders not once but at many crucial points of history during the last four decades. Repression was no doubt the main tool to keep the people living in fear. Its maneuverability and disunity of the opposition forces were contributory causes of its prolonged rule; (8) The junta has proved itself bankrupt in the matter of designing a constitution or running a good governance.

The question of all questions in Burmese politics is: What will be its future Constitution? Constitution is the only guarantee for good governance, amity between ethnics and minorities for equality, stability, democracy and rule of law. Different players in Burmese politics have put in
place their respective versions of a Constitution. The NLD, as the winner of the 1990 Elections, has not put in place any blueprint of a Constitution. The DAB has put in one of their own. The NCUB has also one of its own. Whatever weaknesses these may have, by and large the principles laid down have projected federalism. The ruling junta’s fear of risks of federalism is baseless. It is not true that federalism will provide the ethnic nationalities opportunities to mobilize their resources and to break away from the federal center. Three federal states, Yugoslavia, the USSR and Czechoslovakia are now broken up into 22 independent states. This federalism was based on one-party rule. The case of Indonesia is cited as one case to reject federalism. It has two thousand inhabited islands with various ethnic groups and it is feared that federalism will result in fragmentation; this fear is unfounded because federalism without democracy is illogical, and Indonesia has just entered into democratic transition after 30 years of authoritarian rule. Federal constitutions by and large provide advanced systems of democratic government that allow citizens to be part of the democratic process and decision-making in all levels of government.

Some argue that federalism will lead to warlordism by ethnic leaders, fiefdom, no respect for the central government and a continuation of cold war over who gets what. As if federalism would serve as a recipe for deeper divisions amongst diverse ethnic groups and as if it would lead to subsequent disintegration. These arguments against federalism cannot be summarily rejected. A constitution, however cleverly designed, cannot ipso facto be the panacea of all the evils. The federal constitution has to be vigorously embedded in constitutionalism. Federalism divorced from constitutionalism is like a body without a head.

A deeply divided society is likely to be held together peacefully through a ‘consociational’ power-sharing system of government. It is a form of government based on the cooperation among political elites of the segments of a divided society, an institutional framework. Its immediate aim is to turn a society with a fragmented political culture into a stable democracy. It has shown remarkable success in The Netherlands, Switzerland, Austria, Colombia, Malaysia, and Belgium. Consociationalism has four basic and indispensable characteristics: a power-sharing coalition, proportionality, mutual veto, and segmental autonomy. In order for consociationalism to be implemented successfully, four factors are important: (a) The political leaders from the rival segments should have the ability to accommodate the divergent interests and demands of their own community and they must have an effective control over it; (b) They should be able to transcend cleavages and to work jointly, to cooperate to a large extent with the elites of the rival segments; (c) They should be committed to the
continuance of the system and to its stability; (d) Finally, the elites should understand the perils of political fragmentation. As can be seen, consociationalism needs cooperation of the elites, because its establishment and success depends almost completely on the willingness of the political elites to cooperate. And it requires wise segmental leaders, “more tolerant than their followers”, capable of understanding the importance and the benefits of inter-elite cooperation, as well as capable of creating solutions to the political problems of their countries. If the elites are not willing to make the system work, consociationalism breaks down, leading usually to violent interethnic conflicts.

Having stated the imperative condition, which must be present to develop a power restricting system, it is now necessary to go into a question as to which would be the model. There need not be any bias to focus exclusively on the model offered by the United States. A multi-national polity is inappropriate for Burma. The United States’ federation was the result of a bargain whereby previously sovereign polities agreed to give up part of their sovereignty in order to pull their resources to achieve the goals. The federal bargain accorded the same constitutional competences to each state that is equality of this state. Most of the democratic countries that have adopted federal systems have chosen not to follow the United States’ model. This model is known as “coming together”. At the root is the question as to how a democratic federal system is actually founded. There is a system called “holding together” and not “coming together” federalism. India, Belgium, and Spain had political systems of unitary features. But now they have initiated processes to devolve power constitutionally and transform into federations. The 1950 Indian, 1978 Spanish, and 1993 Belgian constitutions are all federal.

It is safe to say that one of the goals of federalism is to protect individual rights against the central government all against majority. In the United States, each of the states accorded the same constitutional competences. That is symmetrical. Many democratic federations emerge from different historical and political circumstances—holding together India in 1948, Belgium in 1969, and Spain in 1965, had unitary features. But later to hold together these countries change to devolve power constitutionally and turned those threatened politics into federation. In India, holding-together federalism was created differently from the American coming-together style. What is the characteristic of the two? Holding it together means to maintain the unity. In India, the state has much less sovereignty than the American States, and was created not as the result of an agreement among the state, but by an act of constitutional assembly. The bargaining condition between the states did not exist. In fact, only three states existed and the rest were created later on the principle of holding
together. The formation of the federal system fixed into a sort of continuum.

There are differences in unitary democracies and federal democracies, as in the latter many policy areas are constitutionally assigned to the exclusive competence of the state. At the center there are two legislative chambers. One has both principles, the second represents the territorial principle. The judiciary is more powerful. It is the demos-constraining and protects individual rights against the center. The principle of equality is apparently violated, as the ‘one citizen-one vote’ principle is not observed. Empowering the upper house and its veto power result in the situation were legislators, representing less than ten percent of the electorate, are able to thwart the wishes of the mass majority. However concrete the situation, by and large if a polity has great diversity and is multi-ethnic, its chances of being a democracy are much better if it adopts a federal system. Although it amounts to constraining it cannot be helped if the country so needs, for example, Brazil. However, the German federal system is demos-enabling. India is more so than Germany’s. The party system is also an important factor. Over-representation in the territorial chamber and greater representation of the less popular states is a common feature. In the United States and Brazil, each state gets the same number of senators. In Brazil, one vote can block ordinary legislature. The first would have had 144 seats but it actually has 70. The first should have the seat but it actually has 8. The Brazilian constitution specifies that no state can have more than 70 seats in the lower house.

Many democratic federations have different formulas for the constituency of their upper house, not necessarily the principle of equal representation. In Germany, the most populous states get six votes in the upper house. The lesser four get three. In India, six states were carved out in recent times, containing barely one percent of India's population. If India had followed the United States' model, the new states would have to be given 25 percent allotted to the Upper House. The other states would never allow it, under the United States’ principle of representation of each state equally it would have been impossible. India therefore did not follow the United States' model. Where two Houses have exclusive competence, the issue becomes to identify the areas. In Brazil, 13 percent of the total electorate can block ordinary legislature. In Germany, the Upper House seldom vetoes. The limitation of the Upper House is that it has no hand for government formation and government termination. It can delay but not veto. Although joint committees of both the houses in reconciliation meetings resolve their problems, they cannot move non-confidence votes. It is largely a revision chamber. The power distribution between Center and States is an aspect that makes a difference between democratic fed-
erations. The 1988 Brazilian constitution is an extreme case of constitutionality. A normal majority cannot decide these issues. In India, although there were fifteen languages, the states did not correspond to linguistic boundaries. It made provisions to carve new states, i.e. a “holding together” federation. This is impossible in the United States: this prevented secession of some of the States. Unlike the United States, multi-national democracies are constitutionally asymmetrical. They are mononational. Austria, Germany, India, Belgium, Canada, Spain, and Australia are multi-national and their federations are all asymmetrical.

There can be no dispute that Burma falls in the second category. However, there is a difference in the concept of collective rights. The symmetrical democracies depend more on individual rights. But rule of law in the entire polity has to be guaranteed and enforced by the center and cannot be delegated to the states. However, no group-specific rights can violate individual or universal rights. Unless they have given certain groups specific rights, they can never become full democratic citizens with a sense of loyalty. Social loyalties or feelings are influenced by structures of underlying societal operation of political systems. The United States’ constitution is of historical interest but has its limits as a model for other democracies. Two centuries have passed, and no sovereign democratic nation states have “come together”. Unitary states have constructed a “holding together”. If, for example, the United Kingdom became a federation, it would also be “holding together” in origin. The United Kingdom’s federation cannot follow the model of the United States.

A federation could emerge from the repressive regime in Burma in the form suitable to its conditions. The United States’ model of “coming together” with symmetrical federalism may not be pursued. In this context the issue of drafting State constitutions may be examined. Has the process of drafting by the rest of the states to be suspended until the emergence of a federal constitution? The issue has to be properly addressed. States which have drawn up their constitutions cannot argue that by virtue of these acts, they have become independent states and that a federation would have to be created by treaties with theses states on the principle of “coming together”. However, this is a fallacy. Drawing out a constitution by groups of states does not vest the state with legitimacy of a state. If all of the ethnic states in minority, say, the seven states, have drawn out they respective constitutions and dictate to the majority ethnic to accept them and form a Union, they will be devoid of legitimacy however large popular support they may have. The right and legal process is to actively participate in the constitution-drawing process of the federal constitution and bargain for the powers incorporated in the states. The drawn state constitutions are a part of the learning process that is impersa-

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Many democratic federations have different formulas for the constituency of their upper house, not necessarily the principle of equal representation.
tive for growth. All players have to be in the mainstream of the drafting of the federal constitution and garner cumulative strength which alone can accelerate the transition and end the unconstitutional rule over decades.

I have argued that in the given conditions of Burma and its historical background, federalism is the one and only option—not the best—to reconstruct its polity and move toward sustainable development. My argument will be flawed if it gives an impression that having put federalism into place, the rest of the factors will take care of themselves. That is not so. Federalism will have to be reinforced with many other tools, which are constituents of development. It has to be invigorated with constitutionalism, injected with a system of functioning political parties dedicated to democracy, human rights and rule of law. Federalism does not spr

Federalism must have an open society and promote civil society. This is of central importance. It is a no-win situation for all parties. However new activities will unleash new forces which will sweep away the legacies of the past and usher in a new order. The sine qua non is however federalism. Those who find history attractive, let them have centralism, monarchy, autocracy, and the rest of things associated with the dark ages of history. But for the new generation, federalism will be the banner of democratic transition. There are no perfect options but several wrong options, such as oppression and domination, ethnic cleansing, and separation and assimilation. They are not solutions but form the very core of the problem. Legacy of history, or past accords, need not cloud the issues. One way may be to start on a clean slate with an open mind and bargain on constitutional designs of power-sharing. The integrity of the country is non-negotiable.

Germany and Japan both have a history of serious human rights violations. Nevertheless, they have turned to democratic transition overcoming the past and consolidating the transition. Harvard scholars drafted the Japanese constitution, which was imposed by the victorious powers, in six days and it has been working well for over fifty years. Burma needs to end the unconstitutional rule and put into place a constitution to begin with, though it may not be perfect. Time will heal the cleavages, provided there is the political will and genuine federalism. It needs enlightened leadership and a dedicated political party. A successful federal bargain depends upon a solid institutional framework as well as on the capacity to

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to generate consensus between difficult contradictory interests and demands. If this process can be started, the states in course of time will voluntarily relinquish more powers to the federal center because a reasonably stable center can do more for the whole country in terms of development activities for all people concerned. Time will take the people in the learning process of understanding the virtues of good governance, transparency, accountability and decision-making at all levels.

When rule of law is entrenched in a federation, it erodes all authoritarian disease which now fragments the ethnic people. Respect for rule of law generates new perspectives, new attitudes. New generations of ethnic peoples, reoriented in new ideas of federal democracy, will enter into reconciliation and ensure an arrangement that works. The last two, three generations have been steeped in chauvinism the suppression of the military rulers who belong to the ethnic majority. This has deepened mutual mistrust. Ethnic nationalism is the most egocentric of all nationalisms. Federalism is a democratic middle path, a way of negotiation and compromise. The new generations, open to ideas of democracy and information technology if drawn into this vortex, will be liberated of all mistrust and a working arrangement to mutual benefit of all will become viable. The mentality of ethnic leaders will not continue as of today. Changes will sweep away old dust euphemistically seen as holistic rights. The blinkers will be removed from their minds and they will be drawn into the mainstream of nation-building and good governance. By and large there is consensus in federalism, only a twist is required to make it viable.

One last word about federalism is that however good a constitution may be, it will not deliver anything unless there is a strong political party based on its constitution and elective systems, and decentralized leadership which enables decision-making at all levels. It should not leave any space where corruption can creep in. The greatest tragedy of Burmese history is not the forty years of military rule, but the disappearance of all political parties which had played major roles in its changes at different stages of its history. As the search for federalism is intensified, so is also the process of perfecting their political parties. Only they can promote a political system that has to be carried on. For the Burmese people, the choice is either to become more Balkanese or to become more European.

**Endnote**

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Federalism and Self-Determination:
Some Reflections

Venkat Iyer*

Federalism has, for many decades now, been seen an answer to the challenges posed by multi-ethnic societies the world over. In some cases, the idea has worked, while in others it manifestly has not. Where it has failed, the reasons have often lain as much with human deficiencies as with systemic shortcomings.

Whatever the record, there is no doubt that the federal concept has come decisively under the spotlight in the post-Cold War era—an era which has been characterised by the unleashing of nationalist and ethnic tensions on a large, and even unprecedented, scale. In some cases—the former Soviet Union and the former Yugoslavia come readily to mind—the discussion has taken place against the backdrop of bloody conflict, as people keep searching for newer and better ways to accommodate long-suppressed ethnic and other differences and live in some kind of relative harmony.

It is reasonably clear that while federations can be a binding force, enabling the creation of unity in diversity, they can also often be the first step towards secession. As one leading commentator explained in a recent book: “[D]ue in part to the constitutive nature of multiethnic federations, where provincial and ethnic boundaries coincide, the politics of nationalism is rarely far removed from the arena of federal politics, feeding into a set of grievances which in one form or another have the potential to mobilise individuals behind calls for the territorial redistribution of power, including independence”.¹
Whether or not a federal solution will work in a given jurisdiction, therefore, depends on a number of factors, not least the nature of the federal arrangements, the fairness with which the system is operated by all parties concerned, and the degree of political maturity displayed by the leadership at both federal and provincial levels. As long as the costs of remaining a member are not seen as excessive in relation to the benefits accruing from membership, there is a reasonable chance of the federation succeeding.

**Self-determination**

Federalism is, of course, only one aspect of the broader question of self-determination. Given that the issue of self-determination often features prominently in discussions about the future of multi-ethnic societies such as Burma, this article will attempt to examine some of the legal questions surrounding this rather contentious concept.

The first thing to note about self-determination is that it is still a rather nebulous concept. In the words of one scholar, it is “one of those unexceptionable goals that can be neither defined nor opposed”. And yet it occupies pride of place in international human rights instruments, and is one of the most widely-used campaigning slogans in world politics. It has increasingly been used by diverse separatist movements who base their claims to statehood on ethnic identity.

How far are such claims tenable in law? There is no easy answer to this question. Generally speaking, national/ethnic identity as a basis for statehood does not find much support in international law. As Diane Ortentlicher notes in a recent article: “In large perspective, international law has in recent decades embraced a cosmopolitan, liberal vision of states, their relationships with their citizens, and their relations with each other. While respect for pluralism within states is part of that vision, liberal internationalists have largely disdained ethnic particularity as an organising principle of political legitimacy, emphasising instead liberal republican values of civic equality. In similar fashion, global adherence to human rights principles in the post-war decades has affirmed a cosmopolitan faith in universal norms that would displace the parochial values of an obsolete nationalism”.

The problem lies in the fact that separatist claims by ethnic minorities within a nation clashes head-on with one of the well-entrenched princi-
ples of international law, namely the territorial integrity of established states—a principle that is often referred to as a “fortress-like concept of state sovereignty”. Under this principle, once a state had been established, it enjoyed considerable independence from interference by outside forces, and was free to decide how to deal as it pleased with separatist or other forces within its jurisdiction.

This principle finds expression in the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations which, after affirming the principle of self-determination in general terms, goes on to say: “Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour”.

The only exception that was recognised was in respect of states under colonial rule. In the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the General Assembly of the United Nations in 1960, for example, it was made clear that all peoples “subject to alien subjugation, domination and exploitation” would have a right to self-determination by virtue of which they could “freely determine their political status and freely pursue their economic, social and cultural development”.

Interestingly, among the most strident voices in favour of limiting the right of self-determination to countries under colonial rule were the governments of the newly-independent former colonies, who were keen to ensure that secessionist movements within their territories (of which there were quite a few, especially in Africa) could not claim a further right of “internal” self-determination.

**Internal self-determination**

Even so, some scholars have, in recent years, advanced the view that it may yet be possible for national minorities within the boundaries of an established state to claim the right of self-determination (including seces-
sion) under certain circumstances. Frederic Kirgis, Jr., for example, sug-
gests that the extent to which they can achieve this would vary depending
on the circumstances prevailing in the country in question: “One can thus
discern degrees of self-determination, with the legitimacy of each tied to
the degree of representative government in the state. The relationship is
inverse between the degree of representative government, on the one
hand, and the extent of destabilisation that the international community
will tolerate in a self-determination claim, on the other. If a government
is at the high end of the scale of democracy, the only self-determination
claims that will be given international credence are those with minimal
destabilising effect. If a government is extremely unrepresentative, much
more destabilising self-determination claims may well be recognised”.5

If this analysis is to be accepted, the claims of a minority to secede from
state under a repressive dictatorship would be considered legitimate. Kir-
gis sees the right of self-determination as existing in a continuum, with
secession at one extreme and limited autonomy at the other.

A similar approach has been take 

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The first of these grounds (the “oppression theory”) was used to justify
the secession of East Pakistan from the erstwhile state of Pakistan in the
early 1970s—a secession which resulted in the creation of Bangladesh,
which was admitted as a member of the United Nations in 1974. But this
theory is not without its problems. For a start, there is no agreed defini-
tion of what constitutes “oppression” for the purposes of the theory. One
test, proposed by Onyeonoro S. Kamenu requires that “on the basis of
hard empirical evidence, the members of the seceding group could no
longer live in peace and security, or fulfil their legitimate individual aspi-
rations, within the larger political community.” But Kamenu adds a rider
which may make the fulfilment of this test much harder that one would
imagine at first blush: “However, for this rationale to be plausible it must
be demonstrated that all other political arrangements capable of ensuring
the aggrieved group a measure of self-determination short of outright in-
dependence have been exhausted or repudiated by the dominant major-
ity”.8
Another problem with the “oppression theory” is that any intended secession will have to be achieved without outside intervention (given the rule against disruption of the unity and territorial integrity of states by foreign forces), which is practically quite difficult, if not impossible. (East Pakistan, for instance, could hardly have seceded without the help it received from India, but in this, as in other cases, politics overrode the strict requirements of the law when it came to the recognition of Bangladesh).

A further problem with the “oppression theory” is that “it does not accommodate the desires of ethnic groups to create their own nation-states. The prerequisite for secession underpinning the “oppression theory” is not ethnic differentiation but oppression. It was the fact of oppression, rather than the fact that the Bengalis were linguistically, ethnically, and culturally different from other Pakistanis, which ultimately justified the creation of Bangladesh as a separate and independent state under the oppression theory. Many ethnic groups find this an unsatisfactory basis upon which to justify secession”.

The legal niceties described above do, of course, often take a back seat in the face of realpolitik, as the Bangladesh case so starkly illustrated. A more recent example of politics intervening to throw in doubt settled legal principles concerns the former Yugoslavia where the finding of an international tribunal to the effect that the country had been subjected to dissolution rather than secession has been hotly contested. In the opinion of one of the critics, “The response of the international community to the events of Yugoslavia has done much to weaken the principle of territorial integrity and to encourage the notion that self-determination can be achieved through secession from an independent and sovereign state”.

Conclusion

The right to self-determination is fraught with many difficulties, both practical and legal. Although it has been given pride of place in the post-war international human rights instruments, there is no consensus on what the contours and the content of this right are. The situation has not been helped by inconsistent international practice, which has in turn bred a certain amount of cynicism among many observers.

Increasingly, there is a trend on the part of international law to overcome some of the problems of ethnic self-determination by classifying ethnic groups as “minorities” and attempting to guarantee such groups cultural,
linguistic and religious freedoms on a universal basis. And within states, attempts still continue, as they have done over the decades, at accommodating ethnic and other differences through such mechanisms as federalism, autonomy and the like. Just over a decade ago, one commentator spoke of “a federal revolution sweeping the world”¹¹: it is a moot question whether that claim can be made today when the world is facing at once the contradictory pressures of globalisation and fragmentation.

**Endnotes**

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6. Alan Buchanan, cited in Steiner and Alston, supra note 2, at p. 1287.
7. He defines discriminatory redistribution as a practice whereby “the state implements taxation schemes, property rights schemes, regulatory policies, or economic developments programmes that systematically work to the disadvantage of some groups while benefiting others in morally arbitrary ways”.
10. Ibid. at p. 207.
Interview With Sao Seng Suk

(Sao Seng Suk is the Chairman of the Shan State Constitution Drafting Committee. Following is a literal transcript of the interview he had with U Aung Htoo and B.K. Sen).

“Do you consider the constitution to be the core issue in a peaceful political settlement in Burma?”
Sao Seng Suk: “Yes, I certainly do. Because all problems arose since Pyidaungzu was established in 1947 from the then constitution. If all accept democratic constitution, historical problems can be settled peacefully and the country rebuilt according to constitution, as there will be many kinds of freedom, freedom of expression, freedom of activities, etc.”

“What type of Constitution will be viable?”
Sao Seng Suk: “Federal type constitution, federal is suitable for us. First, our history has given us a duty to have a federal constitution. Secondly, it has to be a union guided by federalism. There is no model constitution for Burma, we have to study the constitutions of South Africa, America, Germany, India, Malaysia, etc. There are differences with us. We have to take the good things from them. We have to be careful that a social welfare state evolves. There must not be centralization of power. In order to have a social welfare state, there has to be empowerment of people at grassroots level and we should be careful that this will not be undermined”.

“Do you want restoration of the 1947 constitution?”
Sao Seng Suk: “It is too early to answer. In 1960-61 at the Taunggyi Conference this issue was discussed. But at present it is premature to deal with it in detail. At an appropriate time this can be discussed at all levels of society and institutions. The essence of the Taunggyi Conference was how to deal with genuine federalism. Whether or not the future constitution should be based on the principle of the Taunggyi Conference is too early to answer”.

FEDERALISM IN BURMA
“Do you want restoration with amendments? If not, which or what constitution do you want?”
Sao Seng Suk: “No. Although it is too early to answer in full, I think federalism satisfies most of the conditions necessary for empowerment of people and improvement of the condition. The constitution should be improved from time to time”.

“Do you think that the 1990 election gave indications of what constitution Burma needs?”
Sao Seng Suk: “SPDC and NLD led by Daw Aung San Suu Kyi are presently engaging in preliminary talks, it’s a confidence-building period. Eventually they will come to the point where they will have to discuss drafting of the Federal Constitution. The time will come when all the people of Burma can openly discuss and consult with each other what kind of constitution we all desire and is best for us. Therefore, it is also premature to answer the question through the media and publications on a wider scale”.

“Do you think that the Army will have to be given a role in drafting the constitution?”
Sao Seng Suk: “The army is duty-bound to promote democracy as one of the institutions of democracy and civil society. Only the elected representatives of the people have a legal role”.

“Do you think for the transitional period, the army shall have a place in the transitional constitution?”
Sao Seng Suk: “According to the present circumstances, the army may be given a chance to take part in the formation of the interim transitional government”.

“Do you think a unitary constitution will be a solution?”
Sao Seng Suk: “No”.

“Do you think the future constitution should contain a clause for secession?”
Sao Seng Suk: “It is too early to say, I could answer at a more suitable time in the near future, when there will be full discussion on this issue in an open political arena”.

“What do you think of division of state on ethnic basis?”
Sao Seng Suk: “Yes, it should be on ethnic basis. It is a historically accepted principle”.

“Should the present regions form into one state comprising a Burman
majority? If yes, does it mean only for the purpose of the upper house of nationalities, or for both houses?”
Sao Seng Suk: “Yes, the regions should form into one State but it is for the Burmans to decide its formation. Both Houses should have equal legislative power. There should be no question of big or small when you talk about equal rights”.

“You have minorities in Shan State, e.g. Pa-O, Wa, Lahu, Palaung. How would you provide equality for them in your State Constitution?”
Sao Seng Suk: “First, we have accepted self-determination. We have to initiate it. We have representatives of different nationalities in our Constitution-drafting committee. We have to lay the foundation. We have initiated projects which are based on self-determination. We are practically implementing fundamental principles that we all aspire and preach”.

“How will you determine the representation of the minorities in the CDC? Who is the leader?”
Sao Seng Suk: “You can do that by following democratic procedures such as a referendum or an election”.

“If the minorities say that they want to secede, will you agree?”
Sao Seng Suk: “We would have dialogue. We are not ‘Big Brother’. We can talk about power-sharing. We will initiate discussion from top to grassroots level. We have to do awareness-building, capacity-building. We recognize self-determination. If self-determination is respected there is no question of secession”.

“While drafting Shan State Constitution, have you kept in view its position in correlation with the future federal union constitution of Burma?”
Sao Seng Suk: “There is Federal chance but that will come at a later stage. Our focus is now only on the State Constitution, although we do think in terms of Federal. We have had experiences with federalism since 1922, when the Federated Shan States were formed. The Burmans need to build awareness on federalism and capacity-building into that direction. By doing that, the tension between ethnic nationalities can be relaxed”.

“Don’t you think that the process of drafting a State constitution will strengthen the hands of SPDC?”
Sao Seng Suk: “No, on the contrary, it will weaken them. The successive military dictators, the minority Burmans among the majority Burmans, have abused the rights of the Burman majority”.

“Is there any timeframe for the completion of the drafting process?”

“Our history has given us a duty to have a federal constitution. (...) There is no model constitution for Burma, we have to study the constitutions of South Africa, America, Germany, India, Malaysia, etc. [and] take the good things from them”.
Sao Seng Suk: “That will depend on achievement of peace in Burma which will result from dialogue and peaceful transition”.

**Extracts from Statements**

KNU leader: “We, the non-Burmans, truly believe that we can work together to rebuild the Union of Burma if we respect the spirit of Panglong—self-determination, equality and democracy”.

KNPP leader: “As the process develops and the eight constituent states of the Union of Burma prepare for a new Panglong Conference to draft a new federal constitution, it will be necessary to take steps to ensure that all parties in the 8 states can participate”.

CHIN Seminar (Ottawa, 3 May 1998): “Under genuine democracy and right of self-determination in its fullest extent, we are willing to work together to consolidate unity among all nationalities in Burma to form a Federal Union”.

(It is much regretted that the views of all the ethnic leaders could not be covered due to shortage of time. They will be taken up in our next issue).

**Endnote**

Interview taken by B.K. Sen and U Aung Htoo, Members of the Burma Lawyers’ Council.
Dr David Steinberg of Georgetown University presented a paper, “Myanmar’s Minority Conundrum: Issues of Ethnicity and Authority”, at the Conference entitled “At the Front Lines of Conflict Prevention in Asia”, held in Tokyo on 6 and 7 July 2001. He said that, “The issue of the status and authority of one-third of the population of Myanmar's population, composed of diverse indigenous non-Burman peoples, remains the most intractable of the problems facing the Burmese state since independence in 1948. The sharing of political power in some manner acceptable to the local populations, and social and economic equity among these diverse peoples are all related to, but even more fundamental and difficult of solution than, the issue of the political form of government that has bedevilled the state for decades. Myanmar has been on the brink of fragmentation because of the diffuse, often antithetical, perceptions of these issues by one or more ethnic groups since independence (…)

While the issue of the status of the non-Burmans in a future Burma is a key issue that will have to be dealt with, the “fragmentation” thesis needs to be re-examined. Has Burma really been on the brink of fragmentation since independence? Are the ethnic nationalities and the politics of ethnicity the root cause of the problem? Was General Ne Win correct when he claimed in 1962 that he had to seize state power to prevent Burma from disintegration? The current State Peace and Development Council also claims that there are 135 languages and 8 major races in Burma requiring a strong centralized military to keep the country together. Is this true?

The fear of fragmentation probably has its roots in the fact that post-colonial states or nations were created by grafting nation states onto tradi-
tional societies. The new leaders, the successors to the legacy of colonial “state-making”, the leaders of sovereign “nation-states”, therefore, feared losing their newly acquired piece of “real estate”. This fear—reinforced by the inadequacies and insecurities of the new power elites—was bolstered by the “modernization” theorists of the 1950s and 60s. The modernization theorists and theories pitted the modern elites (in control of the state) against the backward, premodern societies and their parochial, traditional leaders. In this view, the state was modern and modernizing, while traditional ‘societies’ were backward, irrational, etc.

The unfortunate result has been the emergence of state-centric (state-sympathetic) state-society theories, with scholars riding on the back of the ‘rampaging elephants’ (the new states and power holders), looking down on societies, communities, and individuals as these were trampled. The actions of the state, no matter how coercive or repressive, were looked upon as laudable state-building, nation-building exercises. The defensive reaction and resistance of the victims were portrayed as being state-fragmenting, state-destroying acts of tribal insulates or traditional elements.

Of course, in the Cold War context, the state was also a sacred thing for both the US-led “free world” and the communist bloc. Thus was ‘society’ made invisible, as were the repressive actions of the power-holders (who were clients of the respective blocs). ‘Society’ did not count or was considered subversive or infiltrated by the enemy.

In the case of Burma, the earliest rebellions against the new state of Burma were waged by the White Flag and Red Flag Communists and the Anti-Fascist People’s Freedom League’s pocket armies, the Yebaws, and also by men and officers of the First and Third Burma Rifles. These were all Burmans. The communist-leftist rebellions and armed uprisings, were actually really and truly state-fragmenting. They did not even acknowledge Burma’s independence. To them it was counterfeit. Their aim was to overthrow not only the AFPFL but the new state itself—lock, stock, and barrel. But these rebellions are not generally considered by the power elite to be state-fragmenting.

On the other hand, the Karen rebellion was fuelled mainly by the Burma Independence Army massacres during the Second World War, and by the post-war massacres of Karens. In fact, the common thread running through the ethnic rebellions in Burma is that they were reactions to military atrocities. But the “state-fragmenting” approach to history saw the ethnic rebellions as such because they pitched traditional societies against the modern state.
It cannot be said that the Burman elites (the AFPFL as a whole, and the military) eschewed playing the politics of identity. They, and especially the military, had ethnic aspirations, and nationhood was viewed in terms of Burman hegemony (or, as Michael Aung-Thwin and Robert Taylor put it, “Pax Birmanica”).

The “Pax Birmanica” version of history is one informed and buttressed by the textbook history of Burma written by English historians of the Victorian-Edwardian age. The history was gleaned from court chronicles and interpreted in “national” terms (as were histories of the imperial-colonial epoch). Burmese history was portrayed in ethnic terms. What we have then, as a history, is one that gives the impression that Burma evolved through a series of nation-building conquests; that Burma was unified long ago by Burman “conqueror-kings”.

The English Victorian-Edwardian school of history is now unfortunately quite entrenched, fed by ignorance and the military’s control of academic life, and censorship, for over forty years. This situation has produced in turn a counter-history which portrays the Burmans as destructive, expansionist, chauvinistic, brutal, and which alludes to great Mon, Rakhine, Shan, etc., kingdoms and empires, as if nationalism existed in Burma among ethnic-linguistic groups since time immemorial, rather than nationalism or ethno-nationalism being the product of modern imaginings and Western intellectual and technical contributions.

To these historical fancies and myths have been added the military’s image of itself as the saviour the nation, keeping the country together, and other such self-serving propaganda. Scholars should not take the claims of the military seriously. To do so is to buy into the myth that the Union was saved from fragmenting by the military by way of coups and massacres, and brutal and systemic, systematic atrocities.

It would not be wrong to say that the military is inherently part of the problem. Therefore, to look upon the “ethnic” problem in Burma as having to do with fragmentation, describing Burma as being on the brink of fragmentation is to unwittingly rationalize the irrational, to defend the indefensible. It is blame being pinned on everyone except the real culprit.

It is not too late to undo the mischief caused by military rule. Even today, there is almost no ethnic animosity on the people-to-people level. Ordinary folks, regardless of ethnicity, are tolerant, accommodative, kind, generous, and so on. There is no ethnic hatred as witnessed in the former Yugoslavia or today in Afghanistan.
The politics of identity is actually played out only at the elite level, at a political level. In reality, the central problem is the problem of brutal rule, the arbitrary exercise of power, and the mismanagement of everything. Who would like to be a part of a country where an alien and alienating army of occupation does what it wishes with impunity with your village, your crops, your fields, orchards, animals and livestock, and with your wife, your daughter, with any members of your family?

It is the everyday violation of the fact and spirit of Panglong, on which the Union, “modern Burma”, was founded. At Panglong, the people of Burma were for the first and only time united in purpose. Contrary to common perception, even the Karens agreed to the concept of Panglong: equality, self-determination and democracy. At the time of the massacres, the Karens were negotiating to be recognized as a state within the Union.

Had the AFPFL abided by the spirit of Panglong, much of the subsequent fighting over the years could have been avoided. As was witnessed in the early days of independence, the Karen, Chin, Kachin and Shan Rifles rallied to the rescue of U Nu’s government.

Recognizing that Burma’s “ethnic” problem is a constitutional one, Shan and other ethnic leaders in 1960-61 formed the Federal Movement and worked within the legal democratic framework to remedy this problem by constitutional means. But they were stopped by General Ne Win who seized power and claimed he had to save the country from disintegrating. What he has done in 40 years to further fragment the country is well-documented. If Burma does finally fragment (which is not likely though) blame will rest squarely on the shoulders of the generals and their juntas.

**Endnote**

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Federalism:
Putting Burma Back Together Again

Chao-Tzang Yawnghe*

This paper deals with the absence or the non-existence of a functional relation between the state in Burma and broader society which is also made up of non-Burman\textsuperscript{1} ethnic segments that inhabit the historical-territorial units comprising the Union of Burma.\textsuperscript{2}

Introduction: Putting the Country Back Together Again

The paper looks into the problems related to the task, as yet to be accomplished, of “putting the country back together again”, in contrast to the claim of the military and its state is “keeping the country together”. It is here argued that although the military has, in a manner of speaking, “kept the country together”, it has also distorted the relation between the state in Burma and broader society by monopolizing power and excluding societal elements and forces from the sphere of the state and from the political arena. The military’s centralist, unitary impulse, informed by its ethnocentric (Burmanization) national unity formula, has contributed to a dysfunctional state-society relation, that has in turn brought about the present crisis of decay and general breakdown, making Burma a failed state.

The paper focuses on a very crucial aspect of state-society dysfunction or breakdown, this being the dysfunctional relation between the state in
Burma and the non-Burman ethnic segments and the historically defined territories they inhabit. For the non-Burman ethnic nationalities (or national groups), the present, existing state structure (or state order) is not what they aspired to or expected in 1947, when they agreed at Panglong in 1947 to live together under one flag. They envisioned a union of equal states, with a center that is federal and constituted by member states working together in a functional and rational manner.

It is noted here that “putting the country back together again” would therefore involve not only the restoration of a functional democratic state-society relation, but also the return to Panglong or its spirit, where all the territories and ethnic segments agreed to establish a union of equal, self-determining states. Nonetheless, because of the long years of strife and the traumatic experience of living under a failed and harshly oppressive state of the military (for the military, and by the military), the task of “putting the country back together” will not be, the paper argues, easy.

**The Failure of the State in Burma**

By all objective indicators and as measured by the hopes and aspirations of the founders of the country and the people in 1948, Burma (the Union of Burma) must be assessed as a failed country, a failed nation-state. Not only has the promises for democracy and peace not been fulfilled, “killed” by military coup-makers in 1962, the promises made by military rulers of a prosperous socialist society made in 1962 by General Ne Win’s Revolutionary Council, and promises of free-market economic prosperity made in 1989 by the State Law and Order Restoration Council (SLORC), have not been fulfilled.

Instead, Burma remains the poorest country in Southeast Asia and Asia (and of the world as well), and is still torn by strife. The extent of the devastation wrought on the country by a war waged by the regime against the people can be seen from the fact that in central Shan State, the names of villages that are found on maps do not exist on the ground anymore. Vast stretches of fertile and productive farmland, stretching from Khesi to Mong Pan in the south, and west of Laikha and Mong Kung to the banks of the Salween river in the east, have become a wasteland. As a part of its pacification strategy, to sow terror and break the spirit of the people, the military has driven villagers from their hearth and homes in these area and designated them as free-fire zones.
Moreover, the military regime has performed dismally, and has not been able even to deliver, unlike their Southeast Asian counterparts, “economic development”, or a “strong” economy, which is what military regimes and authoritarian states (of both the right and the left) are at one time, rightly or wrongly, presumed to or are expected to deliver. The all-round decline of Burma and the decay of both civil and government institutions and all public service systems, plus the entrenchment within the state of a military elite, that which is predatory and unresponsive to popular aspirations, makes Burma an excellent example of a failed state.

A failed state can be described, conceptually speaking, as one that is marked by a high level of dysfunction in the interactions and relationship between the state (i.e., the government and power-holders) on the one hand, and other forces within broader society on the other. It is also marked, as a result of state-society dysfunction, by the breakdown of the rule of law, chaos, economic decay or decline, absence of government services, and so on.

**The Separation and Alienation of the State from Society**

Although the devastation of the country, its steep slide into deeper economic decay, and rampant social and other problems can be conventionally analyzed as being owed to the incompetence and ignorance of Burma’s ruling generals, internal strife, and/or “ethnic conflict”—which is true enough, more or less—this, however, is not the whole story.

At a deeper, more conceptual or theoretical level, one can say that at the root of all the misery and general decay in Burma is, as mentioned, the dysfunctional relation that exists between the state in Burma and broader society. A significant portion of this dysfunction relates to the hostility between the state dominated by the Burman ethnic group, and the non-Burman ethnic segments, namely, the Rakhine, Mon, Karen, Karenni, Shan, Kachin, and Chin, plus other smaller ethnic groups.

State-society relation in Burma has been marked since 1962, when General Ne Win usurped state power—by the “separation” of the state, monopolized by the military, from broader society and its aspirations. In other words, the state has been and still is insulated from broader society by the military: societal forces and elements have been (and still are) excluded from the sphere of the state and from articulating their interest and preferences within the political arena, which the military has shut down...
since 1962. That is to say, society in Burma has been effectively depoliti-
cized by military power-holders, their lives and dreams shattered, and
their voices and will ignored and brutally repressed.\textsuperscript{7}

Ever since the military seized power and monopolized the powers vested
in the state and closed or shut down the political arena, state and society
in Burma has existed side by side, but locked in a hostile and dysfunc-
tional relation. That is, the military’s monopolization of power and its
use of the state to advance its own interest has been resisted by societal
forces and elements. It can be said that since 1962, society in Burma has
more or less been in a general state of revolt against a harsh authoritarian
state dominated and monopolized by men in uniform.\textsuperscript{8}

The first act of resistance against military rule occurred in Rangoon. In
July 1962, three months after the military coup, students of Rangoon
University staged a series of protests against military rule, and it was bru-
tally put down by gunfire. This brutal act deprived the military regime of
any chance it might have had to win over, at the very least, the support of
the Burman majority whose interest the Burman-dominated military
claimed to protect and advance. Resistance on the part of the non-
Burman ethnic nationalities has been particularly pronounced because
their vision of Burma, nationhood, and national unity differed markedly
from the military’s, as will be elaborated in the passages below. The wide-
spread and systemic atrocities perpetrated by the military in the non-
Burman states have further alienated the non-Burman ethnic nations to a
great degree.

\textbf{“Burma” in Pre-Colonial and Colonial Times}

Like all present-day nation-states of Southeast Asia (and in Asia, on the
African continent, and elsewhere), Burma did not exist as a territorial na-
tional entity, or even as an administrative unit.\textsuperscript{9} There then existed in-
stead (as has been explored by the more perceptive scholars such as
Robert Heine-Geldern, among others)\textsuperscript{10} a loose configuration of what
might be called systems of domination, the “circle of kings”,\textsuperscript{11} revolving
around family and personal ties, shifting tributary relations, and fluid alli-
ances between greater kings, lesser kings, lords, princes, sultans, and so
on.\textsuperscript{12} The reach of these pre-colonial “states” were narrow and were often
mythic or imaginary than real.

The arrival of the British, first to India, then to the area that became Bur-
ma, saw the restructuring by the British of the territories they annexed in accordance with the colonial and bureaucratic imperatives, pacifying the natives and restoring order (as understood and defined by the colonial offices and officers). At first, the “Burmese” kingdom was ruled by the British as part of Bengal province. Later, it was made a province of India (in the restructuring of 1920-21). And in the mid-1930s “Burma” was separated from India, and constituted as a self-governing entity (as Ministerial Burma) but under British supervision.

Other parts of what became Burma in 1948 were administered indirectly. Contrary to the Burman-Burmese nationalist myths, it was not the case of the British conquering a unified Burmese kingdom and partitioning it into separate and different parts to keep it weak and divided, in accordance (as claimed by nationalists) with the divide-and-rule colonial imperatives. Pre-war Burman nationalists like U Ba Pe and U Pu, for example, claimed that there was no ethnic differences between the Burman, Shan, Karen, and so on, that all are Burman, and that it was the British that created differences where there were none. At the Burma Roundtable conference in 1931-32, these Burman nationalists raised the issue of reuniting the Frontier Areas and Federated Shan States with Ministerial Burma.

Rather, it was colonial and bureaucratic imperatives and/or expediency at play in Burma as elsewhere in the colonial or colonized parts of the world, to which the phenomenon of Indirect Rule is owed. The remote, not easily accessible areas or frontier lands, whose resources were not easily workable or it was not cost-effective to impose direct rule, were left more or less alone, with local chiefs and princes in charge, but under loose British supervision. The areas that were not easily exploitable were designated as Frontier Areas, which also included the Federated Shan States. The more accessible Irrawaddy lowland (Burma Proper or Ministerial Burma) with its fertile paddy land, a larger population, was more exploitable and was put under direct rule and developed by British and Indian capital (or investments). Thus was Ministerial Burma (and the majority Burman) modernized and developed, becoming part of the modern world economy.

**Panglong and the Politics of Federalism**

It might be noted that although Ministerial Burma comprised only Burma Proper, i.e., the Irrawaddy lowland, and the rest (of what is now Burma)
were separately administered, they were under one flag (the British Union Jack) and formed a single colonial economic entity or market.

Then came the Second World War. The British retreated to India in 1942 and soon returned, re-capturing Rangoon in May 1945. However, the British were in no position to re-impose colonial rule being impoverished by the war, and the decision of the new Labor government to quit India made it certain that Britain would have to sooner or later grant independence to other colonies as well.

Therefore, at the end of the Second World War, and with the British withdrawing from its colonies in Asia, the people of Ministerial Burma, the Federated Shan States, and Frontier Areas were confronted with the question of how they would relate to one another in a post-colonial world; whether each would go its own separate ways or live together under one flag. And, if so, how? That is, what kind of country or nation-state would they establish: a centralist, unitary state or a decentralized, federal state, and if it were the latter, what kind of a federal arrangement should they settle on?

The defining moment in the making of modern or the present-day Burma was the signing of the Panglong Accord in 1947. The Accord was signed at Panglong, a town in Shan State, by U Aung San, the supreme leader of a Burman nationalist front, the AFPFL (Anti-Fascist People's Freedom League), and leaders of the Frontier Areas and Shan princes led by Sao Shwe Thaikhe, who was to become the first President of the Union of Burma. Unfortunately, Aung San was assassinated four months after signing the Accord (in July 1947).

The understanding was that the peoples and leaders of the Frontier Areas would join with the Burman nationalist forces to jointly fight for independence, and that a federal Union (Pyidaungzu, in Burmese) of equal states, guaranteeing self-determination for all ethnic segments, would be established.

The 1947 Panglong Accord is the most significant historically and politically defining document in Burma. It symbolized the coming together of the various and disparate territories and ethnic communities over which the British ruled, and as well symbolizes their bonding together as a new nation-state, the Union of Burma. The Panglong Accord is also politically defining because it represented at that time the aspiration(s) of all leaders, both Burman and non-Burman, to be free, to jointly obtain independence from British rule. The emerging new country or nation-state, the Union of Burma, was envisioned by all, especially by the non-
Burman ethnic nationalities, as a union of co-independent and equal national states (*pyi-daung* in Burmese). In the Burmese language, the word for the Union is *Pyidaungzu*, meaning “the coming together of national states”.

However, the constitution (the 1947 Union Constitution) which emerged was, from the viewpoint of the non-Burman leaders, not federal, but a centralized, or semi-unitary one. It was one where one constituent state, Ministerial Burma or Burma Proper, occupied the position or status of the mother-state (*Pyi-Ma*, in Burmese). The relationship was one like that which existed between England, the mother state, and Scotland, and Wales. The other seven states were not equal members of the Union, and were at best semi-autonomous, but subordinated entities vis-à-vis the Burman mother-state. Their status and competencies were defined not in the respective state constitutions—there were none—but in sections of the Union constitution which, in essence, was the constitution of Burma proper, the mother-state.

Not withstanding the flaws of the 1947 constitution, its deviation from the Panglong vision and spirit, the ethnic nationalities accepted the Union constitution on the understanding that it could be amended later. Also, there was a pressing imperative to support the government of the day headed by U Nu owing to the danger of a communist takeover.

A very crucial intervening factor which complicated politics in the non-Burman areas was the rise of the military as a significant power within the state in Burma. The U Nu’s AFPFL, besieged on all sides by communist forces, and as well by Karen rebels who took up arms against what they saw as war launched by the Burmans to exterminate them, became increasingly dependent of the military. In time, the military, as the pivotal defender of the AFPFL government gained more and more political and power leverage vis-à-vis its civilian masters, and it became very powerful.

It soon became in time a state within the state, possessing its own intelligence body which operated outside the law with impunity. The military had its own proto-mass movement, the NSA/National Solidarity Association (the core of which became the Lanzin or the BSPP party, and the predecessor of the current USDA/Union Solidarity Development Association). By the mid-1950s, the military also became owners of enterprises, hotels, industries, and in many areas it exercised administrative and extra-constitutional powers, especially in the non-Burman areas.

Unfortunately for Burma, the military’s vision of national unity was pos-
tulated on a mono-ethnic, Burman-centric, concept of nationhood, the thrust of which was that all other ethnic groups should be Burmanized. Such a narrow, exclusionary nationhood formula created a lot of problems and frictions.

As unfortunate was the secession clause in the 1947 constitution where the Karenni and Shan State (and for a time, the Kachin State) was provided with this right, which they could exercise 10 years after being with the Union, that is to say, in 1958. The secession clause was meant to underline the voluntary nature of the Union and as well to serve as a guarantee that the Union would be based on the equality principle. However, in order to pre-empt secession, the military embarked on a reign of terror, indulging arbitrary arrests and torture of those illegally detained, extra-judicial killings, rapes, arson, pillage, etc.

The extra-constitutional exercise of power and rule by terror of the military resulted in armed resistance in the non-Burman states. The concern felt by senior and responsible non-Burman leaders about armed rebellions led them to initiate a move to amend the constitution (the federal movement) aimed at making the Union more federal in 1961. U Nu's Pyidaungzu government which won an overwhelming victory at the polls in 1960 agreed to consult with the non-Burman leaders about amending the constitution. It was understood by the non-Burman leaders, including the former first Union President, Sao Shwe Thaikhe of Yawngewe, all that a more federal arrangement would be worked out in a democratic, legal manner.

For the military, however, federalism was perceived as posing a threat to its position as a dominant and dominating power. A real federal union of states, as envisioned at Panglong in 1947 and aspired to by the ethnic nationalities, would clip its wings, and negate its mono-ethnic, Burman-centric national unity formula. The military, therefore, staged a coup in 1962. This further outraged the non-Burman populace, and strengthened the ethnic-based armed resistance forces in the constituent states of the Union.

The Prospect for a Democratic Federal Order in Burma

With the call for dialogue made by Daw Aung San Suu Kyi and the democratic movement, the passage of numerous United Nations resolutions in support of dialogue, and the secret “confidence-building” talks be-
between the State Peace and Development Council (SPDC) held since October 2000, hopes for democratic transition has been raised.

As well, the military junta has been told by the UN Special Envoy, Razali Ismail of Malaysia, and also by Malaysian Prime Minister Mohammed Mahathir, that there is no alternative to dialogue, to a negotiated political change. Objective conditions in Burma (i.e. the deteriorating economy, general and widespread decay, and a state that is not only insulated from society, but censured by the international community, combined with the inability of the regime to resolve any problems or offer the people any service or deliver on its promises) point to the likelihood that some elements within the military junta may be induced to go the dialogue and negotiation route is quite high. However, the task of “putting the country back together again”, or re-building a functional, two-way relation between the state and broader society is easier said than done, especially in a country like Burma where the gap between the state (monopolized by the military) and the opposition (symbolized by Aung San Suu Kyi, and representing societal forces) is very wide. Fundamentally, there is a large gulf between the opposing camps: on the one hand, the NLD/Daw Aung San Suukyi and the SPDC are far apart on the question of how to re-integrate the state with broader society, and on the other, the ethnic nationalities and the SPDC are far apart where it concerns the issue of how the ethnic segments and constituent units of the union are to relate to one another and to the state.

The ruling generals are of course opposed any form of decentralization and the concept of a society as a body or collectivity of citizens that is autonomous and that holds the state and power-holders responsible and accountable for their actions is alien. The generals are apparently in deep denial of the destruction wrought by the military-state and their over 40 years of failure as rulers, judging from the propaganda in words, print and images manufactured by the junta. It is clear that the military (especially the hard-line elements) do not want any kind of transition. The blessing of a failed state for brutal-minded power-holders is that they have the full freedom to indulge in lawless and predatory practices: get whatever they need and everything they want at gunpoint.

The military is also opposed to federalism which was represented by the coup-makers in 1962, as destructive to national unity (or “national solidarity” to use the term in currency), and the movement for constitution reform was condemned as subversive, a plot by secessionists to dismember the Union. Therefore, even if there is a dialogue, the negotiations with regard to the federalism aspiration of the non-Burman national groups (or nationalities) will certainly be tough and full of pitfalls. Al-
though the Panglong spirit is more or less accepted by all political actors in Burma, even by the military (which has not repudiated the spirit of Panglong, and pays lip-service to the equality of all “national races” [sic]), the devil is, as they say, in the details.

Among Burman political actors and elites, the idea of Burma Proper losing its status and position as a mother-state (Pyi-Ma) is unpalatable. The notion of a federal order where the majority Burman will be placed on equal footing with the non-Burman nationalities, and the extent to which power will, in a federal arrangement, be decentralized, is unsettling; imbued as the Burman elites are with a paternalistic mind-set vis-à-vis not only the non-Burman, but the masses, who are thought of as incapable of governing themselves in an orderly and responsible manner.25

On the other hand, a large segment of the non-Burman population is suspicious of federalism. This stems from their negative experience with sham federalism, or lack of experience with federalism, in other words. As mentioned, the 1947 Constitution was federal only in name. It might even be said that the 1947 Constitution has given federalism a bad name. Federalism has come to be associated in the minds of many non-Burmese with Burman perfidy and the atrocities they suffered at the hands of Burman/ethnic-Burmese soldiers. Some non-Burman nationalist elements are firmly wedded to the idea that no Burman can be trusted because they are all crafty, too clever by half, and that they will always band together to conspire to destroy the identity, rights, and extinguish the freedom of the ethnic nationalities. The distrust of the Burman has been exacerbated by the atrocities, the rule of terror, perpetrated by the Burman soldiers in the Shan, Mon, Karen, etc. countries.26 Given the rejection and distortion of federalism by the military and the confusing babble and emotions that surrounds the question of “putting the country back together again”, the task will be a very daunting and difficult one, an uphill struggle all the way. Nonetheless, Burma has to be put back together again, and the dysfunctional state-society relation that has pushed the country down the slippery slope of decay and into the dark ages, must be made good again. This is a difficult task, but not an impossible one.

Endnotes

* Professor Chao-Tzang Yawnghwe from Vancouver, Canada, is a participant in the struggle for a federal and democratic Burma. His father, Soo Thanke, was Burma’s first independent President.
1. The term “non-Burman” is used to distinguish ethnic groups that do not speak Burmese (the language of the Burmans) as their mother tongue, from the Burman (or ethnic Burmese, or Burmese speakers). In academia, the distinction is made between “Burman” and “Burmese”, the latter connoting all inhabitants or citizens of Burma, in the manner of the distinction made between “English” and “British”. However, the problem is that the term “Burmese” does not approximate the term “British” because “Burmese” is not ethnic-neutral, and connotes things Burman, such as the language of the Burmans, Burman literature, the dress of the Burmans, and so on.

2. These historical-territorial units forms a horseshoe around the Irrawaddy plains or lowland, the homeland of the majority Burman or the ethnic Burmese. They are, the Rakhine State on the West coast, the Chin State, the Kachin State in the North, the Shan State in the East (and bordering China, Laos and Thailand), and the Karenni, Karen, and Mon State. Although these territorial entities have ethnic names, they are in fact multi-ethnic. Resistance to and alienation from the military regime (or the military state) is also multi-ethnic. For example, the Shan State Army operating in Shan State comprises all ethnic groups in Shan State, although the majority are Shan (or more accurately, Tai or Dai).

3. The term “ethnic nationalities (nation or national groups)” instead of “ethnic or national minorities” is here used because the Shan, Chin, Rakhine are not “minorities” in their states or home territories. In the Burma context, it would be misleading to categorize these nation groups as minorities because they are or can validly claim to be the founding nations of modern Burma (the Union of Burma) at Panglong in 1947 (almost one year before independence was obtained from the British, and modern Burma was born).

4. Free-fire zones are areas which have been declared as “black” or “grey” areas, and anyone found there are regarded by military patrols as rebels or their active supporters. Those caught by military patrols (search-and-destroy teams) are frequently killed on the spot, and whatever found is destroyed or confiscated. Reports of such actions are regularly posted on the electronic news board by monitoring bodies as the SHRF/Shan Human Rights Foundation, KHRG/Karen Human Rights Group, and reports are published by the SHAN/Shan Herald Agency for News, and so on. The forcible draining of the Shan population, forced dislocation, has been well-documented, see: “Uprooting the Shans” (Mae Rim: Shan Human Rights Foundation, 1996). For the dislocation of the rural population in the Karen and Karenni States, see: “Forgotten Victims of a Hidden War: Internally Displaced Karen in Burma” (Thailand: Burma Ethnic Research Group and Friedrich Naumann Foundation, 1998), and, “Conflict and Displacement in Karenni: The Need for Considered Response” (Chiang Mai: Nopburee Press, 2000).

5. Especially in the 1960-70s, military leaders who seized power (and their regimes) were thought of in academic literature as secular modernizers whose training and no-nonsense approach was just what was needed to promote economic development and modernization in the third world. It was a view held especially by political scientists looking at modernization and development in the Latin American context. An example of this kind of work, among numerous others, is, John J. Johnson, “The Role of the...
6. This kind of state-society relation is "abnormal" in terms of the generally accepted thinking about state-society relation today, but which may be regarded as normal in pre-modern times. One might even say therefore that Burma has regressed in time, back to pre-colonial times.
9. Edmond Leach provides a very perceptive discussion on the notion of frontiers, boundaries, and states in pre-colonial and ancient Burma, and he criticizes the tendency of most historians of Southeast Asia to assume that "the states they have to deal with were Nation-States, occupied by named ‘Peoples’ and separated from each other by precise political frontiers". See: Edmond Leach, “The Frontiers of ‘Burma’”. Comparative Studies in Society and History, October 1960, pp. 49-68.
10. See: Robert Heine-Geldern, “Conception of State and Kingship in Southeast Asia”. The Far Eastern Quarterly, No. 2, November 1942, pp. 15-30. This is a classic pioneering work, probably the first to deconstruct the textbook histories of national kingdoms (the Burman or Burmese kingdom, the Thai, Cambodian, etc., kingdoms) of Southeast Asia. These histories were official histories that portray ancient kingdoms as national or nation-based kingdoms, well before there were national or nation-states in Europe. Writings on pre-colonial “kingdoms” in Burma that deserve serious attention are: Michael Aung Thwin, “Pagan: The Origins of Modern Burma” (Honolulu: The University of Hawaii Press, 1985), and, Victor Lieberman, “Burmese Administrative Cycles: Anarchy and Conquest” (New Jersey: Princeton University Press, 1984).
11. The phrase “the circles of kings” is borrowed from Renee Hagesteijn’s work, in which is laid out and discussed the structures and political dynamics of relationships between greater and lesser kings, lords, princess in the kingdoms of pre-colonial Southeast Asia. See: Renee Hagesteijn, “Circles of Kings: Political Dynamics in Early Continental Southeast Asia” (Dordrecht, Holland: Foris Publications, 1989).
12. For a comprehensive discussion of the “state” systems of pre-colonial Southeast Asia, see: David J. Steinberg, et al., “In Search of Southeast Asia: A Modern History” (Honolulu: Hawaii University Press, 1985), especially Chapters 1 to 7, pp. 11-67.
14. An excellent collection on colonial rule and subsequent changes or transitions in Southeast Asia, and thoughts relevant to the understanding of the system of Indirect Rule is to be found in Ruth McVey, ed., “Southeast

15. For an account of the organization by the British of their possessions in “farther India” (Burma Proper and the frontier states) and the system of indirect rule, see: John F. Cady, “A History of Modern Burma”. Ithaca: Cornell University Press, 1958, pp. 135-137.

16. The term “semi-unitary” is used because this term makes more sense than “semi-federal”. The “semi-federal” arrangement is by definition “semi-unitary” (but in name, perhaps), or a sham, like the former Soviet Union with centralized control imposed and exercised by the ruling communist party. Unitary states or systems can be very decentralized, where local governments and communities enjoy very wide autonomous powers, but devolved to it by the central government.


18. It might be noted that the Union was at once plunged into a civil war as the communists, their leftist allies, and army mutineers (mainly Burman) rose up in arms against the new government. Outside Burma, China and India were both in a state of bloody turmoil, as were most of the new states of Southeast Asia.


21. The widespread atrocities committed by military personnel especially in non-Burman areas against the non-Burman population is too prolonged, too pervasive, too systematic for such acts to be attributed, one might argue, to indiscipline, even gross indiscipline. For example, not one case of rape by soldiers in the Shan State has been persecuted although rape is a criminal act in the Burmese penal code (as elsewhere).


23. Confidential communication from reliable and highly placed sources in New York, Kuala Lumpur, and Rangoon.

24. However, given the precarious equilibrium within the junta resulting in the absence of consensus on dialogue and dialogue strategy, whether the junta will go for a dialogue solution remains an open question.

25. This reflection of the prevailing general attitude of politically aware or active Burman actors is obtained from discussions with Burman bureaucrats, activists, and educated and informed Burmans. On the one hand, they recognize that grave injustices have been done to the non-Burman and ascribe to the principle of equality and self-determination, but on the other hand, when thinking about federalism, they are haunted by a sense of loss, regarding which they are unable to clearly articulate.

26. The above, representing the views and beliefs of a significant portion of politically non-Burman nationalities vis-à-vis the Burman, were obtained
from long years of conversations, discussions, debates, communication, and interviews with the non-Burmans. Although many top ethnic nationality leaders are willing to give the Burman the benefit of the doubt and have worked with them as compatriots-in-arms, most of them have internalized the unpleasant experience of the past and empathize with the negative sentiments of their rank-and-file and the people.
Federalism, Burma and
How The International Community Can Help

Janelle Saffin*

International Community can help via systematic study and consideration of the world's federations, in pursuit of an understanding of what federalism can achieve when presented with a range of entrenched political and/or ethnic problems. The international community thus provides and becomes the backdrop, and the actor/participants can research, inform, educate, and consider whether and in what ways federalism can provide some solutions to the crisis of governance in which they flounder.

Burma has never progressed past the polarised and prevailing view of federalism, yet for so long an aspiration of many of Burma's leaders, notably the National Democratic Front (NDF) since its formation in 1976, and still today.¹ The United Nationalities League for Democracy (UNLD) an umbrella political organisation of non-Burman nationalities that formed in 1989 likewise embraces federalism as a path to political, therefore constitutional settlement, that will bring peace and prosperity.²

Until the political actors in and of Burma have this debate, its ability to resolve its political differences by political means to effect a constitutional settlement will elude them. National reconciliation will remain a catch cry.

The international community can best focus its help by developing a similar understanding of the nature of federalism and how it has been played out in Burma.
Approach

Before exploring the scope and flexibility of federalism and pointing to and comparing a number of relevant federal arrangements for government, I must first outline the nature of the federalism debate in Burma that leaves Burma in a constitutional vacuum. It will become clear that the need to have a rational and informed federalism debate in Burma is paramount, and that such a debate needs to be informed by comparative international experience. I will conclude with some recommendations that have the capacity to move the debate forward beyond the present and continuing political stasis.

I have used as a point of reference for this article the ideas of two noted commentators: Principal Emeritus and Professor Emeritus Donald Watts, an international expert on federalism, and Larry Siedentop, Faculty Lecturer in Political Thought at the University of Oxford. From that point of reference, I want to use my experience of living, working and being a political actor within a federal system of government, my reading of Burma's political history and my work with Burma's democracy movement, including a large number of ethnic nationalities' organisations and leaders. These leaders, some of whom have been struggling for over fifty years, provide me with real inspiration.

It is important to understand Burma's historical and contemporary debates about federalism, as it is a concept that is understood within Burma as being capable of causing both the integration and disintegration of Burma. I will therefore give some background to Burma's political and constitutional struggles so that the reader can better understand how, if at all, the international community can help.

I am, however, of the view that the international community has a vital contribution to make. I agree with Professor Watts' approach which emphasises researching and understanding how and why federalism works in a variety of contexts and where, how and why it has failed.

Basics and Concepts of Federalism

To understand federalism it is necessary to master the basics.

The essential elements of federalism are that is provides a peaceful means to accommodate political and cultural diversity, by organising a political, governmental and constitutional framework for both shared rule and self-rule, providing the institutional framework for working together, and, im-
importantly, providing unity for fundamental common purposes, and main-
tenance of the integrity of the constituent states. Federalism gives expres-
sion to the broad view of self-determination with its self-government
character, thus avoiding continuing armed conflict. Importantly, it is a
compact that is entered into freely but with a strong and enduring com-
mitment by all parties. Central to the success of federations is the adher-
ence to the rule of law.

To usefully discuss and debate federalism it is necessary to understand
the variety of concepts captured by the term, to comprehend the essential
features of a federal system, to be able to articulate the inherent values,
advantages and disadvantages of a federal system of government, to rec-
ognise the on-going tensions inherent in a federation and how to deal
with them, to understand the operations of federal and state parliaments,
governments and their corresponding bureaucracies, to be aware of the
principles that underpin state-federal relationships in a federal system,
and to come to grips with the concepts of democracy, autonomy, self-
determination, power-sharing, shared-rule, self-rule, states rights, central-
ism, residual power, concurrent power, consensus, uniformity, local gov-
ernment, responsible government, separation of powers, etc.

A tall order!

Nevertheless, these requirements apply to any participant who wants to
be involved usefully and actively in politics, although this contribution
can only touch on some of these, and it is up to the parties to embark on
a more detailed consideration.

For Burma it is also necessary, in a dispassionate way, to be able to re-
fect on the historical and political forces and problems of governance op-
erational in Burma, including the failed state (which it is) and further re-
fect on how a federal system might be able to bring coherence through a
national federal union.

Next, it will prove useful to look at other nations that have chosen feder-
alism as the basis for their system of government.

Professor Watts work provides a comparative examination of the well-
developed federal systems of Australia, Austria, Germany, India, Malay-
sia, Switzerland, and the United States, the emerging federations of Bel-
gium and Spain, and the failed federations of Czechoslovakia and Paki-
stan. He relates the comparative analysis to Canada, his home State, an-
other well-developed federation. The most useful aspects of his work are,
firstly, the clear manner in which he is able to describe the elements of

Requirements for success of federal system to be stud-
ied to know how a na-
tional federal union can be brought in
these federations and the tables that he includes in his work.\textsuperscript{4}

Spain and Belgium are of interest in that they incorporate multiple identities, with both arising out of conflict around the major issue of identity, whilst India and Malaysia are premised on multiracial and multilingual diversity. I would add Ethiopia, which is an ethnic federal state, but has yet to develop marked characteristics beyond the form of the constitution. I also include South Africa which is unitary in form to some degree but federal in practice, given its recognition of eleven official languages and its large system of regional or provincial government.

Indonesia, like Burma, is highly militarised, was colonised, gaining independence at the same time as Burma, and is also afraid of federalism. It sits also on an explosive mix of peoples, languages and cultures, with demands for autonomy and no solution yet embraced, as federalism has been eschewed. With every cry for more freedom, the Indonesian Government through the powerful Armed Forces, the TNI, generally takes action that further represses the people, thus deepening the political cleavages. It is not unlike Burma in this respect.

Watts work is the best that I have read in terms of readability for those with little experience or understanding of federalism, yet it addresses a full mix of federations that represent the world's federal systems, and it provides a breakdown of the elements of federalism, so that the reader is left with a rich understanding of the characteristics of a federation or federal system.

The lessons to be drawn from a comparative consideration of federal systems are that federations are mostly successful, with the prevailing conditions being that of peace and prosperity, even if that prosperity is not evenly spread. The other key feature is that federations are able to protect national interests and the nation state, whilst recognising and reconciling a diversity of interests, ranging from the political to the language to the cultural differences. Malaysia and India are important to study regarding the last point. These aspects alone should be enough to motivate a state like Burma, besieged as it is by conflict, and bankrupt with least developed country status, to consider seriously the advantages of federalism.

Federalism is neither a new nor a novel idea. It is an ancient idea that has survived until modern times, with increasing popularity. Over forty per cent of the world's population lives within a federal system of government and many more nations live within some type of federal arrangement.
What is Federalism?

The first question to be addressed is simply, "What is Federalism?"

Penguin's Dictionary of International Politics describes it as best understood in two contexts:
• to describe and explain how legitimate power is shared in constituent political units and
• as an explanation and to some degree prescription of how integration might be achieved between separate state actors.

Some selected quotes from the definition are:

… Federalism is a favoured system of government in large, culturally diverse states…

… Federalism as a balance between centripetal and centrifugal forces should be distinguished from decentralization or devolution in unitary systems…

The dictionary definition raises an important notion and it is that federalism aims at providing balance to various forces and this must be distinguished from decentralization or devolution in a unitary state. This is of significant resonance regarding Burma, as Burma’s constitutional history is replete with decentralization, without however the self-rule and a token shared-rule, that has served only to sharpen differences, not accommodate them.

Burma’s Political and Constitutional Background

Burma has been locked into a series of civil wars since it gained its formal independence from colonial status from Britain. Whether it has been under civilian or military rule (and it has been military for nearly forty of those fifty-four years), Rangoon has been the focus of the wars. The warring parties have been the Tatmadaw (Burma’s National Armed Forces), Ethnic Nationalities-based armies, the Communist Parties, the Burma Socialist Program Party (BSPP), Student-based parties, fronts and unions, the democratic parties, notably the contemporary National League for Democracy (NLD), the Sangha (Burma's monks at least equal in size to the current Tatmadaw strength of approximately 450,000), and the people.

What has led Burma into this political abyss, which all parties tell us is
too complex and unique to understand? It is widely recognised that deep-seated conflict has three primary sources, namely:
- national identity
- resources
- land

There are issues of national identity with Burma's largest ethnic nationality, Burmans, dominant in most spheres of public and political life. This is most apparent in the military junta's incarnations of the executive, dominant in all spheres of public life including cultural dominance, maintained through an overarching 'Myanmarfication’ or program. Resources and land too are flash points, with the center claiming ownership and all too frequently in the most brutal way, with forced relocation, violence including rape and death, all too common.

The tragedy is that approaches to resolve the political gridlock have been advanced by a large number of political leaders, but those approaches have been rejected by both the civilian government under U Nu's Prime Ministership and the Tatmadaw dictatorship which has affected civilian government under General Ne Win's leadership of a one-party socialist state regime, commonly known as the Burmese Socialist Program Party (BSPP), and then as the State Law and Order Restoration Council (SLORC) and finally as the State Peace and Development Council (SPDC). The best solution offered so far has been federalism, that is a federal form of government.

Federalism was contemplated in the discussions that led to the famous and revered Panglong Agreement of the 12th February 1947 in the lead up to independence. This was a political agreement that was to set the standard for agreements among ethnic nationalities, and can be best summarised with the 'one kyat for all' catch-cry, expressed differently but meaning equality for all with self-determination, in the form of self government at state of local level, within a federal union. The agreement provided the precursor to constitutional settlement, forged among some of Burma's political, ethnic nationality leaders, including Burma's hero of the independence struggle and founder of the Burma Independence Army, U Aung San. His daughter is Burma's highly respected political leader and Nobel Peace Laureate Aung San Suu Kyi, currently imprisoned in her family home in Rangoon by the military junta.

Federalism was at the heart of the decision of ethnic leaders' decision to join together to form a modern post-independence 'Union of Burma'. The constitution was hurriedly drawn up by an 111 member commission appointed by the Constituent Assembly itself, convened on the 10th June
1947 and adopted in September of that year by the Constituent Assembly. It became operative on the 4th January 1948, whereby the Constituent Assembly was declared provisional and elections were to be held within eighteen months. In between the ratification of the Panglong Agreement and the adoption of the Constitution by the Constituent Assembly, U Aung San was assassinated along with other Cabinet members, by a right wing fundamentalist political opponent. The ramifications of U Aung San's early and untimely death are still felt today. The belief supported by evidence is that U Aung San would have ensured a federal system of government and that the constitution, if not entirely in form, in substance would be marked by federalism.

Following independence Burma descended into political turmoil, with widespread law and order problems. The nation had been ravaged by decades of British colonialism and occupation by the Japanese Forces during World War Two. Its institutions were stretched to the limit. The need to keep a reasonable degree of separateness of political parties from the executive government and the parliament was not recognised by some as being essential to the development of parliamentary democracy. Every political move was played out in both parliament and government. The military were quick to take advantage of this situation. The federalism envisaged by Burma's ethnic leaders was not being implemented. Burma's ethnic leaders in turn were not able to focus on democratic consolidation in the respective states and areas. There was also the underground communist forces to contend with.

Add to this potent mix the fact that the Tatmadaw, hugely popular nationally for its role in wresting independence from both the Japanese and the British was now breathing down the neck of the government, ready to take control. With a constitution that contained a secession clause, able to be invoked from 1958 ten years after independence, the turn of events is not so surprising.

In 1961 the Shan State submitted to the Union Government a proposal that recommended changes to the 1947 constitution. The central tenet was to amend the constitution so that its form became clearly federal. Delegates attendant at the Shan State Convention held in Taunggyi in February 1961 had ratified the proposal. The proposals of themselves are neither scary nor novel and outline matters that essentially describe a standard model of federalism.

The first of five key proposals that could give rise to contention was the establishment of a Burmese State as they called it, understood to mean a Burman State. Many Burmans who are happy to have a federation, do
not understand the necessity of having a Burman State, when it has no historical basis, whereas the other States do have clear historical basis. What was being proposed was a symmetrical federation, without first having debated the merits and demerits of symmetrical and asymmetrical federalism. The Shan State charged that under the 1947 constitution, specifically Article 222, Burma Proper had taken on the form of the 'Union Government'. This, understandably, was cause for concern.

Whilst the current draft federal constitution produced by the National Council of the Union of Burma (NCUB) contains a proposal for the establishment of eight states including a Burman one, its inclusion appears to have been added more to accommodate the desires of the seven major ethnic nationalities, and sensibilities of trying to effect equality, rather than having been determined within a debate about the suitability of symmetrical or asymmetrical federalism. Although some understand the issues vis-à-vis symmetrical and asymmetrical, it is not apparent that it has been widely explored.7

The demand for equality has always been the real dominating factor and it has been equated with all things being prima facie equal. This results in a symmetrical federal arrangement, which may well transpire to be the best solution for Burma. However it requires more detailed understanding and debate before any such decision can be made. Aung San himself had issued seven directives, to be taken up as guidelines for the constitutional drafting committee, that strongly focused on equality and autonomy, particularly for the states. When he introduced the draft constitution to the Constituent Assembly he said it was as a basis of discussion. Due to his untimely death, the Constituent Assembly had to complete this task without the benefit of U Aung San and his Cabinet's input.

At least the parties outside and some inside Burma are seized by this debate, whilst the military, still trapped in its anti-federalism shroud, is unable to consider any aspects of its symmetrical-asymmetrical applicability.

The Union Government's Constitution Revision Committee, established by the Union Parliament and Chaired by the Honourable Judicial Minister Dr E. Maung,8 came to consider the Shan State proposals and subsequently produced a report. Their terms of reference were, among others, to:

…Please examine the demands made by the Shan State people and its Government and, after consulting the leaders and representatives of the peoples of the States and Burma Proper, please give
your advice and suggestions as to what steps should be taken ...

The Committee did a good job of classifying the grievances as put in the Shan proposals, into what were essentially constitutional and political. They recommended those that were capable of resolution by political means, but it was the discussion contained under the heading 'Constitutional Question' that revealed the prevailing thinking regarding federalism. I must say that the federalism debate that has taken place in Burma has always been equated with secession, and this has added to the fear of federalism and the stifling of debate by all parties. The Committee pointed out that the Shan proposals demanded a true, real - what is called a ‘genuine’ federal system, but they don't describe what is meant by this demand. Whilst this is true to a point, the nature of the amendments proposed implied a standard model of federalism.

The term is still used today and I would recommend abandoning it, as it simply adds to the cleavage, and it is better to describe what is wanted in concrete proposals.

In answering this question about true federalism, the Committee examined the federations of the USA, Australia, Canada, South Africa, India, and Switzerland and concluded correctly yet disingenuously that:

…There is thus no real type of Federal Government…

They went on to say, incorrectly, that:

…Even if there is a real form of Federal Government on paper, yet in actual practice it becomes unitary…

To conclude that the USA, Australia, Canada, India and Switzerland were unitary states demonstrates a profound conceptual gap, which is surprising given that the erudite Dr E. Maung chaired the Committee.

They went on to examine whether or not the proposals would strengthen the Union and predically concluded that they would not. They concluded this without proffering any evidence and decided that federalism would lead to the break-up of the Union.

Speaking at the first meeting of the Revolutionary Council upon the military seizing power on the 2nd March 1962, General Ne Win pointed out the dangers of the Shan State seceding from the Union, giving rise to the possibility of foreign interference. He cited the recent example of Katanga's secession from Congo, after it had reclaimed independence from
its Belgian colonisers. The Union Government's and the Tatmadaw's fear of secession, despite its inclusion in the constitution, only served to further polarise the political situation. The Constitution prescribed the procedures to be adhered to, including a public plebiscite in the State concerned. The Shan State had not yet called for this nor had it made moves to acquire the votes of the necessary two thirds of the total number of members of the State Council required to trigger the process. Yet some were talking about secession. That is not surprising, given that it was a constitutional provision and that the States were generally unhappy with the Union Government's ability to effect good and inclusive governance.

With its royal system still intact, the Shan State had after all been governing its own affairs since the formation of the Federated Shan States Council in 1922, and were quite experienced in forms of governance despite the colonial administration. Prior to that a Shan Sawbwa had been represented on the Governor's Advisory Council. They had also suffered from Japanese occupation with the Japanese Government unilaterally handing over Keng Tung and Mong Pan to The Kingdom of Thailand.

Whilst discussed at length at both Panglong Conferences and included at point number five in the Kachin-Shan Committee at its Panglong meeting of the 6th February 1947, and affirmed by the Chin-Kachin-Shan Committee at its Panglong meeting of the 7th February 1947, the secession matter was not particularly specified in the 12th February 1947 Panglong Agreement signed by representatives of the Chin, Kachin and Shan Committees and the Burmese Government. U Aung San, however, importantly requested that it be discussed and debated in the Constituent Assembly.

So, whilst the establishment of a federal system was not included in the Panglong Agreement, it was however premised on it, as was the Panglong meetings themselves, and it was agreed that it was also to be the subject of detailed consideration by the Constituent Assembly. As trust had been established by the parties at the Panglong Conferences, like a lot of political agreements, there was belief that the parties would properly advance these matters. Certainly some federal elements were included, not many, with secession included, but the essence of federalism was left out.

The Tatmadaw's official history has this to say about the Panglong Agreement:
…the Panglong Agreement came to manifest two conflicting principles. The first principle represented Sawbwas of the ruling class. It was the right of the Shan State to secede from the Union
after ten years if it then were desired. The principle was not put down in writing but was in the form of a gentleman's agreement (see comments above) between the leaders of the Shan State and the Main Territory. The other principle represented all the national groups inhabiting the Shan State and their aspirations. This principle can be clearly seen as recorded in black and white in (the) Panglong Agreement. It was the principle of the solidarity of the Union.”

The two principles are only conflicting but only if viewed through the prism of misunderstanding the essence of federalism, the way the Tatmadaw chose to view it. One of the gentlemen referred to is U Aung San, a point conveniently excluded from this statement.

The democratic leaders at this time charged the Shan Sawbwas of perpetuating feudalism and they came to equate, in rhetoric at least, feudalism with federalism. Given the endorsement of socialism by the key leaders including U Aung San, the political charge of feudalism against a royal system operative in Shan State is understandable, yet also politically convenient. The Shan leaders did have the foresight to know that federalism in some form was a way to govern to effect a share and peace for all.

The official history goes on to say:

… The emergence of insurrections and demands for federalism in 1959 was instigated by Shan Sawbwas. How ambitious were their aims at that time? The answer lies in the fact that more Sawbwas than actual advocates of federalism had then to be taken into custody …

This proves nothing and says more about the military's fear of secession and exasperation at and with Shan Sawbwas than it does about federalism.

**Secession as a Right**

Secession is an unusual right to see located within a constitution. I have only seen it written into the now obsolete USSR Constitution. This was the inspiration for its constitutional inclusion, if not the idea itself. As noted above, it did not form part of the Panglong Agreement, but was requested by the parties and U Aung San in turn requested that it be a matter for the Constituent Assembly, that subsequently decided to include it in the constitution.
The right of secession is recognised by international law, as an act of self-determination, but only as a right of last resort. Self-determination has a limited meaning in international law, but has been advanced by many oppressed peoples in a broader political framework, who seek political recognition and political power. It is not an essential element of a federal system, is not consistent with the essence of federal systems and more an issue that arises in confederations.

Drawing on his studies, Professor Watts cites the three main reasons offered for not including the right of unilateral secession in a federal arrangement, which is the right expressed in the 1947 Constitution:

…First, it has been feared that the right to secede would weaken the whole system by placing a weapon of political coercion in the hands of governments of the constituent units. Second, there has been anxiety that the possibility of secession would introduce an element of uncertainty and lack of confidence in the future, seriously handicapping efforts to build up federal economic development and unity. Third, theorists have argued that it would undermine the fundamental principle of coordinacy between levels of government in a federation since if a regional government acting alone had the unilateral right to leave the federation, or the federal government had the unilateral right to expel a regional unit, the other level of government would be subordinated."

Professor Watts tells us that Canada's Supreme Court in 1998, in ruling on whether or not Quebec was a constituent state of Canada, had the right to unilateral secession, decided that it did have the a limited right to move for secession but not unilaterally. Many issues were left untouched, but the Court "did recognize the possibility within certain terms of a non-unilateral secession."12

Professor Watts says that in the few cases where secession has been managed peacefully, they have been marked by a "...high price in economic costs, diplomatic and defensive ineffectiveness, and lasting bitterness between the groups involved."13

Such an inclusion creates both a secure feeling for those whose rights it seeks to protect but also creates instability for all parties to the federal compact, not just the holder of the right. However, parties to federal compacts are at liberty to negotiate the arrangement that suits them and their circumstances, and so it will be for this particular issue. Nevertheless, I would caution parties desiring and opposing it, to develop an appreciation of its essence, and its effect and the fears held by the other, that
cause it to be both virulently demanded and implacably opposed. Its inclusion in contemporary times, would have to be weighed up with how it would impact on international financial institutions, and probable donor countries. These are pragmatic but necessary considerations given that Burma is bankrupt in so many areas.

**Burma's 1974 Constitution**

Burma's 1974 constitution, drafted by an 97 member commission, at first glance may appear to contain the essential elements of federalism, but it is really a unitary constitution with a decentralized, devolved form that lacks the necessary self-rule and affects shared-rule. It contains seven states, seven divisions, and these are further broken down into administrative and local areas. The defining Article states:

...Local autonomy under central leadership is the system of the State...

This puts beyond doubt the unitary nature of the constitution. The practice also supports this conclusion. It is important to recognise the unitary nature of the 1974 constitution as it has been presumed to give a large degree of autonomy to the states and the people. However, it served to consolidate the power of the centre, thus exacerbating the political tensions that beset Burma.

**Military Junta's National Convention**

Equally the 104 constitutional principles prescribed by the military junta's 'National Convention' outline another unitary framework that consolidates power at the centre with a large degree of decentralised and devolved administrative form. It is in effect the same as the 1974 constitution. If ever implemented it, too, will fail like its predecessors, as it does not attempt to formally resolve Burma's federalism problem.

Federalism, as we know, can take many forms, with some anchoring characteristics. Some federations operate on the principle of competitive federalism, whilst others adopt a co-operative federalism approach. Neither is supreme, it is a matter of which works or evolves in a state. The co-operative model is dominated by inter-governmental agreements and arrangements that demarcate functions quite clearly, and the competitive model has all governments covering areas and delivering the same or similar services. In Australia this happens particularly in the area of health, and social and community services. In many federations, however, both principles are visible and it is a case of the respective govern-
ments negotiating what works best for its citizens.

**Political, Moral, Cultural and Intellectual Framework**

There are forces that work against Burma coming to terms with its past and forging a workable system of government to shape its future. Its development at all levels remains stunted, stifled, cut-off almost at independence and at least during the period of military dictatorship of General Ne Win. Politics is eschewed by the dominant military and writ large as being a dirty business, and by extension only the business of unfit persons.

As Dr Maung Maung puts it, the tradition had been to look upon politics as the 'refuge of scoundrels.'

Given the prevailing view of politics, there is an absence of political debate, (with constitutional debate specifically prohibited by SLORC Order No 5/96). That has been the situation in essence since the 2nd March 1962, the date of the first military coup. There is no intellectual development of note, given the absence of freedom of speech, hence media, and the censorship applied even to the entire educational system. Even university curricula have to be submitted for approval by the Press Scrutiny Board, which is propped up by the Dickensian Printers and Publishers Registration Law 1962, with even more draconian amendments passed in 1989.

No economic development, despite the BSPP's endorsement of an open market policy at its last Congress in July 1988 and then picked up by the current military junta. No moral debate, as 'Myanmar' morals are deemed for one and all. Cultural debate is expressly prohibited by a variety of 'laws'. The military junta is obsessed with the self-promotion of a mono-cultural society that in reality does not, and has never, existed in the land we know as Burma.

**Constitutional Settlement**

The constitutional settlement envisaged at the Panglong Conference has not yet been achieved, with Burma's military and political leaders polarised in their views towards federalism. Federalism is seen as both the saviour and the destroyer.

This polarised view shrouds any debate in Burma about federalism, but equally provides the entry point for the debate.
It is this polarised view that has kept Burma suspended in a constitutional vacuum, and this vacuum or crisis cannot be resolved until all parties are able to both understand the nature of federalism, its advantages and disadvantages and together explore how it may be suitable if fashioned to suit the multi-ethnic state of Myanmar known as Burma. There may be other systemic solutions for Burma, but they are not apparent, as many have tried for over fifty years to effect a political settlement and are as yet unable.

A comparative study of federal systems of government by all the parties would lessen fears also and provide some realism for those who might be tempted to see federalism as a panacea for all their political ills. The knowledge-base of the current political and constitutional debate is extremely narrow.

**Culture of Consent**

Larry Siedentop, Faculty Lecturer in Political Thought University of Oxford, is able to bring profound clarity to the federalism debate. In his groundbreaking work he correctly characterises the federalism debate being forged in Europe through the European Union, but not necessarily characterised as such by the actors. In commenting on federalism and Europe he says that:

…One of the pre-conditions of successful federalism is a consensus on which areas of decision-making belong to the centre and which ought to be reserved for the periphery …

Burma’s political actors have not reached consensus on fundamental political issues, except for the need to have unity. This is explicitly expressed in all political parties platforms and other political organisations’ charters and key documents, as is federalism except in military circles.

There is sadly no culture of consent, even on the means to move forward.

Larry Siedentop rightly states that judicial review is inescapable in a federation. All commentators define constitutional supremacy as a defining and essential element of a federation, which means that judicial review, with the highest court of the land or a specially constituted constitutional court such as in South Africa having original jurisdiction to settle constitutional disputes. Burma removed judicial review in 1962 when it
abolished the state's judiciary, suspended the constitution and did not reintroduce it into the 1974 constitution. In addition to having been delegalised, Burma has also been de-constitutionalised. Further that a federal form requires considerable intellectual and moral development.18

He further charges that British critics of the further integration of the European Union, frequently equate 'federalism' and 'centralization'. In Burma, the military have equated 'federalism' and 'disintegration'.19 In both cases, Britain and Burma the criticisms are borne out of a desire not to lose political control and owes more to political posturing than reality.

Siedentop identifies the current paucity of debate around great and big ideas. He concludes that:

…Thus the political tradition that once inspired Montesquieu and the American federalists today produces spokesmen who seem not to understand that federalism seeks to disperse authority and power between the centre and the periphery, creating a political system which protects local autonomy in the absence of aristocracy.20

…That is why, in the long run, active citizenry encouraged by a devolved form of the state is the only satisfactory filter for a democratic political class."...LS p 129…

In his introduction, Watts whilst citing the benefits of comparative study also cautioned us about the limitations of comparing federations. He reminded us that there is no one system of federation capable of universal application, but equally importantly highlights the essence of federalism which is its inherent ability to accommodate a system of government that inculcates shared-rule for some agreed common purposes and regional self-rule for purposes particular to those polities, but that all is contained within a single political system so that neither one is subordinate to the other. He further describes how this model (my characterisation of his description) has been applied in different ways in different circumstances.21

The key issue, though, is that peoples are at liberty to negotiate what is best for themselves and, having negotiated the broad political framework expressed in their constitution, they continue to negotiate day to day matters and needs as they arise and change. This is done through the political process and state-federal inter-governmental and institutional arrangements.
The last words I have reserved for Professor Watts, who concludes that

…the essence of federal political systems is to reconcile diversity and unity within a single political system by assigning sovereignty over certain matters to the constituted provinces and sovereignty over other matters to the federal government with each level of government responsible directly to its electorate… 22

Overarching this is the need for a central focus of loyalty to be able to deal effectively with matters of common interests if the federation is to secure the citizens' loyalty over the long term. 23

…Where diversity within a society is deep-rooted the effort simply to impose political unity has rarely succeeded, and indeed has often instead proved counter-productive creating dissension… 24

The author could have been describing Burma, but was in fact expressing a general observation supported by a lifetime of study of federal systems. The aggregate of the international community's experience in federal systems can hopefully help by its exposition of the advantages and disadvantages of federalism, with the advantages for states that are multi-ethnic, and multi-linguistic. Burma is a nation that cries out for some form of federally agreed political settlement which will then allow them to effect the constitutional settlement that is desperately needed. Only when a constitutional settlement is wrought will Burma be able to kick-start its development and consolidate its peace and prosperity. That has to be a common interest desired and committed to by all.

Endnotes

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1. The National Democratic Front (NDF) formed on 10th May 1976 with an alliance of ethnic nationalities' organisations that opposed politically and military the Tatmadaw and BSPP Government and the military's SLORC and SPDC today, the NDF has long advocated a federal union as a way to peace so as to effect a nation wide ceasefire. They have consistently said that "What the ethnic nationalities want is not racial discrimination and hatred, they simply want to co-exist peacefully….They wish to stay in a genuine Federal Union where all ethnic nationalities enjoy equal rights and have (the) right of self-determination to shape their own future..." 'A Brief History of The National Movement of Ethnic Nationalities' by Khaing Soe Naing Aung pl Author, Burma, August
Their message has not altered since 1976, it has however suffered from not being able to be progressed to take on a tangible form.

2. The UNLD successfully contested the 1990 multi-party general elections, and its conference held in Rangoon, June 29th – July 2nd, it adopted seven key principles that they determined were necessary for a national constitution, and they are premised on federalism. The UNLD was banned by the SLORC in 1992, but now operates in exile as the UNLD-LA, the LA standing for 'Liberated Area', and it continues to give voice to the UNLD's aspirations embodied in the seven principles.

3. Ronald Watts is Principal Emeritus and Professor Emeritus of Political Studies at Queen's University. He has held numerous posts that recognise his outstanding knowledge of federalism, federal systems and the like. He is also President of the International Association of Centres for Federal Studies. The work I draw on for this article is his book titled 'Comparing Federal Systems', second edition McGill's-Queen's University Press, Montreal 1999. This work offers a useful description of a number of developed federations, and gives insight into some failed ones. The theme of this work is that by comparing federal systems, thus understanding them, we can utilise that knowledge to think broadly and creatively about the diverse possibilities that federalism throws up. I am currently an elected member of the New South Wales Parliament's Legislative Council, or Upper House as it is referred to, Australia's dominant state within our federation. I have had an opportunity to be an actor in a federal system at parliamentary, governmental and political level, as well as living it daily as a citizen. For many years I have worked collaboratively with many actors within Burma's broad democracy movement and the ethnic nationalities organisations, both of which in some forums, collaborate for the common purpose of advancing democracy within a federal framework in Burma. Much of my work focussed on teaching and advising in the areas of federalism, state-federal relations and arrangements, state constitutions, constitutionalism, politics, law in general and the rule of law. This work has enabled me to read widely about Burma's history and to learn from some of its key political actors.

4. Watts op cit pp 64, 86-87

5. As a means of describing and explaining the division of legitimate power or authority in federations, federalism postulates as an initial position a tension or conflict between centripetal and centrifugal forces. This conflict will be settled by the several parties signing a constitutional bargain that will stipulate where the jurisdictions of the centre and the periphery lie. Thus certain issue areas will be reserved for the centre, others retained by the periphery. Normally defence, foreign affairs and macro-economic policy are handled exclusively at the centre. Conversely, the periphery will retain some revenue raising power, control over social and welfare services and some small discretion regarding penal codes and provisions...In federalism the centrifugal forces are already in place when the initial constitutional divisions of labour are effected. In decentralization the centrifugal forces come to the surface after the initial constitutional arrangement has been made...Federalism, as a theory of regional or even global integration, derives its inspiration from seeing the positive benefits of federalism as a system of government...Federalism remains the only empirically tested theory of regional integration that
combines unity with diversity. Implicitly it is also a theory of limited government as the Founding Fathers of the United States well understood. Whether it should proceed by the elitist or by the populist modes is a point of debate within its adherents. By tackling the issues of high politics directly, the federalist approach to integration is far more ambitious and controversial than functionalism. This is its latent mass appeal. It confronts the key issue areas of state sovereignty and national interest by proposing a power-sharing arrangement which is enshrined in a constitutional bargain. ['The Penguin Dictionary of International Politics', by Graham Evans and Jeffrey Newnham Penguin Books ply by The Penguin Group London 1998 pp 169-170]

6. The proposal referred to is titled 'Document containing proposals for the Revision of the Constitution Of The Union Of Burma submitted by The Shan State' pl by the The Shan State Government (7,000 16-3-61) printed at the Do-Ta-Wun Press (30-32) Thingaha Street, Kyaukmyaung, Rangoon.

7. The National Council of the Union of Burma (NCUB) is a consociational coalition arrangement formed in Manerplaw originally to operate as a Parliament of the National Coalition Government of the Union of Burma (NCGUB) (the exiled government previously a Cabinet of Ministers but now a Council of Ministers), the Democratic Alliance of Burma (DAB), the National Democratic Front (NDF) and the National League for Democracy-Liberated Area (NLD-LA), with the NCGUB now replaced by the Member of Parliament Union (MPU) that formed in 1992 and it was charged with a 'constitutional consultation and drafting process' that culminated in a draft model federal constitution. The NCUB has a Constitution Drafting Committee chaired by U Thein Oo who is both a lawyer and an elected MP. I have the post of the CDC's International Co-ordinator. The document is not meant in any way to be prescriptive but a model for debate that contains most elements of federalism. It is currently being reviewed and revised for an improved draft that can take account of inter alia the current developments made by the formation and work of the State Constitution Drafting Committees and the recent study tour they undertook together to Germany to study federalism.

8. The Constitution Review Committee came into existence after agreement had been reached between the Government of the Union of Burma and the Government of the People's Republic of China on boundary issues and the Union Parliament realised that constitutional amendment was necessary to give effect to this agreement. In debating this, the Parliament decided that it should also review the constitution, not comprehensively, but to "...round off the rough edges of the Constitution, if there be any." [p1 of its report on the Shan State Proposals] There were three principles articulated for the guidance of the Committee. They were, (1) Not to infringe the principle underlying the Constitution, (2) Not to infringe the principle of Democracy, and (3) Not to suggest any amendment that will sow dissension or promote discord among the races living within the Union. I find the last principle demonstrates a patronising attitude towards the ethnic nationalities, excluding Burmans. It is what they would call 'chauvinism'.

9. General Ne Win's comments and attitudes are expounded in the Tat-
Federalism in Burma


10. op cit p10
11. op cit p12
12. Watts op cit p108
13. op cit p115
14. See Dr Maung Maung's the 1988 Uprising in Burma monograph 49/Yale South East Asia Studies New Haven, Connecticut 1999, which sheds light on historical and contemporary events but through his very biased position as apologist for successive military regimes sometimes cast in civilian guise such as the Revolutionary Council and then the Burmese Socialist Program Party (BSPP) (also called Lanzin regime) governments. It is useful for some facts and details and gives a prism through which it is easier to understand the delusional thinking that produced current day events.

15. Burma was renamed Myanmar in 1989 by military decree called the Adaptation Expression Law 1989 which the military junta then known as the State Law and Order Restoration Council (SLORC) promulgated, claiming that Myanmar was inclusive of all the peoples. This gives rise to four issues. 1. The notion of inclusivity is not universally accepted. 2. A military junta having seized power by military coup d'état does not have the legitimacy nor legality to change laws. 3. Such a fundamentally important issue such a country's name should be a matter for all the people to have a say, and a referendum or large-scale community consultation should precede any such change. 4. It continued a pattern of polarity that marks Burma's political history and further deepened cleavages.

17. op cit p95
18. op cit p94
19. op cit p79
20. ibid
21. Watts Chapter One Introduction p1
22. op cit p80
23. ibid
24. op cit p16
Coups, Dialogue and Transition

B.K. Sen*

The Burmese military junta, in the course of its rule for the last forty years, has adopted a range of strategies for its survival. Overthrowing the constitution, bringing in a fake constitution, martial law rule, then an attempt to install constitutional rule by holding elections, then initiating talks with the winning party… the list seems endless. These are just a few of the strategies adopted. These were the political exercises. Internally the junta carried out purges and reorganization of its different commands, at different levels, at different times. However, all these actions had one thing in common, namely the total denial of Rule of Law. The well-publicized, attempted coup by the Ne Win family has been dramatized for the first time.

The underlying cause of the instability of the regime is the elimination of Rule of Law and all the principles of accountability and transparency. Concentration of power in a few hands is fraught with inherent dangers. The military junta has to release this power centre and put into place an open society. This would enable dissent and differences to be ventilated and channel legal activities by civil society, thereby minimizing the necessity for a violent regime change. The power struggle inside the junta can never be resolved by one group eliminating another. Power belongs to the people and logically, if power is in the hands of the people, the conflict will revolve around the groups representing the people. The armed forces will remain out of this battle zone, which also means that their integrity as an institution can be maintained. One of the founders of the Burma Army, hero of the independence movement, uncrowned king for the last forty years, the symbol of oppression and brute force has met his nemesis. What popular movement could not do, the long arm of the law has done. Ironically, law has become the arbitrator of the conflict between the two
illegal outfits. The need of the hour is a speedy trial, all the conspirators have to brought before an open court, and the public must have access to the proceedings. The trial will be historical. Not Ne Win will be in the dock, but militarism will be accused number one. This is the first part.

The second part is expediting the dialogue, making it inclusive and time-bound. If the two processes go on hand in hand, the destabilizing factors can be isolated. The military junta will have to negotiate with the pro-democracy movement and restore a civilian government based on Rule of Law. Democratic transition is the only lighthouse in the turbulent sea of Burma.

The Kashmir Issue: Relevant to Burma?

The India-Pakistan talks have been scuttled. At first glance there may be no apparent relevance of the Kashmir issue to Burma. However, the giant issue which led to the talks between the world’s largest democracy and a coup-ridden military dictatorship is very relevant to Burma. That issue is the secession of Kashmir, a state adjoining India and Pakistan. Kashmir once was an independent state under British paramountcy. It was neither part of India nor under the jurisdiction of the Government of India. At the time of Independence, the state of Kashmir was given the option to join either the Republic of India or Pakistan, a newly-created State at the time of Independence. The Head of the Kashmir government decided to have accession to India, subject to referendum by the Kashmiri people. However, shortly afterwards a war broke out between India and Kashmir on the question of ‘no accession without referendum’. The United Nations intervened and a Peacekeeping Force, with a Line of Control, was installed until a plebiscite was held to finally determine the question of accession. That was in 1948. Up until now it has not taken place. On the contrary, three large-scale wars have taken place. Now the United Nations are not insisting on a plebiscite, as the parties at the Simla Conference agreed to settle it bilaterally.

The first question of relevance to Burma is why the UN has refused to intervene. The second question is what will become of the plebiscite. The third question is what the legal remedy for the people of Kashmir would be, to enforce their right of self-determination. The fourth question is what has become of the militant armed fight that has been waged for over half a century, apart from gross abuses of human rights. Kashmir has become a giant issue that has defied political and constitutional solutions.
Even the international community has taken its hands off the case. The right of self-determination of the people of Kashmir is equated with the right of secession. The result has been devastation of this beautiful land. There is no gain in just saying that people have the right of self-determination. Will this self-determination, in the context of the history of the struggle and international law, include the right of secession?

There are differences in the two situations: in Burma, first and foremost the states are in a Union and very much part of that Union. It would be something unpractical to claim secession under the 1947 Constitution which has been buried at this point of history. If secession as such were claimed, there would not be any takers. For example, if the Shan State said it has its own constitution and is a free sovereign State, this unilateral action would not take it anywhere. It would only reduce the state to one of the failed states of Africa. In contrast, the people of Kashmir, as two big powers are directly involved in the issue of their self-determination, do not seem to have a say in deciding their own future.

**Endnote**

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