QUEBEC AND TATARSTAN IN INTERNATIONAL LAW

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"Historically," writes Ivan Bernier, "international law responded to the appearance of federal states by ignoring their constitutional characteristics and assimilating them to other sovereign states."[1] A prominent example of this traditionally monolithic treatment is the Montevideo Convention of 1933, which declared in no uncertain terms that the federal state "shall constitute a sole person in the eyes of international law."[2] Over time, however, the orthodox view expressed at Montevideo fell into disfavor with commentators who questioned a rigid perspective of international law, an inflexibility epitomized by the traditional positivist view that states only and exclusively are proper subjects. Jurists criticized the limited membership of international society, urging a progressive development of the law free from what Sir Hersch Lauterpacht called "the dead hand of obsolete theory."[3] He added:

> [W]hether a person or a body is a subject of international law must be answered in a pragmatic manner by reference to actual experience and to the reason of the law as distinguished from a preconceived notion as to who can be subjects....[4]

Since these words were written in the late 1940s, the number of actors on the international plane has increased significantly. Today, besides a growing body of states, international society counts international organizations (IOs) and in some cases individuals among its subjects. Yet whether this list has expanded sufficiently to include member states of federations is debatable, for while the plenary international competence of the federal state has never been in dispute, the same cannot be said for its components. Despite the efforts of several writers to shed light on the matter,[5] their position under international law remains unclear.[6] This paper will attempt to add a measure of scholarship to this discussion by

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examining the international legal status of federal components by using two case studies: the Canadian province of Quebec and the Russian Republic of Tatarstan.

International Legal Personality

Every legal system, including international law, is characterized by its subjects and objects. Put simply, those persons to whom the norms of the legal order apply and whose conduct the order regulates by imposing duties or conferring rights are its subjects,[7] and those matters to which the norms of the legal order reach are its objects.[8] Kelsen refers to this dichotomy as the difference between, respectively, the "personal" and "material" spheres of validity.[9] In the personal sphere, subjects of the law are those entities "entitled to rely upon legal rights, obliged to respect legal duties, and privileged to utilized legal processes."[10] These subjects are the proper players in their legal systems.

The majority of the literature equates a subject of international law with an international legal person. As Brownlie observes, the relationship between the two is circular as the indicia constituting a subject depend upon the existence of a legal person.[11] Echoing the 1949 judgment of the International Court of Justice (ICJ) in *Reparations*,[12] Oppenheim's definition of an international person reflects this intimate association:

> An international person is one who possesses legal personality in international law, meaning one who is a subject of international law so as itself to enjoy rights, duties or powers established in international law, and, generally, the capacity to act on the international plane....[13]

The subjects of the international legal order are, therefore, persons whose existence is evidenced by the possession of international rights, duties and capacities.

Brierly's treatment of the subject reaches the same conclusion as Oppenheim, but considers the matter in terms of hierarchy. Though not writing directly on the definition of an international person, Brierly implies that to be a subject of international law is to be subject, or subordinate, to it.[14] Thus international persons exist within the realm of international law and are governed by its precepts, much as medieval citizens lived within a territory according to the laws of their king. In both cases it is the sovereign, the highest authority in the realm, that is supreme: the king to his subjects, and international law to its as well.[15]

From the foregoing we learn that international personality is not a conclusion in itself, not a condition whose acquisition suddenly confers

powers, but rather a description of an entity possessing rights and obligations under international law. It is a generic term to describe the various subjects of the international legal order. To possess international personality means that one is a subject of—and is subject to—international law. And to say that one is a subject of international law is to say, moreover, that one possesses some (but not necessarily all) rights, duties, and capacities under that legal regime.

A Spectrum of Personality

States are full international persons. They are the principal or normal subjects of international law.[16] On the international plane they are the highest order species, each potentially carrying the fullest range of capacities. All other persons possess some lesser measure of rights, duties and powers. Indeed, the combination of capacities can vary considerably among them. As the ICJ recognized, "The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights..." [17] Some may have the power to conclude treaties; others may not. Some have objective personality that is recognized universally, while others exist only vis-à-vis certain other legal persons. "Nevertheless," as Oppenheim observes, "such possessors of limited international personality are real international persons."[18] The extent to which an entity is a subject of international law "is a question of degree depending on the circumstances of particular cases."[19] Thus, the variety of non-state international persons is a function of the extent of their capacities, suggesting that there is a sliding scale of international legal personality.

Federal States

Federal states are internally organized according to the principles of federalism, a system of governance popularized by the *Federalist Papers*. In contrast to a unitary state, which is characterized by a high degree of centralization, the federal state is a system of constitutional power sharing between a central government and several local governments, which possess exclusive legislative competencies in certain areas. A federal state is formed when two or more states (1) conclude a treaty conferring power over them and their citizens to an organ of the community composed of the contracting states, and (2) subsequently accept a federal constitution outlining the competencies of the federation and member states.[20] Thus the federal state is said to exist side-by-side with its member states.[21]

Federal states can be found in nearly every region of the world[22] and contain approximately 40 percent of the world's population.[23] Federalism has proven to be a particularly popular and effective form of governance for states administering large land masses with diverse regions and communities.[24] By advocating regional autonomy, federalism produces two important effects. First, it deflates secessionist pressures and safeguards national unity. In a world characterized by increasing fragmentation, illustrated vividly in the recent dissolution of the USSR and of the Socialist Federal Republic of Yugoslavia,[25] measures that can successfully overcome divisiveness and promote stability cannot be casually dismissed. Second, it upholds the self-determination of peoples to organize their own affairs without external interference,[26] and protects political communities which "often preserve linguistic, cultural and religious features that would be disrupted or submerged by central control."[27] By protecting the interests of its component parts, the concept of federalism also protects and promotes the federal state itself.

Treaty Implementation in Federal States

In some federal legal systems (like the United States) treaties form part of the internal law of the state and generally require no further legislative action to become effective.[28] In others (like Canada) treaties are external to the state's municipal law, and any international agreements that require a change of the internal laws can only be accomplished through legislation.[29] Unlike in unitary states, where treaty implementation is rarely in doubt, the performance of treaty obligations for federal states can sometimes be problematic. As Hogg explains:

> Because legislative power is distributed among a central and several regional legislative bodies, there is the possibility that treaties made by the central government can be performed only by the regional legislative bodies which are not controlled by the central government and which can rarely be persuaded to act in unison.[30]

The question of who is the appropriate entity in federal states to enforce treaty provisions—the federation or member states—has led to different solutions. Generally, federal states are divided into two categories on the basis of the location of this power, the difference between what one writer describes as "union" and "compact" federations.[31] In union federations, the power to implement treaties lies in the federation itself, while in compact federations that power resides in either the mem-

ber states or the federation, depending on the subject matter of the agreement. In practical terms, the significance of where the treaty-implementing power is located becomes apparent in cases where the federal government concludes agreements impinging upon the legislative competencies of the member states. In the United States, for example, the Supreme Court has held that the federal government can conclude and enforce treaty obligations that intrude upon the powers of the American states notwithstanding the guarantees of the Tenth Amendment to the Constitution.[32]

The Canadian experience is markedly different. In the 1937 *Labour Conventions* case, the Privy Council favored the preservation of the federal distribution of powers over an "expansionist, preemptive foreign affairs power."[33] The result, a product of constitutional judicial interpretation, has produced a Canadian style of "centrifugally-oriented, decentralizing, pluralistic" federalism that has impaired Canada's capacity to play a full role in international affairs, as it has been unable to accept or in some cases to fulfill certain treaties.[34] By contrast, the American experience has produced an erosion of member state powers in favor of a stronger federal government and a more centripetal style of federalism. The different federal experiences of Canada and the United States demonstrate that the concept of federalism is neither monolithic nor static and can evolve over time through constitutional practice.

The Status of Federal Components in Legal Doctrine

Traditionally, international law gave little weight to the position of federated states. Fitzmaurice, for instance, declared that "a constituent State of a Federation can never be a State internationally or, as such, party to a treaty..."[35] Brierly reached a similar conclusion when he defined a federal state as a "union of states in which the control of the external relations of all the member states has been permanently surrendered to a central government so that the only state which exists for international purposes is the state formed by the union..."[36]

Gradually, however, that orthodox view has softened, and many now believe that federal components can possess a limited measure of international personality. In reaching this conclusion, some scholars have focused principally on the constitutional law of the individual federations. Kelsen, for instance, argues that component states "may be considered as subjects of international law, with a restricted personality," since they "have this competence in accordance with the federal constitution."[37] Lauterpacht agrees with Kelsen, but phrases his position in the negative:

> In the absence of [express] authority conferred by federal law, member states of a federation cannot be regarded as endowed with the power to conclude treaties. For according to international law it is the federation which, in the absence of provisions of constitutional law to the contrary, is the subject of international law and international intercourse...[38]

Brownlie adopts a different position. He believes that constitutional law delegations do not necessarily confer separate status, as constituent states are usually acting as a delegate or agent of the parent state when operating on the international plane. A separate personality may be obtained, however, "by agreement or recognition," as in Soviet-era Belarus and the Ukraine which, while members of the former USSR, concluded treaties in their own name and were members of the United Nations.[39]

While adherents of a constitutional approach are correct to examine the division of competencies in the federal state, they are wrong to rely solely on textual provisions to support their argument. For while some constitutions surely confer on paper a limited external competence, not all components can effectively exercise it. Consider the American federal system. While the U.S. Constitution permits member states to conclude agreements with foreign powers with congressional consent,[40] in practice such approval has not been tendered.[41] Moreover, as the President is, by judicial decree, "the sole organ of the nation in its external relations" with "plenary and exclusive power," member states have been forbidden to deal directly with sovereign states.[42] Accordingly, while the American components enjoy a potential international status, their claim to international personality fails as all external sovereignty has been absorbed by the federal state.[43]

Similarly, Brownlie's position dismisses too easily the value of constitutional law. For in citing the Ukraine and Belarus as his principal sources of evidence, he fails to acknowledge that the Soviet Constitution expressly conferred upon member states the power to engage in international relations.[44]

Perhaps the best doctrinal approach is that of Oppenheim, who stresses both constitutional and practical considerations. Emphasizing that "[e]verything depends on the particular characteristics of the federation in question,"[45] he identifies four points of extra-constitutional evidence as proof of a limited international status: (1) membership in IOs; (2) judicial resort to international law in the settlement of disputes between members of federations; (3) possession of sovereign immunity by member states in courts of other countries; and (4) limited relations with foreign states.[46]

Federal Components in Constitutional Law: The Status of Quebec, Canada

Unlike most countries, Canada does not have a single constitutional document. Its constitution is composed of instruments from a variety of sources that have achieved legal supremacy within Canada's legal system. Among these sources are imperial statutes, Canadian statutes, case law, royal prerogative and conventions.[47]

The instrument bearing the closest resemblance to a comprehensive constitutional document is the British North America Act, 1867 (BNA Act or Constitution Act, 1867).[48] The BNA Act "federally united" three of the British North American colonies and formed Canada, a Dominion composed of the four provinces of Ontario, Quebec, Nova Scotia and New Brunswick.[49] With the title of "dominion," Canada became distinguished as a self-governing territory of the British Empire.[50] Among the principal developments in Canada's evolution to statehood are its separate signature to the Treaty of Versailles (1919); separate membership to the League of Nations (1919); recognition as an autonomous community equal in status with the United Kingdom by the Balfour Declaration (1926); and removal of any "lingering remnants" of formal dependence upon the British Parliament by the Statute of Westminster (1931).[51] Today, Canada is composed of ten provinces and two territories,[52] has over 27 million people, and covers a land mass of nearly 10 million square kilometers.

Since 1867, Quebec's relationship with the rest of Canada has been largely harmonious. From the 1960s, however, a growing segment of Quebec's Francophone population has grown disenchanted with the terms of federation. Concerned principally with preserving and promoting Quebec's ethnic and cultural identity, the constitutional amendment procedure, participation in federal institutions and the erosion of provincial powers,[53] the people of Quebec have sought a new relationship with federal authorities. In 1980, the ruling provincial government, the Parti Québécois (PQ), staged a referendum seeking a mandate from Quebec voters to negotiate a "sovereignty-association" agreement with the federal government. This would have involved secession from all but economic association with the rest of Canada.[54] Although the proposal was rejected by nearly 60 percent of voters, the defeat did little to stem the separatist movement. In the October 1995 referendum the PQ dropped the pretense of association and simply sought "sovereignty,"[55] something that Premier Jacques Parizeau equated with independence in a December 1994 interview.[56] The referendum was narrowly defeated by 50.6 to

49.4 percent; a mere 53,000 votes out of 4.8 million ballots cast swung the balance.[57]

Following the narrow separatist defeat, Canadian Prime Minister Jean Chretien introduced legislation that would give Quebec greater autonomy within Canada. The major elements of his plan would recognize Quebec as a distinct society and provide the province with a veto over constitutional changes.[58] Although the offer conceded two of the demands Quebec leaders have traditionally sought, the proposals were nonetheless criticized by the PQ because they would not be embedded in the constitution.[59] Federalists also criticized the measures, fearing devolution would only hasten national fragmentation. Contemporary relations between Quebec and Canada are uneasy, and Quebec's future within the federation remains uncertain.

As a Quebec government publication asserts, the Quebecois have come to think of their provincial government as a national government.[60] Yet, constitutionally speaking, Quebec is in an inferior position to Canada. To illustrate, section 52(1) of the 1982 Constitution Act affirms the supremacy of the Constitution over all other conflicting laws. Of course, within their areas of exclusive competence, neither the central nor regional governments is subordinate to the other. But to the extent that an area of jurisdiction overlaps, the federal constitutional law prevails. Moreover, residual legislative power inheres in the federal parliament,[61] ensuring (in theory) a strong central government. Finally, the Constitution does not provide an express mechanism for secession, leading several scholars to conclude that it is an unavailable legal option under municipal law absent constitutional amendment.[62] While a unilateral secession could, if successful, provide the foundation for a new, legitimate legal order, it would nevertheless constitute an unlawful act in disregard of the Constitution.[63] Nor is secession, absent remarkable factual conditions,[64] available by right under international law, which has upheld the territorial integrity of states in countless manifestations. For better or for worse, Quebec is a part of Canada.

With respect to foreign affairs, the *Labour Conventions* case conclusively established that the provinces share a treaty-implementation power with the federal government. The Privy Council decision was silent, however, as to the matter of treaty making. The Constitution itself provides little guidance and has given rise to different interpretations.[65] According to the federal government, because executive power was delegated by the Crown to Canada, only it has international personality and the power to conclude formal international agreements.[66] But Quebec argues that there is no constitutional authority to support an exclusive federal treaty-

making power,[67] and since the late 1960s, has consistently asserted its competence to conclude treaties on matters falling within its legislative competence. Quebec's position has never been accepted by the federal government.[68]

Notwithstanding constitutional muddles, in practice provinces like Quebec have concluded agreements with foreign jurisdictions. But agreements such as these have always been preempted by the federal government, which has intervened to give them legal effect.[69] Such intervention typically takes the form of an exchange of notes, wherein the Canadian government informs the foreign state concerned that the agreement meets with its concurrence. This is what happened after France and Quebec concluded an educational entente on February 27, 1965.[70] By the same token, intervention may occur before the conclusion of an agreement, lending federal approval in advance.[71] Quebec has also sought to participate in international conferences. Like its stance on treaty making, however, the position of the federal government is firm in principle: only Canada as a whole can participate in international conferences. But yet again, paper and practice are not the same thing, as Quebec does in fact attend many educational and cultural meetings. As before, Canada and Quebec have reached understandings that have allowed Quebec to attend the conferences. "By such techniques," Hogg informs us, "the federal government has managed to satisfy legitimate provincial interests while remaining firm on its insistence that international affairs are an exclusive federal preserve."[72]

The Status of Tatarstan, Russia

The foundation of the Russian legal system is its Constitution, a comprehensive document that entered into force on December 25, 1993. It establishes Russia as a federal state and provides for the legal characteristics of its federated components. The Constitution is itself based upon the Federation Treaty of March 31, 1992,[73] which delineated the spheres of jurisdiction between the Federation and its component republics.[74]

Described as a "country of countries,"[75] Russia is a multi-ethnic state subdivided into 89 territorial units (or subjects) with varying degrees of autonomy.[76] Chief among these are the 21 republics, which under Art. 5(2) of the Constitution promulgate their own constitutions and legislation. To lend clarity to the country's various legal orders, the Constitution establishes a hierarchy of laws, none higher than itself: no law may contravene the Constitution.[77] With respect to the laws of the subjects, federal law prevails in the event of a discrepancy.[78]

The Russian Federation is highly decentralized, having conceded considerable autonomy to its subjects in an attempt to avoid unraveling. With the collapse of the Soviet Union, a number of Russian republics sought to follow the example of the former Soviet republics and declare independence. To accommodate the centrifugal forces, Russia has pursued the "broadest possible forms" of self-determination for its republics, recognizing their sovereignty within Russia while at the same time preserving Russia's territorial integrity.[79] Devolution has permitted many regions to attain a level of stability that republic leaders are now loathe to upset.[80] And, some writers contend, their practical autonomy is growing. Presidents, governors and other leaders of regional governments frequently control the federal military and security forces in their jurisdictions.[81] Several republics also exercise considerable foreign affairs powers, occasionally pursuing policies contrary to Moscow's interests. Russia, seemingly, is content with these developments, often sending high-ranking federal officials to attend republic celebrations commemorating their declarations of state sovereignty.[82] Moreover, the foreign minister has publicly expressed "satisfaction" with the development of at least one republic's international relations and said such contacts would be promoted in the future.[83]

Tatarstan is an autonomous republic in the Russian Federation that claims to be a distinct nation on the basis of language, religion and culture. Straddling the Volga River with Kazan as its capital, Tatarstan has 3.6 million people of whom 50 percent are ethnic Tatar and 43 percent are Russian. The heavily industrialized republic is prosperous compared to the other regions of the federation, as natural resources, particularly oil and gas, are plentiful.[84]

The constitutional history of Tatarstan can be traced to the period immediately preceding the dissolution of the Soviet Union. In 1990, eager to enlist the support of allies against Soviet power, Boris Yeltsin urged a number of republics to "take as much sovereignty as you can swallow."[85] Tatarstan did precisely that. In 1990 the republic issued a Declaration of Sovereignty[86] and, following the Soviet collapse in 1991, promptly declared its independence from any association of states that might emerge from the carcass of the former empire. It followed these measures by refusing to sign the 1992 Treaty of Federation, one of only two Russian republics to do so, and by staging a referendum on sovereignty, in which 61 percent of voters approved Tatarstan's status as "a sovereign state, and a subject of international law..."[87] Although both the Russian Parliament and the Constitutional Court declared the referendum unconstitutional,[88] Tatarstan's status as enunciated in the referendum was included nearly

word-for-word in the Tatar Constitution promulgated in November 1992.[89]

As a study of the Russian and Tatar constitutions will reveal, the documents are in several key respects contradictory. As a result, the constitutional relationship between Russia and Tatarstan is, to put it mildly, confused. Tatar Government spokesman Anwar Malikov characterized the situation as "just too complicated," and Vadim Grigoryev, a specialist on territories in the Russian Federation, asserts "[t]here's no clarity at all."[90]

There are three principal contradictions. The first concerns the relationship between the federation and its components. According to the Tatar Constitution, the Republic of Tatarstan is a "sovereign state" and a "subject of international law associated with the Russian Federation."[91] By contrast, the Russian Constitution asserts that Tatarstan is a "subject" of the Federation and a part of its territory.[92] The second concerns the status of republics. Although Tatarstan claims the "independent" right to determine its legal status,[93] Russia contends that a republic's status is defined according to a joint reading of both federal and republican constitutions.[94] Finally, each constitution provides for the supremacy of its own provisions.[95]

The issue of the republic-federal relationship was somewhat resolved in the 1994 Russo-Tatar Basic Treaty (1994 Treaty), wherein the method for determining Tatarstan's status was resolved and in which it was declared that the republic is "united with the Russian Federation on the basis of the constitutions of Russia and Tatarstan."[96] But, as one writer is apt to point out, how can two contradictory constitutions form the basis for unity?[97] For while the issue of association versus unity is resolved, the question of legal supremacy remains clouded. Furthermore, the Russians and Tatars have disagreed on several related matters. Russia, for instance, argues that by signing the 1994 Treaty, Tatarstan also became party to the 1992 Treaty of Federation, a position the republic flatly disputes.[98] And despite unity, Tatar Parliamentary Speaker Likhachov continues to believe that Tatarstan is "becoming a subject of international law."[99] Finally, even within governments there is uncertainty on the law. According to an official statement of the Russian Foreign Ministry,

> In accordance with the treaty between the Russian Federation and the Republic of Tatarstan, ... Kazan may establish the relations with foreign states and sign agreements with them, as long as they do not contradict the constitution and international obligations of the Russian Federation.[100]

But in a press conference a year later, President Boris Yeltsin took a contrary position: "When we were signing an agreement with Tatarstan, we didn't give it—and they agreed to that, although it was a long process—international activities, international relations, including economic ones, the signing of agreements."[101] What are we to make of these contradictions?

It is possible that Yeltsin simply made a mistake. After all, he did declare in 1992 that the Treaty of Federation, to which Russia asserts Tatarstan has implicitly acceded, "gives each region the right to independently participate in foreign relations and foreign economic affairs, to govern itself based on its own constitution and laws and to choose its own anthem, flag and state symbol."[102] Developmentally speaking, the constitutional practice of this young federation is still teething, and a degree of confusion is to be expected. But regarding the other contradictions, we must simply accept that the constitutional law is unsettled in places and pay heed to existing conduct in this unfolding constitutional drama. It is said that substance matters more than form, and it is especially true when the form in question is rather amorphous.

Nevertheless, on several points the constitutional relationship between the two is less murky. The 1994 Treaty harmonized the issue of the military draft, recognizing Tatarstan's right to exempt its men from military service with alternative civilian service.[103] It also recognized Tatarstan's sovereignty over its natural resources and the residual legislative powers reserved for Federation subjects.[104] Moreover, by declaring itself united with Russia, Tatarstan apparently accepts the impermissibility of secession and lends strength to Yeltsin's assertion that Russia is "indivisible."[105]

With respect to the foreign affairs power, the Russian constitution vests jurisdiction over foreign policy, international relations and international treaties in the Russian Federation.[106] However, under Art. 78(2) these powers may be delegated by special agreement, as in the 1994 Treaty. Moreover, the Federal Law of the Russian Federation on International Treaties of the Russian Federation (Federal Law) defines an "international treaty of the Russian Federation" as an agreement concluded "by the Federation" with foreign entities,[107] and pointedly excludes agreements concluded by its subjects. Thus Tatarstan's assertion of power to conduct international relations and conclude treaties comports with Russian constitutional law.[108]

Beyond its own power to conclude treaties, Tatarstan also has influence over the formation of Russia's international agreements. According to Article 4(1) of the Federal Law, international treaties of the Russian Federation affecting matters within a subject's exclusive jurisdiction require its assent,[109] effectively lending Tatarstan a veto power over certain federation agreements. Moreover, the Federation and its subjects exer-

cise concurrent jurisdiction over the implementation of such treaties by virtue of Articles 32 and 72(1)(n) of the Federal Law, suggesting a superficial resemblance between Russia's federal structure and that of Canada. Accordingly, Tatarstan enjoys impressive internal autonomy and wide constitutional and federally delegated powers in the international arena.

Treaty-Making Practice

Evidence of treaty making by both Quebec and Tatarstan is impressive, although the Canadian material is much more extensive, given the youth of the Russian Federation. According to one estimate, Quebec had concluded 230 ententes with foreign governments by 1989, nearly 60 percent of which were with sovereign states.[110] For its part, Tatarstan has concluded a number of agreements with foreign jurisdictions, including Azerbaijan,[111] Bulgaria[112] and possibly a few Polish provinces.[113] It even went so far as to sign an agreement with Abkhazia, the breakaway republic of Georgia, much to the dismay of Moscow.[114] The majority of the agreements concerned cooperation in the areas of culture, commerce, science and technology.

A facile assessment of the evidence might conclude that Quebec and Tatarstan are subjects of international law simply by virtue of their treaty-making activities. After all, in the *Wimbeldon* case the Permanent Court of International Justice stated that "the right of entering into international engagements is an attribute of State sovereignty."[115] However, the Court's position on treaty making should not be taken to mean that the act of contracting on the international plane establishes, by itself, an international person. As explained previously, whether an entity is an international person depends upon whether it is the bearer of rights and duties under international law. But, if by virtue of their treaty-making power components have secured international legal rights or assumed international legal obligations, then it can properly be said that they have acquired some measure of international personality.

Have the agreements concluded by Quebec and Tatarstan generated legal rights and duties? The answer to this question requires us to consider five related issues: (1) the identity of the parties; (2) the capacity of the parties; (3) the binding nature of the agreements; (4) the system of applicable law; and (5) the locus of state responsibility.

Parties

According to Article 2(g) of the Vienna Convention on the Law of Treaties (VCLT), a "party" to an international agreement is "a State which has

consented to be bound by the treaty and for which the treaty is in force."[116] Analogizing this provision to the case of federated states, we learn that an entity which has manifested its consent to be bound to a treaty in force is a party. Yet this seemingly simple equation ignores the central question of *who* has expressed consent. Is it the component acting in its own capacity, or perhaps the federal government for whom the unit has served as an agent? For while it is true that components frequently conclude agreements in their own names,[117] the identity of the negotiator and signatory is not necessarily the same as that of the party to the agreement.

The question of who has expressed consent to a treaty—unit, federation or both—naturally raises the issue of the constitutional relationship between component and federation with respect to the treaty-making power. Although the Canadian Constitution is silent with respect to provincial treaty making and despite sharp debate over Quebec's independent right to conclude treaties,[118] contemporary federal-provincial practice has established that Quebec may conclude international agreements with federal authorization.[119] The fact of consistent preemption by Canada suggests, moreover, an agency relationship between Quebec and the federation. By contrast, the Russian constitutional system expressly recognizes Tatarstan's independent power to conclude agreements that do not conflict with Russia's constitutional law or international obligations. Because Tatarstan's agreements do not require federal assent, it is probable that the republic concludes agreements in its own right and not as a federal agent.

Yet this focus on treaty making ignores the relevance of treaty implementation. True, the issue of consent turns on who has the power to conclude treaties. Nevertheless, the entity charged with executing them is not insignificant. Both treaty maker and treaty implementor play important roles in the lifespan of an agreement.[120] Those charged with implementation bear an important responsibility, for if the admonition *pacta sunt servanda* is to be observed, the cooperation of authorities responsible for enforcing agreements is essential.

Therefore, as a matter of municipal law, the federal components surveyed may either conclude international agreements as the agent of the federation or in their own capacities outside an agency relationship. For some agents, however, their internal competence and responsibility to implement certain treaties probably implicates them as parties as well. It would appear that for agreements concluded by Quebec both federation and province are proper parties to all agreements that have obtained federal assent. In the case of Tatarstan, however, the republic is the

sole party to agreements because no agency relationship with Russia was established.

Capacity

The issue of capacity addresses the validity of consent—do the parties who have purported to express consent have the ability to do so? The VCLT establishes that all states have the capacity to conclude treaties, but is silent with respect to federal components. However, International Law Commission draft Article 5.2 provided,

> States members of a federal union may possess a capacity to conclude treaties if such capacity is admitted by the federal constitution and within the limits there laid down.

Although this provision was ultimately deleted at the Vienna Conference, one scholar who has studied the conference records believes that the provision was defeated because delegates were unhappy with the wording, not with its substance. On this basis he concludes that the deletion of paragraph 5(2) does not mean that components cannot conclude agreements as a matter of international law, and that whether capacity exists is a municipal law question.[121]

A number of writers and ample constitutional practice support this position. The internal laws of both Canada and Russia permit components to conclude agreements under certain circumstances, and writers like Oppenheim[122] and Bernier[123] agree that constitutional law may empower member states to do so. In sum, federated units may properly conclude international agreements to the extent of their constitutional competence.

Binding Nature

Agreements between international persons can take a variety of forms and bear a variety of names, including charters, protocols, pacts and declarations—collectively called "treaties" by the VCLT. Likewise the objectives of treaties can differ. Some agreements are like contracts in that they involve discrete bargains between players. Under this category would fall the 1867 American purchase of Alaska from Russia for $7.2 million.[124] Other agreements seek to establish a more continuous legal relationship, like treaties of friendship, commerce and navigation. But not all agreements are contracted with the goal of concluding a legal bargain or creating a legal relationship with concomitant rights and obligations. Some,

in fact, are concluded under the expectation that they generate no legal effect at all.

All of this points to the conclusion that what an agreement is supposed to achieve and whether the agreement can be said to be legally binding at all depends upon the intent of the parties. How do we know if the parties have manifested such an intent? In his article *The Legal Character of International Agreement*, Fawcett suggests that an inspection of individual agreements could reveal such an intent via, *inter alia*, provision for compulsory dispute resolution or the inclusion of mandatory language creating rights and duties under some system of law.[125]

Applying this test to the case studies produces a mixed result. Although the component agreements are silent with respect to dispute resolution, they do speak to the matter of intent. Many Canadian provincial agreements specifically state that they are not legally binding,[126] speaking more of understandings than obligations, privileges rather than rights, and the binding force of good will rather than law.[127] This evidence lends support to Canada's contention that provincial agreements are informal "administrative arrangements" that lack legal force.[128] By contrast, Tatar agreements do not suffer from Russian protest and generally appear to possess some legal quality. To illustrate, an agreement between Tatarstan and Bulgaria was said by the parties to provide "a legal basis for further cooperation."[129] In addition, according to Moscow, an agreement between Tatarstan and Abkhazia "contravened" the Russian Federation's obligations under a friendship treaty with Georgia.[130] Arguably, such an instrument could not violate Russia's obligations unless it possessed legal force.

Although this analysis suggests that the Quebec agreements are nonbinding, it is important to note that the parties in question often consider them to have legal force. France, for instance, believes its ententes with Quebec are binding under international law.[131] Involvement by federal authorities may lend the agreements a legal character as well. Canada maintains that its practice of preemption by an exchange of notes raises "base consensus ... to the status of an international agreement."[132] Notwithstanding the absence of mandatory language, subsequent recognition by the parties could introduce a legal element to agreements that might otherwise bear only political force. However, whether the agreements require any performance at all is another matter entirely.

System of Law

Obviously, if the agreements concluded by the components generate no legal rights or duties, then no system of law is implicated. However, agree-

ments that create legal rights and duties are "binding and legally enforceable only by virtue of some system of law."[133] In the case of Quebec, agreements the federal government has preempted graduate to the level of interstate treaties and are thereby governed by international law. For agreements lacking federal assent, however, the answer is less certain. The federal government maintains that, absent federal approval, no agreement has been concluded at all.[134] But this position seems odd as both Quebec and at least one of its counterparts assert that their agreements are legally binding instruments. Furthermore, there does not appear to be any reason in principle why international law could not control such agreements, for if Quebec is a subject of the law then by definition its conduct must be regulated by it; and one of the principal ways in which this could occur is if international legal norms were applied to its agreements.

Admittedly, Quebec presently lacks a procedural capacity to appear before international tribunals, thus limiting the ability of an aggrieved party to assert its rights by judicial process. Nevertheless, too much should not be made of this fact as there is a "clear distinction between procedural capacity and the quality of a subject of law," and the absence of a full procedural capacity does not degrade an entity's footing as an international person.[135] However, this speculation is *de lege ferenda,* and the applicable system of law for provincial agreements lacking federal assent is uncertain at present.

Tatarstan contracts on the international plane with powers constitutionally delegated by Russia. One could assume then that its agreements are regulated by international law. But it would probably suffice to argue that because Tatarstan is constitutionally competent to conclude international agreements, and its power to do so is recognized by contracting counterparts, its agreements are objects of international law.

Locus of International Responsibility

The law of state responsibility is about accountability for violations of international law.[136] In brief, it holds that if a state violates an international obligation, it is liable for that trespass. The obligation itself may rest on "treaty, custom, or some other basis."[137] The duty to make reparation is the consequence of state responsibility.[138]

The matter of state responsibility bears on the question of component personality insofar as it determines whether an entity is accountable for internationally wrongful acts and therefore required, as a matter of law, to discharge the liability. Should responsibility be attributed to the

federated unit, it would then be the bearer of international duties, a prerequisite to personality.

While recognizing and respecting the right of federal units duly authorized under domestic law to negotiate and conclude treaties,[139] international law nevertheless maintains that it is the federal state that bears ultimate responsibility for the agreements. One group of jurists pronounced:

> [F]rom the viewpoint of international law: the distribution of powers between the federal State and the federated entities is purely a matter for municipal law ... to be resolved freely by the Federation. Only the federal state is bound by international obligations that can restrict its territorial powers and it alone is liable in the event of a violation.[140]

Moreover, a state cannot escape international liability by pleading provisions of its internal law,[141] including those pertaining to its federal structure.[142] Thus, it is the federal state that bears liability for any breach of a component agreement, despite a component's competence to conclude and implement it. Because federal components derive no liability under the law of state responsibility for breaches of its agreements, they derive no international status from it either.

From the foregoing, we find that both Quebec and Canada are parties to agreements that secure federal assent. Quebec's capacity to tender its consent to international agreements is derived from constitutional practice granting it the power to do so under limited circumstances. While most of the agreements concluded by Quebec do not on their face create legal rights and duties, subsequent federal approval or recognition by contracting parties could introduce a legal aspect. Additionally, where federal assent is given, the agreements are governed by international law; where federal assent is absent, the applicable law is unclear, although Quebec and its counterparts assert the applicability of international law. Finally, the law of state responsibility does not assign liability to Quebec for breaches of international agreements.

Tatarstan, on the other hand, is the sole party to its international engagements and possesses the requisite constitutional capacity to produce lawful consent. By all appearances, the agreements that have manifested an intention to create legal rights and duties are legally binding, although that conclusion, it should be noted, is tentative given little supportive practice. Likewise, the applicable system of law is probably public international law. Like Quebec, Tatarstan is also not internationally liable for breaches of its agreements.

PARADIPLOMACY

Paradiplomacy refers to the brand of international relations that substate entities conduct. The term is used to distinguish the limited foreign affairs practice of federated states from the plenary diplomatic practice of states. This section will describe the type of paradiplomacy that Quebec and Tatarstan conduct and will measure the significance of the activity under international law. In terms of practice, it will consider four types of behavior: legation; statements and actions of foreign officials; activity in IOs; and role in conflict resolution.

QUEBEC

Quebec's level of paradiplomacy is impressive. As one writer puts it, Quebec "has become the prototype of a subnational state involving itself in international relations."[143] In 1967 Quebec created the Department of International Affairs to be responsible for the conduct of its foreign relations. Closely resembling a foreign ministry,[144] the department in 1992 employed over 1,000 people—400 of them stationed abroad in 29 cities—and enjoyed an operating budget of C$126 million.[145] Maintaining its international visibility has consistently been a priority of the Quebec government. Between 1981-1985 Quebec ministers made 333 foreign visits, and between 1985-1989 that number fell to 234. Regionally, 52 percent of visits were made to Europe (principally France), 27 percent to the United States, 8 percent to Asia, 3 percent to Latin America and the remainder to IOs.[146]

Quebec actively pursues bilateral relations, partly in an effort to secure legitimacy for its cause and to strengthen its claim as an international actor. France and the United States are the chief targets of Quebec's policies, and of the two, Quebec has found the warmer reception in France. Ever since General Charles de Gaulle declared "*Vive le Quebec libre*!" before a cheering crowd in Montreal in 1967, statements by French officials have tended to support Quebec's independence movement. A French Information Minister once remarked that Quebec enjoyed the beginnings of an international personality and that its ententes with France held the legal validity of treaties.[147] President Jacques Chirac publicly expressed France's willingness to recognize an independent Quebec should it choose sovereignty in the referendum,[148] and National Assembly President Seguin assured Quebecers that France would "walk by your side, at the pace and in the direction you will have chosen." Symbolism has also weighed heavily in this drama. Parizeau was greeted as a head of state upon his arrival in Paris in January 1995, and was received by the Repub-

lican Guard on the steps of the National Assembly. He was also accorded the honor of passing through the Napoleon Gates, not used in ceremony since U.S. President Wilson passed that way in 1919.[149] France's efforts have extended even to the post-referendum era, as former Prime Minister Alain Juppé praised Quebec's tenacity and even went so far as to compare Quebec's francophones to the French Resistance of WWII, remarking that "[t]he spirit of people is never better forged than through resistance."[150] Nor has France been loathe to promote Quebec's cause covertly. In a book by former Premier Parizeau, it was revealed that the Quebec government had secretly planned a unilateral declaration of independence within ten days of a referendum victory and had made a private deal with France to secure rapid recognition.[151] Accordingly, among Quebec's allies, none has been more supportive than France.

The United States, by contrast, has been cool, if not frosty, to Quebec's separatist aspirations. Not only has the United States been indifferent to government-to-government contact,[152] it has also made clear that an independent Quebec's continued membership in multilateral arrangements like the North American Free Trade Agreement (NAFTA) and NATO is by no means assured.[153] Moreover, President Clinton affirmed American support for a united Canada in an address before the Canadian Parliament[154] and at a state dinner in Ottawa, at which he concluded his speech by declaring "Vive le Canada!" in a clear allusion to General de Gaulle.[155]

Quebec participates in international institutions and is one of the only non-state members of La Francophonie, an organization of French-speaking countries. It is also a participating government of the Agency for Technical and Cultural Cooperation under conditions fixed by a federal-provincial agreement.[156] Moreover, despite Canada's insistence that it represents the interests of all Canadians in its diplomacy,[157] Quebec has pursued separate membership in the U.N. ever since Premier Levesque proposed the idea shortly before the 1980 referendum.[158] Although a seat in the General Assembly does not appear forthcoming, Quebec has nonetheless sought to win allies from within the organization, scheduling private meetings with persons of influence like the Secretary-General.[159]

TATARSTAN

Since concluding the Russo-Tatar Basic Treaty in 1994 that recognized Tatarstan's capacity to conduct foreign relations, Tatarstan has cultivated extensive ties with foreign states at both the national and regional level. A

brief survey of major news sources reveals that Tatar officials have visited, or been visited by delegations from Azerbaijan, Bulgaria, Cyprus, Denmark, France, Iran, Malaysia, Poland, Turkey, the United Arab Emirates, the United Kingdom and the United States. It has even strengthened its intranational ties, as Chechnya recently opened a trade mission in Tatarstan.[160] Typically, Tatar representatives meet with foreign officials from the highest level of their governments: presidents, prime ministers, vice-presidents and foreign ministers. The subject matter of the meetings suggests a functional division between Muslim and non-Muslim countries. Generally speaking, discussions involving non-Muslim states focus principally on improving economic ties. With Muslim states, however, Tatarstan appears to be cultivating cultural and political ties in addition to commercial ones. Turkey, for instance, has opened a consulate in Kazan and is developing inter-parliamentary contacts with the republic. Iran has also expressed a desire to accelerate economic, cultural and political cooperation. Azerbaijan and United Arab Emirates likewise seek improved cultural relations. Other areas of mutual cooperation cited in discussions with Muslim and non-Muslim states include agriculture, tourism, science, technology, humanitarianism and the environment.

Unlike France's innuendo-heavy relationship with Quebec, Tatarstan's foreign counterparts have made their positions on Tatarstan clear. Poland's Ambassador to Russia explained that the visit to Tatarstan by Polish Prime Minister Cimoszewicz was "an integral part of the visit to the Russian Federation" and had been approved by the Russian Foreign Ministry. And Turkish Ambassador to Russia Bilgin said that the expansion of ties with Tatarstan was occurring in the general context of developing good neighborly relations with Russia.

Tatarstan is a member of the U.N. Information Centre for Heavy Crude and Tar, but at present is member of no other IOs. Tatarstan has, however, cooperated with the United Nations in other areas. A Tatar delegation joined with U.N. representatives and others to negotiate with leaders of the Taliban movement over the release of a captured airliner crew and discussed prospects for Russian noninterference in the Afghan civil war.[161]

The Legal Significance of Paradiplomacy

Measuring the legal significance of a component's international activity is largely an inquiry into the relationship between the act of recognition and international personality. For while an entity may enjoy the constitu-

tional power to engage in treaty relations with foreign jurisdictions, that power is meaningless unless foreign states agree to reciprocate. Some may argue that recognition counts more than constitutional capacity, and in some cases they would be right. Only Ukraine and Belarus were accepted as members of the United Nations, for example, even though the Soviet Constitution granted external competence to each of its republics.[162] However, recognition absent a correlating constitutional capacity in the component is probably an internationally wrongful act from which no legal rights may spring.[163] It is therefore likely that international personality is a function of both constitutional competence and international recognition.[164]

Recognition, however, can be ambiguous. For while a component's relations with foreign states could be interpreted as evidence that it enjoys a limited international personality, it could also qualify as undue interference in the internal affairs of the federal state.[165] Like a glass half-full, the effect of recognition is a matter of perspective.

Nevertheless, some behavior could legitimately evince a measure of international personality without impinging on the interests of the federal state. International activities that comport with the constitutional competence of a federal unit would fall into this category, as would activity that meets with federal approval. In such cases of constitutional or federal sanction, it is difficult to see how the rights of the federal state are injured. But at what point does the practice cross the line from recognizing a subject of the law to interference in internal affairs? The answer to that question turns on the matter of intent. For while it is clear that states which enjoy relations with components recognize their external competence, it is unclear whether more is intended.

So what do the state parties that have enjoyed relations with Quebec and Tatarstan intend by their conduct? With respect to Quebec, the practice of the United States affirms that Quebec is an integral part of Canada—no more and no less. France's behavior, on the other hand, appears internationally injurious at times.[166] Declarations by de Gaulle and Chirac, for instance, support secession from Canada and undermine Canada's right to territorial integrity. The symbolic treatment of the Quebec Premier as a head of state has much the same effect, for Quebec is being afforded the dignity due a sovereign state and not a political subdivision.[167] Moreover, by conspiring to recognize an independent Quebec following a unilateral declaration of independence, France violated the duty of nonintervention by meddling in Canadian internal affairs.

That each of these acts should be attributed to the French state is without question. States can act only through their agents and representatives,[168] and where such persons behave in a way that violates interna-

tional law the state itself is held responsible.[169] By treating Quebec as a state, France commits an internationally wrongful act for which reparation is due.[170] Moreover, the tortious nature of France's conduct negates whatever legal effect might otherwise have been obtained from its acts of recognition, as legal rights cannot derive from international wrongs. However, to the extent that France's conduct complies with its obligations under international law to respect, inter alia, Canada's territorial integrity, its relations with Quebec could give rise to an enhanced international status. This is certainly the case when French government officials comment upon the province's maturing international personality and competence to conclude binding treaties.

Membership in an organization like the United Nations is prima facie evidence of statehood.[171] The same is not true, however, for membership to the specialized agencies or other international institutions,[172] many of which do not view statehood as a prerequisite for admission or participation. Thus Quebec's activities in La Francophonie and the Agency for Technical and Cultural Cooperation do not support the province's statehood in the least. They do, however, affirm Quebec's ability to act on the international plane.

According to the states with which Tatarstan enjoys unofficial relations, the republic is a part of the Russian Federation. To that end, foreign governments seek federal approval before signing agreements and conducting meetings with Tatar officials. By engaging Tatarstan in the way that they have, foreign governments have recognized the republic's limited external competence without triggering the law of state responsibility.

As in the case of Quebec, Tatarstan's participation in an international organization supports its viability as an international actor without creating the false impression that it constitutes a sovereign state. Tatarstan's involvement in conflict resolution is interesting. Beyond seeking the release of Tatar citizens, the republic also spoke with the Taliban about the matter of Russian military or political involvement in the Afghan civil war, suggesting a mediation role. Typically, such roles are filled by states or IOs, not political subdivisions of states. That the republic participated in the discussions on an equal footing with Russian and U.N. representatives suggests acceptance and even approval of Tatarstan's place in international society.

On the basis of paradiplomacy, both Quebec and Tatarstan enjoy a limited measure of international personality by virtue of the acts of recognition from their foreign counterparts. Quebec is regarded as a subject of the law by France and is acknowledged to be an international actor by virtue of its participation in IOs. Tatarstan likewise possesses a

limited personality from its bilateral relations with foreign states, participation in an IO, and involvement in interstate conflict resolution.

Federal Components as Subjects of International Law

This paper has sought to develop a greater understanding of the international legal position of federal components. To that end it has considered the position of components according to legal doctrine, constitutional law and actual practice. From this investigation a number of conclusions can be drawn.

First, both Quebec and Tatarstan are deeply committed to maintaining a strong international presence and promoting an official, if not statelike, appearance to foreign observers. Thus, Quebec's leader is a premier, its legislature is the National Assembly, and its external relations are coordinated by the Department of International Affairs. It devotes a good portion of its resources to maintaining an external presence and its foreign offices all fly the provincial flag. The provincial government also frequently invokes international legal principles and has commissioned a study by a panel of jurists on its international rights should it successfully secede.[173] Similarly, Tatarstan has a president who is also the head of state, various ministers and a Constitutional Court, features also found at the federal level. Like the federation, moreover, Tatarstan has its own flag, emblem and national anthem and its constitution emphasizes the primacy of international law within the republic.

Second, there appears to be a positive correlation between internal autonomy and external capacity. Thus, the component with the greater constitutional powers plays the more prominent role on the international stage. To illustrate, Tatarstan's powers are more extensive than Quebec's and its emerging external affairs are somewhat more impressive. In only a few years the republic has engaged in high-level meetings with delegates from over a dozen countries. It has discussed matters and concluded agreements in areas of low as well as high politics.[174] The establishment of inter-parliamentary links with Turkey and the development of greater political cooperation with Iran are the two most obvious examples. Moreover, the republic's U.N.-sanctioned role in conflict resolution cannot be overlooked, nor its telling treaty with Abkhazia, which the federal government has not declared void despite asserting that it exceeds Tatarstan's external competence and conflicts with Russia's international obligations.

Unlike Tatarstan, Quebec is a joint party to its international agreements and requires federal approval in their conclusion as an independent treaty making power is disputed by federal authorities. Its agree-

ments, moreover, rarely require legally mandated performance. The bulk of its paradiplomacy, while extensive, concerns matters of low politics with the exception of its relations with France.[175] However, whatever legal significance can be drawn from French practice is suspect given France's likely tortious conduct.

Furthermore, it would appear that the level of external activity is more dependent on internal autonomy than actual claims of status by the components. Since the 1994 Treaty, Tatarstan has never claimed to be anything more than a republic of the Russian Federation. Yet its treatment by other states and the extent of its foreign contacts more closely resemble that of a sovereign state than does the activity of statehood-aspirant Quebec. From this one must wonder about the precision of O'Connell's assertion that an entity is only recognized for what it claims to be.[176]

Third, international personality as a measure of international legal rights and duties is a product of both constitutional competence and recognition; in other words, the combination of law and politics. As observed previously, whether a state can participate on the international plane and whether it actually does are two different things. Thus, any consideration of personality that does not weigh both types of evidence is flawed.

Fourth, the extent to which an entity is a subject of the law is a matter of degree, as international personality is essentially a function of the totality of one's international rights, duties and capacities. Thus all subjects of the international legal order exist at discrete points along a continuum of personality. The question is where do Tatarstan and Quebec fall?

It is clear from the evidence that both are subjects of the law enjoying a limited measure of international personality. Their claims are founded on legal doctrine, supported by constitutional law, and confirmed in treaty making and paradiplomatic practice. Of the two, the analysis suggests that Tatarstan enjoys the greater status. On the basis of its treaty making and paradiplomatic activity, Tatarstan possesses a superior ability to be the bearer of international rights and duties. The republic is the sole party to its agreements which are probably binding and governed by international law. The federal government also recognizes it as constitutionally competent to conclude agreements, and it shares a concurrent jurisdiction over treaty implementation. By comparison, Quebec is a joint party to its agreements which mostly carry political, not legal, force. Moreover, while the Canadian Constitution and the federal government both recognize Quebec's concurrent jurisdiction over treaty implementation,

neither expressly recognizes Quebec's independent ability to conclude treaties or otherwise participate in international affairs.

Finally, it has been fifty years since the International Court rejected the view that only states are the subjects of international law. Since that time international society has grown—and is still growing. Today, along with an expanding number of states, IOs and to a limited extent individuals have been accepted as the bearers of international rights and duties. At the same time, the world has witnessed tremendous structural change. Empires have fallen, colonies have gained independence and global interdependence has flourished. Yet perhaps the most interesting, if not destabilizing and perplexing development has been the phenomenon of balkanization. Today no region of the world is free from secessionist pressures, and afflicted countries are increasingly challenged to accommodate these demands, often granting regions like Corsica, Catalonia and Crimea considerable autonomy. But, as has often been the case, such compromises offer only temporary relief and frequently serve to whet the secessionist appetite further. In light of this, the question is posed here: could balkanization be averted if international society were further expanded to admit sub-state units? Would these regions be satisfied with internal autonomy plus a measure of international personality? Test cases for this thesis clearly exist, for entities like Tatarstan have (for now) exchanged their independence demands for broad internal autonomy and limited external competence. But is international society prepared to accept these pseudo-states onto the playing field, and can international law adapt to accommodate their unique characteristics? The progressive development of the law to reflect changing political realities has been stressed before; now might be such a time again. ■

Notes

[1] Ivan Bernier, *International Legal Aspects of Federalism* (London: Longman, 1973).
[2] Montevideo Convention on the Rights and Duties of States, December 26, 1933, art. 2.
[3] H. Lauterpacht, "The Law of Peace", in *International Law: Being the Collected Papers of Hersch Lauterpacht*, ed. E. Lauterpacht (London, Cambridge University Press, 1970), 500.
[4] Lauterpacht, 494.
[5] Bernier, 13.
[6] See Robert Jennings and Arthur Watts eds., *Oppenheim's International Law*, 9th ed. (Harlow, England: Longman, 1997), 249; Ian Brownlie, *Principles of Public International Law*, 4th ed. (New York: Oxford University Press, 1980), 76.
[7] Hans Kelsen, *Principles of International Law*. 2nd and rev. ed., ed. Robert W. Tucker (New York : Holt, Rinehart and Winston, 1966), 181.

[8] Kelsen, 290.
[9] Kelsen, 180-182, 290-291.
[10] Mark W. Janis, *An Introduction to International Law 2nd ed.* (Boston : Little, Brown, 1993), 176.
[11] Brownlie, 58.
[12] Reparations for Injuries, International Court of Justice (1949):178-79.
[13] Jennings and Watts, *Oppenheim,* 119.
[14] J.L. Brierly, *The Law of Nations,* 6th ed., ed. Humphrey Waldock (Oxford: Clarendon Press, 1963), 46.
[15] The personification of international law as a king presiding over his subjects draws on the legal tradition of reifying abstract concepts for purposes of convenience and clarity.
[16] Jennings and Watts, *Oppenheim,* 120.
[17] Reparations, 178.
[18] Jennings and Watts, *Oppenheim,* 120.
[19] Jennings and Watts, *Oppenheim,* 124.
[20] Kelsen, 260.
[21] Jennings and Watts, *Oppenheim,* 249.
[22] Rudolf·Bernhardt, "Federalism and Autonomy," in *Models of Autonomy,* ed. Yoram Dinstein (New Brunswick, NJ: Transaction Books, 1981), 23.
[23] Daniel J. Elazar, *Exploring Federalism* (University, AL: University of Alabama Press, 1987), 42.
[24] Keith S. Rosenn, "Federalism in the Americas in Comparative Perspective," *University of Miami Inter-American Law Review* 26 (1994): 1-3.
[25] The author recognizes the irony of citing two failed federations in extolling federalism. However, notwithstanding these examples federations have effectively accommodated secessionist tendencies for over two centuries.
[26] Bernhardt, "Federalism and Autonomy," 25-26.
[27] Edward L. Rubin and Malcolm Feeley, "Federalism: Some Notes on a National Neurosis," *UCLA Law Review* 41 (1994): 903, 991.
[28] This is true for self-executing treaties which, according to Article VI of the U.S. Constitution, are "the supreme law of the land." In American constitutional law there is a distinction between self-executing and non-self-executing treaties. Treaties that are self-executing do not require further legislation by Congress to be enforced, while those that are non-self-executing do. A treaty is self-executing "so long as its provisions are interpreted as being aimed directly at the court and not at the Congress requiring legislative action." Janis, 86.
[29] Peter W. Hogg, *Constitutional Law of Canada,* 3rd ed. (Scarborough, Ontario: Carswell, 1992), 285.
[30] Hogg, 287.
[31] Jeffrey L. Friesen, "The Distribution of Treaty-Implementing Powers in Constitutional Federations: Thoughts on the American and Canadian Models," *Columbia Law Review* 94 (1994): 1415-1441.
[32] Missouri v. Holland, 252 U.S. 416 (1920).
[33] Edward McWhinney, "Canadian Federalism, and the Foreign Affairs and Treaty Power: The Impact of Quebec's "Quiet Revolution", *Canadian Yearbook of International Law* (1969): 3-5.
[34] Hogg, 295.
[35] Crawford, 291-92.
[36] Brierly, 128.
[37] Kelsen, 260-61.
[38] Lauterpacht, 3: 250-51.

[39] Brownlie, 76-77. Unfortunately, Brownlie does not explain what he means by "agreement or recognition." This paper will therefore assume that agreement refers to a federal delegation to components of limited external competence. Recognition will be assumed to mean the process by which foreign entities acknowledge the separate international personality of federated units.
[40] "No state shall, without the consent of Congress, enter into any agreement or compact with another state, or with a Foreign Power." U.S. Const. art. I, sec. 10.
[41] Luigi Di Marzo, *Component Units of Federal States and International Agreements* (Rockville, MD: Sijthoff & Noordhoff, 1980), 41-42.
[42] *U.S. v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).
[43] Bernier, 81; Oppenheim, 252. "As a result of the separation from Great Britain by the colonies acting as a unit, the powers of external sovereignty passed from the Crown not to the colonies severally, but to the colonies in their collective and corporate capacity as the United States of America." Curtiss-Wright.
[44] "A Union Republic shall have the right to enter into relations with foreign States, conclude treaties with them and exchange diplomatic and consular representatives, and participate in the work of international organizations." USSR Const. art. 80, cited in Oppenheim, 249, fn. 7. However, it has been pointed out before that Article 73 gave the USSR Supreme Soviet the power to coordinate the external activities of the union republic, with "coordinate" meaning "dictate" in Soviet lingo. See Remarks by Vladimir Kartashkin, *Proceedings of the American Society of International Law* 85 (1991): 132,137.
[45] Jennings and Watts, *Oppenheim*, 249.
[46] Jennings and Watts, *Oppenheim*, 249-52.
[47] Hogg, 11-17.
[48] The BNA Act was renamed "Constitution Act, 1867" in 1982. Constitution Act, 1982, sec. 53(2).
[49] Constitution Act, 1867, preamble, sec. 5.
[50] Hogg, 104.
[51] Hogg, 47, fn. 10; Oppenheim, 257-60.
[52] In addition to the four enumerated provinces, the ten provinces are Alberta, British Columbia, Manitoba, Newfoundland, Prince Edward Island and Saskatchewan. The two territories are presently the Northwest Territories and the Yukon Territory. In April 1999 the Northwest Territories will be split in two; the eastern part will be renamed Nunavut, while the western part is as yet unnamed.
[53] Marc Chevrier, *Canadian Federalism and the Autonomy of Québec: A Historical Viewpoint*, 11-14 (on file with author).
[54] Hogg, 125.
[55] "Chronology of Events in Quebec's History," *The Christian Science Monitor*, November 1, 1995.
[56] McNeil/Lehrer News Hour, December 20, 1994.
[57] U.S. Congress, House. Committee on International Relations. Earl H. Fry, *Quebec's Sovereignty Movement and its Implications for the U.S. Economy* September 25, 1996.
[58] Facts on File, World News Digest, "Chretien Offers Quebec Autonomy Plan," November 30, 1995.
[59] Charles F. Doran, "Will Canada Unravel?" *Foreign Affairs* (Sep-Oct 1996): 97.
[60] Chevrier, 6.
[61] Constitution Act, 1867, art. 91.
[62] Hogg, 126.
[63] Hogg, 128.
[64] *See*, e.g., Gregory Marchildon and Edward Maxwell, "Quebec's Right of Secession Under Canadian and International Law," *Virginia Journal of International Law* 32 (1992): 583 (arguing that the right of secessionist self-determination is "subject to heavy limita-

tions").
[65] For an analysis of the relevant constitutional passages and their history, see Bernier, 51-64.
[66] Bernier, 53, 60.
[67] Bernier, 55.
[68] Hogg, 298.
[69] Hogg, 298.
[70] Bernier, 58-59.
[71] Di Marzo, 84.
[72] Hogg, 299.
[73] Treaty on the Delineation of Spheres of Jurisdiction and Authority Between Federal Government Bodies of the Russian Federation and the Government Bodies of the Sovereign Republics Belonging to the Russian Federation, 31 March 1992.
[74] Constitution of Russia, arts. I, II.
[75] "Press Briefing by the Russian Federation Foreign Ministry Spokesman," *Official Kremlin Int'l News Broadcast*, March 16, 1995.
[76] Russia consists of republics, territories, regions, federal cities, autonomous areas, and an autonomous region. Russian Const. art. 5, sec. 1.
[77] Russian Const. art. 15, sec. 1.
[78] Russian Const. art. 4, sec. 2.
[79] "Press Conference with Vyacheslav Michailov," *Official Kremlin International News Broadcast*, July 19, 1995.
[80] Marshall Ingwerson, "Long Arm of Russia Reaches Out, But Nation Battles to Hang Together," *The Christian Science of Monitor*, March 20, 1996.
[81] Ibid.
[82] *ITAR-TASS Domestic News Digest*, August 29, 1995.
[83] "Press Briefing," March 16, 1995.
[84] "The Strange Case of Tatarstan," *Swiss Review of World Affairs*, July 3, 1995.
[85] Azer Mursaliyev, *Moscow Prepares For a Struggle Against the Regions*, January 27, 1995.
[86] "Constitutional Court Chairman Presents Ruling on Tatarstan," *BBC Summary of World Broadcasts*, March 20, 1992.
[87] Steven Erlanger, "Tatar Area Vote Backs Autonomy Push," *New York Times*, March 23, 1992.
[88] Shafiga Daulet, "Tatarstan's Separate Peace," *The Christian Science Monitor*, December 23, 1994.
[89] Radik Batyrshin, "Tatarstan Russia Sign Treaty — Who Gave In?" *Current Digest of the Post-Soviet Press*, March 16, 1994.
[90] "The Strange Case of Tatarstan," *Swiss Review*.
[91] Constitution of Tatarstan, art. 61.
[92] Russian Const., art. 65, 67.
[93] Tatar Const., art. 59.
[94] Russian Const., art. 66.
[95] Compare Tatar Const., art. 59 with Russian Const., arts. 4, 15.
[96] "The Strange Case of Tatarstan," *Swiss Review*.
[97] Ibid.
[98] "The Treaty of Federation was not signed by Tatarstan and will never be signed by it." *Swiss Review*.
[99] Ibid.
[100] "Moscow says Tatar-Abkhaz accord contradicts obligations," *BBC Summary of World Broadcasts*, August 23, 1994.
[101] "Press Conference with President Boris Yeltsin," *Official Kremlin International News*

Broadcast, September 8, 1995.
[102] "Remarks by Madeleine K. Albright," *Proceedings of the American Society of International Law*, 86 (1992): 1.
[103] Richard Boudreaux, "Tatarstan Reaches Pact with Moscow, Drops Sovereignty Bid," *Los Angeles Times*, February 18, 1994, A6.
[104] Ibid., Russian Const., art. 73.
[105] Yeltsin Press Conference.
[106] Russian Const., art. 71, sec. j.
[107] Federal Law of the Russian Federation on International Treaties of the Russian Federation, art. 2, sec. a, June, 16 1995.
[108] Tatar Const. art. 62.
[109] Federal Law, art. 4, sec. 1; Gennady M. Danilenko, "The New Russian Constitution and International Law," *American Journal of International Law* 88 (1994): 451-455.
[110] Of the agreements, 32 percent concerned education and science, 26 percent the economy, 10 percent culture and communications, 9 percent mobility of persons, 9 percent political questions, and 12.5 percent miscellaneous topics. France alone accounted for 38 of the agreements. See "Remarks by Ivan Bernier," *Proceedings of the American Society of International Law* 85 (1991): 132-134.
[111] *ITAR-TASS News Digest*, November 21, 1996.
[112] "Tatarstan-Bulgarian cooperation agreement signed," *BBC Summary of World Broadcasts*, June 10, 1995.
[113] Press Conference with Poland's Ambassador to Russia, *Official Kremlin International News Broadcast*, November 11, 1996.
[114] Tatar-Abkhaz accord.
[115] The SS Wimbeldon, 1923 *Publications of the Permanent Court of International Justice*, ser. A, no. 1, 25.
[116] Admittedly, the Vienna Convention on the Law of Treaties is an imperfect definitional source given that the Convention, according to Article 1, "applies to treaties between States" and ostensibly excludes from its ambit agreements involving sub-state units. Nevertheless, as much of the international law concerning federal components is insufficiently developed resort must be had to materials which can provide guidance by analogy.
[117] Di Marzo, 118.
[118] Di Marzo, 45.
[119] Di Marzo, 122.
[120] Di Marzo, 129.
[121] Di Marzo, 20-21.
[122] Jennings and Watts, *Oppenheim*, 250.
[123] Bernier, 82.
[124] Leon F. Litwack and Winthrop D. Jordan, *The United States Becoming a World Power II*, 6th ed. (1987), 521.
[125] Fawcett, 387-88.
[126] Di Marzo, 135.
[127] Di Marzo, 138; Bernier, 58.
[128] Di Marzo, 57, fn. 173.
[129] Tatarstan-Bulgarian cooperation.
[130] Tatar-Abkhaz accord.
[131] Bernier, 60.
[132] Di Marzo, 196, fn. 112.
[133] Di Marzo, 144.
[134] Di Marzo, 150.
[135] H. Lauterpacht, 2:505.

[136] Higgins, Problems and Process, 147 (1994).
[137] Brownlie, 436.
[138] Higgins, Problems and Process, 162 (1994).
[139] Hogg, 297-98.
[140] Franck, Higgins, Pellet, et al., *The territorial integrity of Quebec in the event of the attainment of sovereignty* trans. Boulet (May 8, 1992), sec. 1.20.
[141] Vienna Convention on the Law of Treaties, art. 27.
[142] Brownlie, 449.
[143] *Remarks by Ivan Bernier*, 133.
[144] Di Marzo, 72.
[145] Earl H. Fry, "Sovereignty and Federalism: U.S. and Canadian Perspectives Challenges to Sovereignty and Governance," *Canadian-U.S. Law Journal* 20 (1994): 303, 310.
[146] See "Remarks by Bernier," 134.
[147] Bernier, 60.
[148] Speaking of the approaching 1995 referendum, President Chirac remarked that following a "yes" vote "French-speaking nations, and particularly France, would naturally recognize the new situation." Mark Clayton and Gail Russell Chaddock, "French Nod to Solo Quebec Boosts Separatist Leader in Run-Up to Referendum," *The Christian Science Monitor*, January 30, 1995. He later followed this remark with a CNN interview in which he stated unequivocally that France would recognize an independent Quebec if separatists triumphed. Hugh Winsor, "Chirac Says Paris would recognize Quebec," *The Independent*, October 25, 1995.
[149] Clayton and Chaddock.
[150] "Quebec Court Faces Sovereignty Issue," *Facts on File World News Digest*, July 25, 1996.
[151] Rheal Seguin and Graham Fraser, "Parizeau book stuns separatists," *The Globe and Mail*, May 8, 1997.
[152] Craig Turner, "Quebec Separatist Asks Private Meeting with Clinton," *Los Angeles Times*, February 7, 1995.
[153] Clayton and Chaddock.
[154] "Remarks to the Canadian Parliament in Ottawa," *Weekly Comp. Pres. Doc.* 31 (February 27, 1995) 296.
[155] "Remarks at a Gala Dinner in Ottawa," *Weekly Comp. Pres. Doc.* 31 (27 Feb 1995): 302-304.
[156] Bernier, 63.
[157] James Morrison, "Embassy Row," *The Washington Times*, November 23, 1994.
[158] John Rogers, *Reuters*, November 2, 1979.
[159] David Gamble, "Saint Lucien," *The Toronto Sun*, June 12, 1994.
[160] Alvi Karimov, Chechnya Opens Trade Mission in Russia's Regions, TASS, February 19, 1996.
[161] Press Briefing by Foreign Ministry Vice Spokesman Mikhael Demurin, *Official Kremlin International News Broadcast*, September 6, 1995.
[162] Bernier, 80.
[163] See "Nationalization and International Law: Testimony of Elihu Lauterpacht, Q.C.," *The International Lawyer* 17 (1983): 97, 110, 150.
[164] See, generally, Bernier, 78-82..
[165] Ibid., 64.
[166] The injury arises from the actions of foreign states who, by virtue of treating an unqualified entity as a state, adversely affect the interest of another state. Restatement, Third, sec. 202 cmt. (f).
[167] Unless, of course, Quebec purports to be acting as Canada's agent.

[168] German Settlers in Poland, 1923 *Publications of the Permanent Court of International Justice* ser. B, no. 6, at 22.
[169] Higgins, *Problems and Process* (1994): 149.
[170] Oppenheim cautions us against assigning full responsibility to the state where officials and employees act in an unofficial capacity. In such cases, he argues, the state is probably only vicariously liable. See Jennings and Watts, *Oppenheim,* 540-42. However, in the matter at hand de Gaulle made his remarks during a state visit to Canada and Chirac spoke in his capacity as President during an interview.
[171] Brownlie, 97.
[172] Brownlie, 97.
[173] Franck, Higgins, Pellet, et al.
[174] The modifiers "low" and "high" are used to describe the general character of external activity. Thus, matters of low politics comprise mostly commercial, cultural, and educational relations, while matters of high politics concern more formal political and security affairs.
[175] Bernier, 135.
[176] See Crawford, 151.