

Notes for a Presentation by Paul Heinbecker*

Polycentric Governance?

**Subnational Governments and Foreign Policy in an Age of
Globalization,**

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Check Against Delivery

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Introduction

Today, I will argue three points:

1. On the vast sweep of international affairs, the world presumes that Ottawa speaks for Canada, period.
2. It is not in the interests of Canadians as a whole to fragment or otherwise weaken Ottawa's capacity to represent all of them;
3. If the recent agreement with Quebec on UNESCO is a "veritable precedent" as Minister Gagnon-Tremblay described it, it raises issues that will need to be managed carefully if it is not to diminish Ottawa's effectiveness in managing foreign affairs.

What Does The World Think About Canada?

I have represented Canada abroad as Permanent Representative to the United Nations, as Ambassador to Germany, and as Minister in Washington. I have been Head of Delegation to the UN human rights conference in Durban and to the Climate Change conference in Kyoto. As ADM for security and global affairs, and as political director, I was responsible, inter alia for the UN, NATO, the Commonwealth and La Francophonie. I attended literally uncounted meetings, both at home in preparations for negotiations and abroad in conducting those negotiations. As Secretary to the Cabinet for Foreign and Defence Policy and Chief Foreign Policy Advisor to Prime Minister Mulroney, I gave advice on the main foreign policy issues of the time and received senior visitors from abroad.

I try your patience in reciting my own curriculum vitae to make the point that I am pretty conversant with how Canadian diplomacy functions and how the world works and to set the stage for a series of assertions I will make because there is not going to be time in the minutes given to me to substantiate everything I say.

In all of those years representing Canada, I cannot recall ever being asked how Ontario felt, or what Quebec thought, or whether Alberta agreed with what I was saying. I mean no disrespect to the provinces. This is a federation and the provinces, and indeed the municipalities and the First Nations all have their legitimate constitutional roles to play and those roles are all deserving of respect by other levels of government.

I suspect that I believe as strongly as most Canadians, and more strongly than many, that the constitution should be respected, and that Ottawa should not meddle in matters properly the responsibility of other levels of government. I, also, believe that the converse is important. The provinces should not interfere in what Ottawa properly does under the constitution, including its exercise of powers derived from the BNA Act.

Nor do I mean to imply that the provinces should have no interest in foreign affairs. The constitution makes it otherwise, and the agenda of this conference reflects that fact.

Nevertheless, what the world wants to know when treaties are being negotiated or representations made on one subject or another in one capital or another is what Canada, the national entity, acting on behalf of all Canadians, thinks, feels or wants. The world is not so affected by or curious about Canada's diversity that it has the time, interest or inclination to accommodate itself to Canadian theories of duality or multiplicity.

Theories of globalization and the increased roles of private companies, civil society and sub-national governments notwithstanding, the basic organizing principle of international relations is still the state, unitary or federal. Diminished in some fields though states may be, but the state nonetheless.

There can be very few countries in the world that are not already well aware of Canada's linguistic duality. Whatever Canadians and Quebecers may think of the Gerin-Lajoie thesis, the Allaire Report, the Campeau-Belanger proposal, or Prime Minister Charest's claims to international jurisdiction, and I am not persuaded by these proposals and theories that have so little traction outside of Quebec, the world is simply not interested.

There are 191, plus, independent countries recognized by the UN. On most of the major issues of our day, they do not have the time to care about our complexity or nuances. The world knows that Canada has signed and ratified the 1969 Vienna Convention on the Law of Treaties which holds, inter alia, that central governments are responsible for fulfilling treaty commitments regardless of internal jurisdictional concerns. The world presumes, therefore, that Canada will have come to international negotiations with positions that have already been fashioned by, and taken into account, our constitutional peculiarity, and that Canada will not agree with propositions that are inconsistent with Canadian reality. The internal processes we use to reach these positions are, and should be, of little or no interest outside the Canadian family.

For as long as most of us can remember, information sharing and national level negotiations, formal and informal, have preceded international negotiations, particularly on trade and on environmental matters. Equally, Canadian delegations have long made places for provincial government representatives, especially those bringing expert knowledge or representing truly special provincial responsibility or stakes in the outcome, for example Alberta on Kyoto.

The same is true for civil society representatives. All of that is well established and I see no reason to change. I do not believe that very much innovation is necessary in the way we incorporate our confederal realities into the development of our international positions. I would readily concede that we could take a page from the Japanese auto industry manual and its constant efforts at improvement. But that process is evolutionary not revolutionary, and eminently achievable with today's communications advances

What Is In Canadians' Interests?

It is trite but true that we need to speak with one voice. Whether it is the UN, or NATO, or the OECD or in key capitals like Washington, we have a difficult enough time as it is getting our single voice heard, let alone expecting the world to indulge us in the full expression of our

Quebec-Canada duetor of our entire chorus of constitutionally empowered voices. Likewise, for our often useful but always only partially representative civil society. The exception has been the Francophonie where others do indulge us because of the significance of Quebec as a guarantor of the French language in North America and as an authentic French-speaking voice, in an organization that is inherently French language-based with a vocation to defend the language from outside pressures. By the way, UNESCO although located in Paris is not a francophone organization. It speaks all six UN official languages.

Beyond La Francophonie, the objective of giving expression to our linguistic duality, crucial as it is to Canadian unity, does not sweep all other objectives before it. We have interests at stake and, as in any negotiation, even two voices, whether they are speaking in one language or two, imply disunity, any hint of which creates openings for dividing and conquering.

If there is no significant difference in the positions of Ottawa and a given province, there is no substantive reason in giving voice to that province's position. In fact, there is a substantive reason for not doing so. If there is a significant difference, we probably should not be negotiating yet. Bear in mind, the issue is not the use of French, in which Canadian delegations routinely speak. The issue is the voicing of the perspectives of sub-national governments. Only the very patient, or the very underemployed, or the potentially the very malevolent among our diplomatic partners will even attempt to sort through our complexity. There is, moreover, the perception of fairness and the reality of fairness. If most provincial governments believe it best that Ottawa speak for Canada, what are their citizens to think if one or another province insists on speaking on its own behalf?

The UNESCO Agreement as a Precedent?

Former PM Paul Martin said in a speech two years ago to the Laval Chamber of Commerce, referring to UNESCO, inter alia, that

le Québec doit non seulement être assis avec nous à la table de l'UNESCO, mais il faut qu'il puisse prendre la parole lorsque nous discutons, par exemple, de diversité culturelle. [Le Québec]...doit pouvoir s'exprimer sur les grands sujets qui le touchent de près. La porte doit lui être toute grande ouverte, sans équivoque. Et elle le sera.

After M. Pettigrew's vain attempt to close that door last fall, Prime Minister Harper ushered Quebec through it last month.

Some argue that the UNESCO agreement is *sui generis* and has little precedential significance beyond UNESCO. Certainly that should be the position of Ottawa, bearing in mind that there are dozens of international organizations and agencies that deal with issues that touch on Quebec's, and other provinces, constitutional powers. The UNESCO agreement, itself, and the Prime Minister's accompanying statement were at pains to limit the precedential quality of the agreement. But not everyone sees it that way, including apparently Madame Gagnon-Tremblay, the Quebec Minister of International Affairs who said May 24 in Montreal:

C'est un véritable précédent. Cette reconnaissance ne se trouve dans aucun des textes fondateurs de l'implication du Québec dans la Francophonie, ni dans la Charte liée à la Convention de Niamey de 1970, ni dans les Modalités de la participation québécoise à l'Agence de coopération culturelle et technique de 1971, ni dans les ententes Canada - Québec de 1985 et 1986 sur le sommet francophone. Cette reconnaissance vaut à l'égard de tous les partenaires internationaux. Elle marque un changement d'époque : le Québec ne travaillera plus à l'ombre, mais en plein jour.

This comes in a text that speaks of Quebec's participation in international organizations, plural, and discusses plans for augmenting Quebec's representation abroad, including in particular, in Washington, and in Germany. The aspirations evident in the foreign policy document on the web-site of the Quebec Ministry of International Affaires go well beyond education and culture, well beyond UNESCO, and well beyond reciprocal recognition of drivers' licenses or pension benefit transfers, the stuff of most of provincial international accords. Perhaps more important, provincial voices in Washington especially are not a trivial matter. The presence of an Alberta representative in Ottawa's Embassy in Washington does not enhance the unity of the Canadian position in the most important capital abroad and it does not cinch the argument for a Quebec presence there. In my own experience, provincial representatives are rarely effective dealing with national governments but they have often succeeded in introducing complexity and confusion when not actual contradiction.

Some others argue that this sort of compromise should be extended beyond UNESCO to other organizations and capitals in any case, allowing Canada to become a looser federation. Such generosity of spirit on Ottawa's part would help to maintain unity in the long run by diminishing whatever incentives there may be for Quebec (or others) to seek independence. Why seek *de jure* independence, this argument goes, when you already have the requisite *de facto* powers? But the converse argument is equally persuasive, especially in a referendum context: why not seek actual independence if you already have it in all but name, when other countries already acknowledge your international standing? The existence of this international standing makes saying "yes" seem less fraught with dangerous and unknowable consequences, an important consideration in light of the narrow margin of victory by the federalists last time.

The concessions made to Quebec by the Mulroney government as regards La Francophonie participation counted for little or nothing to the separatist government of Quebec when it called a referendum in 1995. Nor would it likely do so were another referendum to be called. M. Duceppe said on March 16 that "If ...Quebec has a voice at UNESCO that would be good for a sovereign Quebec in the future."

Also, the UNESCO agreement seems much more likely to become a new floor than a new ceiling for Quebec nationalist/sovereignist aspirations. Further, beyond this very real slippery-slope risk, the agreement creates plenty of new elements for Quebec and Ottawa public servants and politicians to fight over. At the same time, what happens if the other provincial governments decide they too need to be able to represent themselves abroad, if not in UNESCO then in the OECD or the International Atomic Energy Agency or the International Energy Agency or APEC or the World Health Organization or even the UN, itself, where recognition of

sovereignty is most prized? The UN does not deal exclusively with military/security issues. By what principle do we persuade the provinces that Ottawa can do the job in these organizations on behalf of all Canadians?

One other not trivial point about the UNESCO agreement that we should hope will not be a precedent is the line that “Quebec alone will decide if it proceeds with implementation (in the absence of a consensus with Ottawa) in areas of its responsibility.” This is a rather categorical deference to provincial powers in cases of federal-provincial disputes over foreign affairs, arguably more than the constitutional record requires. The fact is there have been disagreements in the past, notably on Kyoto, when the provinces, aware of their tenuous constitutional positions, resisted Ottawa’s decision to proceed over their objections but did not dare to take their case to the Supreme Court. In fact, the degree of constitutional ambiguity that exists in cases where the provinces and the federal government disagree on international commitments has been very useful in inducing federal-provincial cooperation. Finally, this agreement seems like a solution in search of a problem. I am unaware of any really major international issues that Quebec has been unable to address as part of a federal state, beyond conscription, which is a whole other matter but one which the federation survived.

Conclusion

Today, I argued three points.

First, on the vast sweep of international affairs, the world presumes that Ottawa speaks for Canada, period. The world is not so affected by Canada’s diversity that it has the time, interest or inclination to negotiate on the basis of Canadian theories of duality or multiplicity.

Second, it is not in the interests of Canadians as a whole to fragment or otherwise weaken Ottawa’s capacity to represent all of them. The information sharing and national level negotiations, formal and informal, that have preceded international negotiations, particularly on trade and on environmental matters, have been pretty effective. Canadian delegations have long made places for provincial government and civil society representatives, especially those bringing expert knowledge or representing truly special provincial responsibility or stakes in the outcome, for example Alberta and Kyoto. There is no need for far-reaching innovation in these matters but improvement is always possible.

Third, if the recent agreement with Quebec on UNESCO is a “veritable precedent” as Minister Gagnon-Tremblay described it, it raises issues that will need to be managed carefully if it is not to diminish Ottawa’s powers to and effectiveness in managing foreign affairs. While this agreement was concluded with a federalist Quebec Government, beyond the federalist Prime Minister Charest wait the separatists Parizeau, Landry, Duceppe and Boisclair. I do think that, as with every agreement, reasonable people can and will for the most part find sensible ways forward. Let us hope that Ottawa will be always be dealing with such reasonable people.