In Search of a Constitution for Burma

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

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

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

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

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

A Study Tour

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

Burma Project and Burma Bureau

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

**Federalism: A German-Burmese Dialogue**

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

Dr Wagner, a professor and research scholar in Bonn University was specially invited to the workshop. According to Dr Wagner, as far as ‘federalism’ is concerned, there is no standard ‘Federal Structure’ which is universally accepted. Even those countries which share common historical background differ in the way they establish their respective nation-state. India and Pakistan are examples. Every country has its specific characteristics. Burma is not an exception. Despite their specific characteristics, problems faced by these countries are same. Burma is now confronted with the task of establishment of a democratic Government. At the same time, just social and political order is to be established for the entire people of all ethnic nationalities. Integration of these two missions constitutes a practical challenge. Therefore the cardinal question is how to build a Federal structure in conjunction with democracy. The idea of Federalism is merely a method to fulfill our aspirations. The essence of ‘Federalism’ is a mechanism to reconcile the different interests. Some of the Federal states are very good on the paper but not practically feasible.

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As far as ‘Federalism’ is concerned, there is no standard ‘Federal Structure’ which is universally accepted. Even those countries which share common historical backgrounds differ in the way they establish their respective nation-state.
Due to paucity of time, I shall only focus on important and controversial aspects. I shall discuss only weaknesses of your Federal constitution (Draft). I shall focus those points which can breed controversies. Our objective is to help Federal Constitution Drafting process progressing in right direction. Firstly, in your Federal Constitution (Draft) I found only two lists of legislations. One is Federal list of subjects handled by the Federal legislature and another is concurrent list, i.e. the subjects which are handled by the Federal legislature as well as the state legislatures. List of State subjects ie the subjects which are solely dealt by the State legislature is absent in your draft constitution. These should be specifically mentioned. This is to prevent the Federal Government from interfering with the functioning of the State Governments. In fact the Federal Government can meddle with the functioning of State Governments with reference to those subjects of ‘Concurrent list’. Therefore a separate Legislation Index should be put in place for the states to prevent the interference of the Federal government.

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

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

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

Mr. Norbert von Hoffmann discussed this matter from a different point of view. General features of the constitution need to be discussed in the context of ‘Globalization’. One can find that movements to promote national languages are taking place. Mongolia is an example. The main issue to be addressed is ‘National Identity’. What are the requisite provisions of the constitution to bring out ‘National Identity’? It should be considered. Promotion of Language and Culture is the essential component of promotion of National Identity. Compelling the Federal Government and the State Governments to accomplish this task is an important step in the

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‘Proportional Basis’ should be clearly defined in Burma’s constitution. In the absence of an accurate census, establishment of the armed forces on a proportional basis will raise controversies and disputes.
direction of promoting ‘National Identity’. Therefore, in my opinion, this right should be granted. Technicalities such as, ‘How to teach the language?’, ‘How to open the school?’ and ‘How to train the teachers?’ are the problems encountered all over the world. If this issue is to be prescribed in the constitution, it should be considered fundamentally and the constitutional provision should be drafted in such a way that no language problem will arise in future.

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

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

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

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

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

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

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

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

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

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

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

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

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

Meeting with Prof. Dr Schneider and Dr Kramer

On 10-12-2001, our study group left Berlin for Hannover in a mini bus. President of Burma project U Ngwe Aung performed as our interpreter and guide in this tour. In Hannover we called on Professor Dr Hans Peter Schneider and Dr Jutta Kramer who are experts in Federalism on the faculty of Hannover University. Dr Schneider, who is one of the most prominent scholars on Federalism in Germany briefed us about the history of Germany. His team has been doing research on three topics: (1) Unification of Germany following the collapse of the Berlin Wall. Complex situations arose thereof and changes developed in the Federal structure; (2) How to converge German Federation with European Union. As EU is also taking the shape of Federal structure, a research is being un-
The professor gave a brief on the history of Federal Republic of Germany. Aftermath of Napoleon's wars in the 19th century, Holy Roman Empire collapsed. Consequently, the concept of national Independence gained currency and 'confederations' in place of 'Federation' took shape. Then Federal system was introduced for the second time through contacts among the dukes and princes. In those days Prussia was the biggest constituent state of this Federation. Prussia constituted two thirds of the entire Federation in which there were 30 to 35 smaller states. In the Federal Council, voting strength was not equitable because of the huge difference between Prussia and smaller states. When Prussia owned 17 votes, each of the other states owned only one vote. Germany became the Weimar Republic after the First World War in 1919. The Weimar Republic was neither a Federation nor a Confederation. It was a unitary state. It had overturned the Federal system. This happened because of three factors: (1) Socialist party rule was established; (2) A strong Central Government was put in place; (3) The Central Government controlled the treasury and distributed the money among the states.

Then the Nazis came to power and the Weimar Republic fell apart. After the Second World War a new Germany emerged. In 1948, Germany had 14 states. When reorganization of the Federation was discussed, the Socialists favoured a Federation with a strong Central Government. In these deliberations, conservatives argued that Germany should have a weak Centre. In course of debates on this issue they found a solution. It is two-tier Government system. Both tiers enjoy three powers. Both Federal Government and the state Government would be conferred the three powers. In practice only the Federal Council exercises the powers and the states have no power. It is remarkable that 'concurrent legislative power' is exercised only by the Federal Council. The State only implements the laws concurred by the Federal Council which is constituted by representatives of the states. Almost entire legislative power is conferred to the Federal Council of Germany. In interpreting the law, laws of the Federal Council and Central Governments are given broad interpretation on the basis of codified law and Roman law. Laws of the states are given limited interpretation. Difference between the U.S.A. and Germany is that in the U.S.A. every state has legislative power whereas a German state has very little legislative power. In Germany, states are only to implement the law made by the Federal Council. Even in implementation, the states have to bear the expenditure.
Professor Dr Schneider emphasized that Civil Society should be the basis for sustenance of the Federal Republic. Lack of Civil Society is one of the major causes of the collapse of the Soviet Union. Public Associations, Unions and Social Welfare Organizations are part of the Civil Society which can check dictatorship tendencies at all levels of Government, i.e. Central, State and local. Professor Dr Schneider gifted a copy of his paper read at the seminar ‘Federalism and Civil Societies’ held in 1996. His paper concludes with an interesting observation. According to the paper, there are tendencies of reverting to former narrow groupings on the basis of common culture, common territory, neighbourhood and kinship when the communities face with complexities and uncertainties in the ‘Nation Building’. The professor uses the term ‘Tribalisation’ in describing such tendencies towards narrow groupings. This is one extreme, he remarked. Another extreme is giving priority to Globalization wherein worldwide networking is emphasized. Federalism is to bridge the two extremes, i.e. Tribalization and Globalization and thus contribute to the progress of Human Society. The professor’s remarks underline many facts to consider in connection with our National building.

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

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

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

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

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

Visit to European Parliament (13 December)

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

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

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

**National Reconciliation and Accountability Issues**

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

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

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

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

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

Visit to Belgium Parliament

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

Endnote

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