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The Role of Constituent Unites In Foreign Affairs in Ethiopia

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Chapter 1

Introduction

1.1 Background

The historical development of the federal principle began with the federal constitution. The aim of such a constitution is to combine unity and diversity (i.e. shared-rule and self-rule) harmoniously in a political system (Thuerer, 2002, p.54). This has expressed itself in the design of federations by the distribution of powers between those assigned to the federal government for the purposes shared in common and those assigned to the regional units of government for the purposes related to the expression of regional identity. Thus, the fundamental defining institutional characteristic of federations has been the constitutional distribution of powers between the federal and regional governments (Watts, 2008, p.83).

Despite the whole range of variations among the federations (in their distribution of power) a common pattern of sorts emerges. The general principle, on which allocation of responsibilities has usually been based, is the vague concept that matters of national importance should be reserved to the federal government while matters of regional importance should devolve to the states (Assefa, 200, p.307). One of the matters that have been considered as matter of national importance is foreign affairs. Recently, however, whether or not foreign affairs should continue being an exclusive federal jurisdiction is becoming a center of intense debate. The world of federations is witnessing variations in this area because some countries have changed their constitution in a way it gives power on foreign affairs to their constituent units. Even among federations which granted constituent units power to participate in foreign affairs, there is variation regarding the extent to which constituent units can participate in foreign policy formulation and implementation.

Since Ethiopia lived under a unitary system of government before 1991 (of course some argue that historic Ethiopia lived under De facto federation before the unitary system (Assefa, 2007, p.13-25), the issue of constitutional division of powers between the center and constituent units is relatively new.

After the collapse of the Dergue regime in 1991 the country was restructured in to 14 Regional States mainly along ethnic lines. The 1991 transitional charter of Ethiopia introduced the principles of federalism without mentioning the word ‘federation’. Each Nation, Nationality and People was guaranteed the right to administer its own affairs within its own defined territory and effectively participate in the central government on the basis of freedom, and fair and proper representation (Transitional charter, article 2(b)). Therefore, we can see that the charter seems to have adopted the standard of matters of national and regional importance as a basis of allocating power to the center and regions. Article 9(h) of the charter clearly provides that the Council of Representatives was empowered to ratify international agreements. The closest regional governments could get to foreign affairs (bodies) was establishing direct contact with relief organizations with respect to relief work (article 5).

In 1995 a new constitution came in to force which expressly established a federal state (article 1 of the FDRE constitution). The new constitution reduced the number of Regions in to 9 member states of the federation (article 47). The regions were created mainly based on ethnic consideration in a way it enables the exercise of the right to self-determination of the Nations, Nationalities and Peoples of Ethiopia guaranteed under article 39 of the Constitution. Power was divided between the federal government and the States on subject matter basis (articles 51 and 52). Both the federal government and States were entrusted with legislative, executive and judicial powers (article 50(2)). Since their respective powers are defined by the constitution (according to the constitution), both governments are expected to respect each other’s powers (article 50(8)).

According to the above division of powers, formulation and implementation of foreign policy (at the heart of which is treaty making) became an exclusive federal jurisdiction

(article 51(8)). This study aims at examining the effect of this provision on the entire power relationship between the federal government and the States.

1.2 Statement of the Problem

The Ethiopian federal system, which was mainly designed to safeguarding the right to self-rule of the Nations, Nationalities and Peoples of Ethiopia, seems to have become an instrument of encroachment upon States' autonomy due to its unlimited treaty making power in particular and federal monopoly in the area of foreign affairs in general (article 51(8) of FDRE Constitution). The fact that foreign policy is no more strictly about a relationship between sovereign states and that treaties cover a whole variety of subjects including social and economic fields, protection of human rights, education, labor conditions, etc... have only intensified federal 'invasion' of the States' autonomy.

As article 9(4) of the FDRE Constitution makes international treaties ratified by Ethiopia an integral part of the law of the land, a treaty on a subject matter which is an exclusive jurisdiction of States may for all practical purposes mean assuming legislative power in that particular area by the federal government. This in turn amounts to amending the constitutional provisions that deal with division of powers by the federal government without the consent of the States as it is required under article 105 of the constitution. Since the House of Federation does not have any say in the ratification of treaties, it seems that States can't even influence such decision before it is reached through the second chamber (which usually is considered as the guardian of constituent units' interest in federations). This, at least gradually, is going to affect the very balance of the forces of unity and diversity leading to excessive centralization. There doesn't, however, seem to be consensus as to what should be the solution.

1.3 Research Questions

Regarding the role of constituent governments in foreign affairs, there are two general patterns. The first is the one that makes foreign affairs an exclusive federal jurisdiction. Even if such an approach is frequently mentioned as 'traditional' by the revisionist scholars, highly developed federations like the USA are in this category. The second group of federations took measures to involve constituent units in the formulation and/or implementation of the countries' foreign policy and included such changes in their constitutions. Belgium and Switzerland are examples from the second group. Recent literatures show that constituent governments' direct involvement in foreign affairs (in addition to maintaining their autonomy) is also beneficial to the national interest. Following this, some writers are advocating constitutional amendment in Ethiopia so that constituent units can have power on the formulation and implementation of foreign policy. Considering where the existing literature is:

- The first question this work tries to address is what the effect of federal monopoly in foreign policy is in the Ethiopian federation.

- Regarding the role of States the second question is, with a non-legislative upper chamber what role can States play in the country's foreign policy making and implementation?

- Following the above two questions the third question is the viability of federal monopoly in the area of foreign affairs, i.e the possibility of considering constitutional change in foreign policy making and implementation as a solution.

- Regarding the current practice, the fourth question is the involvement of States in the country's foreign affairs practice.

- Following a discussion on the above questions the last issue will be (incase no constitutional change is needed), what solution should be considered? Other questions which may be relevant to answer the above research questions will also be raised in the main body of the paper.

1.4 Objectives

“An understanding of the governance of external relations within a particular federal set-up must take constitutional disposition as a starting point of enquiry. However, anyone interested in the true functioning of a political system has to go beyond formal structures. The political practices and the interplay of the sub national units with each other, as well as the relationship between the federal and the sub national level must be examined” (Jha, 1999, p.13).

Studying the true functioning of a political system is again meaningful only if it is done with the intention of contributing to its success. As constitutional division of power is a fundamental element of a federal system, checking whether the forces of unity and diversity are in their proper balance is crucial to its role for the survival of a federation.

Foreign affair is a crucial area of any federation. Whether or not its exercise is handled in a way that satisfies national interest without marginalizing the constituent units has a significant impact on the power relationship between federal government and constituent units. The general objective of this paper is, therefore, primarily to try to contribute to the understanding of where the Ethiopian federation is in this regard.

To fulfill the above general objective, this work set out the following specific objectives:

- 1- Analyzing the provisions of the FDRE Constitution that give monopoly to the federal government in foreign policy making and implementation.
- 2- Identifying other mechanisms (other than through the upper chamber) of State participation in foreign policy making and implementation.
- 3- Going through the benefit or otherwise of amending the constitution in a way it gives power to the States on foreign affairs.
- 4- Examining the current practice in relation to the actual participation of States in foreign affairs.

1.5 Significance of the Study

As the area is one of the least researched in Ethiopia and the topic is timely, it is the belief of this writer that it will have some value for those who want to conduct further research. The knowledge this writer believes this work will add is the different perspective it came up with compared to previous works in the area.

1.6 Scope of the Study

Foreign affairs/relations cover a wide range of activities. Especially these days when international agreements cover almost all aspects of a country's life, it is becoming harder to distinguish between domestic and international area of activities. As the Ethiopian Foreign and National Security Policy clearly put it, the formulation and implementation of the country's foreign policy needs the involvement of not only the officials of government but also private citizens, the private sector, non-governmental organizations, higher institutions etc...

In this work since the main focus is the role of constituent units, in addition to treaty making, their influence in foreign policy formulation process (directly as constituent units or indirectly through the institutions of shared-rule), their participation in the country's 'economic diplomacy', their relationship with neighboring regions of neighboring countries, twinning relationships created between them and foreign cities (constituent units) etc... will be considered as 'foreign affairs'. As the Indian Constitution defining 'foreign affairs' under article 246 schedule 7 put it 'all matters which bring the [federation] in to relation with any foreign country' will be covered. A working definition of "foreign affairs" is given in section 4.2.3 of this study.

The time frame for this study is limited to the power relationship of the federal government and the States since the coming in to effect of the federal constitution in 1995.

In addition to “foreign affairs”, “foreign relations”, “external relations”, “international relations” and “foreign policy making and implementation” are used to transfer a more or less similar message.

1.7 Method

As it was indicated in the objective part of this study an understanding of the governance of foreign relations in a federation requires the analysis of the constitutional framework and the practice. It also requires the understanding of the development at the international level. As a result, this study mainly depended on reviewing documents (the Ethiopian Foreign and National Security Policy, available international agreements by federal and regional governments), analyzing various legislations including the FDRE Constitution, referring to academic literature and interviews (with two legal experts of the Ministry of Foreign Affairs and two officials from Oromia Investment Commission) as a source.

Since the study is interested in the relationship between the constitutional framework and the practice in light of the international developments – even if the study is not engaged in full comparative analysis- the need for some degree of comparison is unavoidable. In order to satisfy the comparability requirement of comparative research method, multicultural nature of federations is selected as a common ground. This, of course, is not without a reason. As the management of diversity is at the heart of these federations the issue related to constituent units’ autonomy is supposed to be guarded seriously.

On the other hand, in order to show the diversity in the constitutional treatment of foreign affairs internationally, the degree of foreign affairs decentralization is used as a standard. As a result, three multicultural federations are selected to make a comparison of their constitutions in the area of foreign affairs. Belgium is the most decentralized for it is said to have given its constituent units foreign relations autonomy -to the extent of formulating their own foreign policy in the area of their domestic jurisdiction. The second case is Switzerland known for its detailed constitutional mechanism of constituent units’

participation before policy decision is reached. The third case is India which is known for its centralization not only in foreign affairs but also in every aspect.

1.8 Limitation of the Study

As a self-sponsored student in the program, time and financial resource was one obvious limitation of this study. Even if the writer paid an early visit, the Ministry of Foreign Affairs did not allow him to have copy of any agreements as a result of which it was found necessary to base part of the treaty analysis on the ratification proclamations.

1.9 Organization of the Study

The study is organized in five chapters. The first Chapter, following a brief background, presents the problem statement, the research questions, the method and other introductory parts. In chapter 2, the existing literature on the relationship between federalism and foreign relations, constituent diplomacy and related issues is discussed in a way it shows competing positions of ‘pro’ and ‘against’ constituent diplomacy. In chapter 3, the Ethiopian constitutional law on foreign affairs is discussed with brief comparison with three other multicultural federations’ constitutions. In chapter 4, the practice- in Ethiopia- of foreign policy making and implementation is discussed followed by a concluding remark (chapter 5).

Chapter 2

Review of the Literature

Today, the constitutional law of foreign relations is a center of intense academic debate. This mainly emanates from the practice of constituent governments in federal states which are trying to exert as much influence as they can in the country's foreign policy making and implementation. The period since 1960s has shown a rise in the involvement of federating entities' involvement in foreign affairs. Countries (and scholars) are divided between giving constitutional recognition for such involvement and not. Below, we will try to see what the relationship between foreign affairs and federalism is; what constituent diplomacy is; factors that affect the involvement of constituent units' in foreign relations; and different positions regarding constituent diplomacy.

2.1 Federalism and Foreign Relations

For a long time, international relations were synonymous with relations between sovereign states with clearly defined national borders, where the nation states were the principal actor in foreign affairs. The basic principles of this world of states were national sovereignty, and deriving from it, the equality of states and the prohibition of intervention (Theurer, 2001). For the state, the fact that sovereignty constituted its claim to power mean that it could take decisions independently of other states, both towards foreign states in matters pertaining to international law, and in relation to itself in matters

concerning the shape given to domestic government and the treatment of the various problems and tasks of politics and jurisdiction. The notion of the state was closely tied to a particular, exactly defined territory. The limits of national territory were coterminous with the limits of national sovereignty within which the hierarchically structured body politic could develop without restrictions (Brock & Albert, 1995 as cited in Ehrenzelleer, Hrbek, Malinverni and Thurer, 2002). Hence, the first objective of foreign policy was to safeguard the independence of the nation state in its territorial integrity. With this objective in mind constituent units (in unitary or federal systems) did not have a say in a country's foreign policy making and implementation.

From a federal perspective the prevailing view was that while a country may adopt the federal system as a way of preserving its "unity in diversity", to quote Jawaharal Nehru's oft-quoted and celebrated phrase about the Indian federation, it was no less entitled than a unitary government to speak with a single voice in the international arena and have a single, unified, national and nationwide foreign policy for the country as a whole (Kumar, 2010:p.2).

The need for a state to take a unified action against the world outside was undisputed and thus, in states with a federal organization, called for a concentration of foreign policy making by the central state. Increasingly, this traditional conception of the nation state's foreign policy is being called into question by far-reaching changes in the international system and in the international relations, by the changing nature of what constitutes state and statehood and by the growing influence of non-governmental actors on international relations (Ehrenzelleer, Hrbek, Malinverni and Thurer, 2002:p.19).

Traditionally the state has been defined by three elements; its people, its territory and its state's power. However, each of these points of reference has become questionable. The criterion of state power for instance, has become doubtful by virtue of the externalized dimensions of areas that were traditionally part of domestic policy. But this is so more particularly because states are dividing and asserting this power (i.e. their sovereignty) with others within the scope of international organizations. This is known as "pooling of sovereignties". The increasing integration of nation states on an international level has

led within nation states, though a parallel process as it were, to a kind of disintegration of political structures and forces, and thus, to relativizing of centralized state's monopoly of foreign policy (Maliniverni, 1998 as cited in Ehrenzelleer, Hrbek, Maliniverni and Thurer, 2002).

Today it is nearly impossible to find a policy field that can be analyzed and regulated exclusively in terms of the nation state. Virtually all political problems have a foreign policy dimension, whether with regard to their content or to the decision-making process. This means that the domestic and external spheres of the state are growing together more and more; it also means that this conventional division is becoming less meaningful. International events increasingly determine the scope for action in domestic policy, and there is a corresponding internationalization of politics within the scope of the nation state (Bernhard et al., 2002: p.26).

Currently virtually all government activity enters into the field of competence of at least one intergovernmental organization, and frequently many more. In this way in the context of international organizations and international conferences, themes are dealt with that relate to education, public health, cultural diversity, the environment, business subsidies, the treatment accorded to investors, the removal of non-tariff barriers and so forth. In this context federal states are more aware that their political power and their sovereignty, or, in other words, their ability to formulate and implement policy, are subject to negotiation in multilateral fora. Hence, the issue of sub-federal entities in foreign policy of federal states leads to the fundamental question in contemporary political science: who governs? (PaQuin, 2010:p.161-162). As the sphere of international activity has grown beyond issues of security and state recognition, constituent governments worldwide have taken an increased interest in the conduct of foreign affairs (Halberstam, 2001:p.3).

Federal structure of a country is one of the most important factors that condition its foreign policy. Federalism being a form of democratic political system, and federal government can hardly ignore the special interests of the constituent units while formulating foreign policy (Jain, 2009:p.1).

In essence federalism is a principle that structures and orders complex national entities by spreading state power among several levels of government. Traditionally, it is considered as being closely connected to the idea of the federal state. The principal features of a federal system of government are the vertical separation of powers, the substantial autonomy of the constituent states and their right to participate in the administration, decision shaping and making of the federation. While different levels are related hierarchically with constituent's states as subordinates, they exercise their respective powers independently, as allocated to them by the constitution. The constituent states generate their own purposes and aims, and engage in the decisions of the state as a whole through various participatory rights (Bernhard et al., 2002: p.19).

Besides the allocation of power to different levels, what federalism really means and where its significance lies, is its pursuit of particular systems of values, in particular its preservation of numerous regional and local identities, and its integration of heterogeneous societies. What matters in this respect is the cooperation and coordination between different government levels, a linkage that presupposes respect for, and observation of federated jurisdiction. Moreover, federal system aim to ensure a closer relationship with their citizens by promoting decision-making processes that are equitable and transparent, involve less bureaucracy, and grant citizens more political responsibility and participation, thus lending greater guarantees to the legitimacy of political decisions. Federal systems presuppose that an adequate foundation has been laid in a constitutional text, or in some other forms of social consensus that has accorded a similarly fundamental status (Bernhard et al., 2002: p.20).

In all federations, therefore, a common feature has been the existence at one and the same time of powerful motives to be united for certain purpose and of deep-rooted motives for autonomous regional governments for other purposes. This has expressed itself in the design of federations by the distribution of powers between those assigned to the federal government for the purposes shared in common and those assigned to the regional units of government for the purposes related to the expression of regional identity. Thus, the fundamental defining institutional characteristic of federations has been the constitutional distribution of powers between the federal and regional governments. (Watts, 2008:p.83).

The specific form and allocation of the distribution of powers has varied, however, relating to the underlying degrees and kinds of common interests and diversity within the particular society in question. Different geographical, historical, economic, security, linguistic, cultural, intellectual, demographic and international factors and the interrelation of these have been significant in contributing to the strength of the motives for union and for regional identity, and therefore have affected the particular distribution of powers in different federations (Watts, 2008:p.84).

Despite the whole range of variations among the federations (in their distribution of power) a common pattern of sorts emerges. The general principle on which allocation of responsibility has usually been based is the vague concept that matters of national importance should be reserved to the federal government while matters of regional importance should devolve to the states (Assefa, 2007:p.307).

Consistent with modern federalism's nation building premise and with the world of nation states, all the important powers and powers relevant to the international law that pertain to defense, foreign affairs, and diplomacy are ordinarily allocated exclusively to the national government in a federation. Yet, since the founding of the first modern federation (i.e. the United States) most federal constitutions also have explicitly and implicitly reserved limited roles for constituent political communities in foreign affairs. In the United States, for example, the constitution authorizes states, with the consent of congress, to enter agreements or compacts with foreign nations (Kinkaid, 2005:p.20).

Since the 1960's, there has been a marked increase in the level and variety of international activities undertaken by the constituent political communities and municipalities of most federations (e.g. sister city or twinning relationships) and especially by the developed-country federations, such as Belgium, Canada, Germany, Switzerland and the United States. These activities have a substantial economic component involving trade, investment and tourism as cities and regions seek to be competitive in the global arena. Also common are technical and cultural exchanges. According to Kinkaid (2005), such activities are less prevalent and more constrained in less developed country federations and in federations with more centralist orientations such as Brazil, India,

México, Nigeria and South Africa. Here, there are usually fears too, that centrifugal forces might be accelerated or unleashed by too much substantial engagement in international affairs(:p.20).

As a general proposition it may be concluded that the divergence between the inner and the outer structure of the federal states is increasingly receding into the background and the “internal diversity” lauded by Escher is being reflected more and more towards the outside as well. Noticing these developments Theurer asks, behind the gradual shift to autonomy in foreign policy and the emergence of sub-national territorial units from the grip of the old nation state, are we seeing the birth of a new, flexible, variable federative model, characterized by overlapping spheres of competence, in the shaping of national, from national, international and supra national relations? (2002: p.58)

Thus, the issue concerning the relationship between federalism and foreign policy can be approached at two levels. At a broader level it concerns the operation of federal political systems. As the boundaries between domestic and international policy arenas become hazier, understanding federalism increasingly demands that the international environment in which a given system functions be taken into account. The traditional concern with relationship between central government and the constituent units of a federation now has to be expanded to embrace the international environment in which both levels of government operate. The second level concerns the conduct of foreign relations. The management of foreign policy demands cooperation between levels of government. Though conflict of interest may occur, structure and practices will emerge to achieve cooperation (Jain, 2009:p.13).

Broadly speaking (putting the practice aside), federal constitutions provide two approaches in dealing with foreign affairs. The United States, India and Ethiopia adhere to the dominant thinking that foreign affairs are exclusively federal; while Switzerland, Germany and Belgium have introduced some departure from this approach in which mechanism are designed for the constituent states to have some say when a treaty has impact on matters within the state jurisdiction (Assefa, 2007:p.31).

2.2 What is Constituent Diplomacy (Para-diplomacy)?

The term “diplomacy” derives from the ancient Greek word “diploma”, composed of diplo, meaning “folded into two,” and refers to the conduct of official relations between sovereign states (Szykman, 1995 as cited in Vychodilova, 2011). The prefix ‘para’ derives from a Greek language and has two meanings; nearby and outside (Oxford English Dictionary, 2011). Consequently para-diplomacy is a term with two meanings: 1) an addition to the traditional interstate diplomacy, and/or 2) a deviant form of diplomacy (not normal or outside) (Vychodilova, 2011:p.12).

Duchacek defined para-diplomacy as “activities parallel to, often coordinated with, complementary to, and sometimes in conflict with center-to-center macro-diplomacy” (1990:p.32). In this sense, para-diplomacy was able to represent (among other things) the motivations of constituent governments to develop international relations (Lecours, 2002, p.93-97). It also shows that constituent units may act alone with or without the consent of the center.

Brian Hocking criticized Duchacek’s line of conceptualization of para-diplomacy for two reasons. First of all, according to him, it served to reinforce the distinction between central and non-central government in the field of international relations; and second, it considered constituent government as unitary actors, neglecting the diversity of interest and strategies they embrace. Therefore, Hocking dismissed the concept of para-diplomacy in favor of his concept of multi-layered diplomacy which he described as a “densely textured web” in which constituent governments are capable of performing a variety of roles at different points in the negotiating process. In so doing they may become opponents of national objectives but, equally, they can serve as allies and agents in the pursuit of those objectives (Hocking, 1993:p.2-3 as cited in Vychodilova, 2011).

The concept of multilayered diplomacy succeeded in taking into account the political nature of constituent governments and emphasizing the patterns of linkage between levels of political authority. As a result, activities of non-central governments did no longer have to be examined from a purely state-centric point of view, but from their own position (Hocking, 1993:p.693 as cited in Vychodilova, 2011). Nevertheless, the difficult point with the concept of multilayered diplomacy was that it seemed to offer too simplistic and optimistic theoretical solution to a problem: the compatibility between the foreign activities of constituent governments and the diplomatic activities of central governments (Aguirre, 1999:p.2013 as cited in Vychodilova, 2011).

Another writer notes the so far available literature on para-diplomacy suffers one shortcoming: a single dimensional focus. According Lecours (2002), it is either exclusively theoretical, making sense of para-diplomacy and categorizing its different forms or heavily case-oriented, discussing international relations of a particular constituent unit by identifying and evaluating its specific international activities. The solution, according to him, is grounding the study of para-diplomacy in both theoretical and comparative perspective (p.3).

In a similar manner, Joachim Blatter (2008 3 as cited in Vychodilova, 2011) thinks that the studies of regional foreign activities either have no theoretical framework or use quite different ones, making it very difficult systematically to derive general conclusions. As a result there remain major gaps, ambiguities and uncertainties in our knowledge of the foreign activities of the sub national government (p.469). As a result lack of detailed knowledge of the foreign policies implemented by non-central governments and their consequent comparison is noticeable. To overcome that shortcoming, comparing the objectives of governments and the results they finally achieve is important (Vychodilova, 2011:p.8).

In any case, the current diplomacy era-the period extending from the early 1960's to date- is viewed as a distinct historic period identified in terms of dynamism, growth, and impact on the international behavior of sovereign players. Diplomacy has become unambiguously multilayered, shifting from a purely state centric approach to one

welcoming input from constituent units (Totoricaguena, 2005: p.2843 as cited in Vychodilova, 2011). In addition to para-diplomacy and constituent diplomacy, the process of constituent units of federal governments playing a role in foreign policy making have been variously characterized as perforated sovereign, foreign policy localization, multilayered diplomacy and plurinational diplomacy among the others. The terms mentioned above seek to capture the entire gamut of processes currently underway where constituent units are pursuing a role in foreign policy making and implementation.

In studying this “new development”, para-diplomacy, in foreign policy making and implementation, scholars tried to make further classification (approached it from different angles). Ivo Duchacek (1990), for instance, made a distinction between three forms of para- diplomacy based upon dimensions of geographical proximity: 1) Trans border regional micro-diplomacy (representing formal and informal interaction of constituent units across national borders conditioned by geographic proximity and the need to solve common problems); 2) Trans regional micro-diplomacy (symbolizing cooperation of constituent units that are not neighbors but whose central governments are); and 3) global para-diplomacy (referring to political functional contacts of constituent units, with foreign central governments, international organizations, private sector industry or interest groups) (p16-17).

Another classification of para-diplomacy is in terms of its layers (focuses). Not all constituent units have approached foreign relations in a similar way. According to Andre Lecours (2008), at the broadest level, we can distinguish between three layers of para-diplomacy.

The first layer corresponds to economic issues. In this context, constituent governments aim at developing an international presence for the purpose of attracting foreign investment, luring international companies to the region, and targeting new markets for exports. The second layer of para-diplomacy (for Lecours) involves cooperation (cultural, educational, technical, technological and others). Here, para-diplomacy is more extensive and more multidimensional in so far as it is not simply focused in economic gain. The third layer of para-diplomacy involves political considerations. Para-diplomacy in this

layer tends to feature prominently the international expression of an identity distinct from the one projected by the central state as in the case for Quebec. Here, constituent governments seek to develop a set of international relations that will affirm the cultural distinctiveness, political autonomy and the national character of the community they represent. Of course, political considerations need not necessarily involve identity. Constituent governments may have other political objectives than gaining recognition as a distinct community or a nation. They may, for example, seek to influence the behavior of a neighboring region (p.2-3).

2.3 Factors Conditioning Constituent Diplomacy

Several explanations have been put forth to comprehend the rise of constituent diplomacy. Bell (1977 as cited in PaQuin, 2010), putting it in general terms, wrote the realization that “the nation state has become too small for the big problems of life and too big for the small problems” has driven the expansion of constituent governments’ international activities (p.132). According to Requejo (2010), factors which most satisfactorily explain the improvement of foreign policies of federated states (constituent units) in the last three decades are the degree of democratization and federalization, the degree of socio-economic development and the increasing internationalization of markets. Especially in developed states, he pointed out that these entities must look beyond their borders in order to implement their powers (p.11).

As the process of democratization involves bringing power closer to people, the change of regimes in to democracy and decentralization increased the role of constituent units in many aspects which also increased their role in foreign policy. The fact that people in many less developed countries begin to afford (due to rapid economic development in many countries) purchasing goods from developed states encouraged the developed states to consider strong connections through constituent diplomacy.

Even if such factors are said to explain the rise of constituent diplomacy in the last three –four decades, Requejo argues that comparative politics shows that the foreign policies of

constituent units preceded the present day globalization process, which only reinforces the previous tendency dating back to the middle of the 20th century. Economic and technological globalization represents a new scenario for the foreign policies of the constituent entities of liberal democracies. This globalization encourages self-governing territorial entities to implement specific policies in order to defend and promote their interests, values and identities, as well as promoting global objectives such as solidarity peace, development or cultural pluralism (Requejo, 2010:p.11).

John Kinkaid (2010) agrees with Requejo that constituent diplomacy emerged in various forms before the centralization of the modern nation states. Hence, for some constituent political communities, contemporary constituent diplomacy is a recovery of prerogatives deemed to be ancient. Globalization, according to Kinkaid, is more of an enabling factor than a causal factor in so far as global networks, communications, transportation, and institutions enhance the ability of constituent governments to engage the world in more diverse and in intense ways, than was possible in the past . This is why, he further argues, globalization does not explain the variation in constituent diplomacy in most countries.

Kinkaid, in another piece of work, points out that it is also important to distinguish between the impacts of globalization and regional integration. Regional integration, for him, has a broader and deeper impact on constituent regional and local governments than globalization, because it may (like EU) entail monetary and political union (2005 :p.134). Principal causal factors for him are the freedom of action produced by democratization and market liberalization. Where democratization and market liberalization are absent or restrained, there is little or no constituent diplomacy, no matter what the level of globalization (Kinkaid, 2010:p.16).

Borah (2014), discussing “enabling factors and permitting conditions” of constituent diplomacy in India seems to agree with Kinkaid. For the constituent units to play a role in foreign policy there have to be conditions which enable such behavior on their part. According to him, the rise of coalitions in Indian politics and the liberalization of the Indian economy have been identified as the twin factors which have created the conditions for the constituent units of India to play a role in foreign policy (p.36).

Coalition politics in India have enabled some regional parties to exert their influence in foreign policy matters. Being a part of a coalition government at the center, these parties have used their bargaining power to influence certain decisions or policies towards a neighboring country. The collapse of single party dominance and the rise of coalition politics provided a fertile ground for constituent diplomacy to take root. Similarly, economic restructuring with macroeconomic stabilization and structural economic programs under the new economic policy of 1991 led to the dismantling of the industrial control regime and provided a window of opportunities to the state governments to pursue their growth strategies. This made way for the states without routing their efforts through the central bureaucracy. In this new environment, states could partially pursue their own economic diplomacy-by seeking foreign direct investments, promoting foreign trade, participating in negotiations with foreign investors, and access global economic opportunities (Borah, 2014:p.36-37).

Market liberalization and democracy are not the only causal factors for Borah, of course neither are they for Kinkaid. In India those states that share a boarder with a foreign nations have historical, cultural, linguistic, religious and ethnic links with the bordering nation that have made it imperative for their respective governments to indulge in some activities. These have foreign policy overtones at some point of the time or another (Borah, 2014:p.37).

Constituent diplomacy also is more prevalent where one or more constituent governments have a distinct national identity and national aspirations based on historic claims of nationality, race, language, religion, or other cultural anchor. Having a distinct cultural identity usually generates a desire to forge an international presence because such a presence is the principal way in which the constituent political community can manifest itself as a distinct people among the peoples of the world. Constituent diplomacy is more prevalent in developed countries and developed constituent jurisdictions, although there are variations shaped by internal political conditions. Another characteristic of constituent diplomacy is that it occurs whether or not the nation states' constitution assigns any foreign affairs power to the constituent governments (Kinkaid, 2010:p.17-19).

2.4 Arguments in Favor of and Against Constituent Diplomacy

At the level of theory concerning federalism and international relations (foreign affairs) two conceptions enter into conflict: the centralizing school and the school devoted to multilevel governance. At the level of the centralizing approach, one of the leading theoreticians of federalism, Prof. Kenneth Wheare, has asserted that a monopoly of foreign affairs is a “Minimum power” of all federal governments. He highlighted the negative consequences of an unbundling of central control over foreign affairs for the national interest and for the functioning of the international system. In the same vein Robert Davis has maintained that questions concerning international relations are at the heart of federal regimes (PaQuin, 2010:p.163).

Kenneth W. Dam (1964) another centralist, argues a federation must be able to conduct foreign affairs with speed and flexibility. By its very nature, foreign relations demand rapid and flexible action. The federal form of government which is not properly adopted, according to Kenneth, carries with it the danger of hamstringing the conduct of foreign relations. His argument goes to the extent that, for effective foreign relations, the federal government needs unlimited treaty making power to make all treaties, irrespective of their subject matter (p.345).

According to central school, centralization of foreign affairs is (also) a requirement of international law because a centralized political system is a necessary condition for states to be able to play the role they are assigned in international law and practice. In essence, without the existence of central government which has a plenary authority on its territory in relation to foreign affairs and the ability to participate in international relations and to enforce international obligations in the domestic order, inter-state relations can only be seriously compromised. If a power of co-decision is granted in federal states regarding

foreign affairs, this risks paralyzing a state's foreign affairs and harming the state's image in the international arena (Paquin, 2010:p.164).

Supporters of the concept of multi-level governance take a different view. According to Baldi (1999), what qualifies a federal distribution of power (in the first place) is its non-centralized nature. Federalism is antithetical to centralism: the existence of power by the "center" (government at the center) is constrained by the guaranteed presence of other centers (the constituent polities) which share the exercise of power. Therefore, for Baldi, federalism is based on institutional mechanisms which can be defined "center-constraining": they constrain the capability of the center to perform "centralistically" (concentrate or devolve power unilaterally), structuring instead a non-centralized or multi-centered structure of government, where no single center is able to perform as such (p.6).

Hocking (1993 as cited in Vychodilova, 2011) argues, in a way that is similar to Baldi's line of argument, that foreign policy cannot be considered as a monopoly of the central government. Federal states will always have an important role, even if it is for the purpose of implementing international agreements concluded by the state. Giving a monopoly over foreign affairs to central governments in federal regimes also puts in danger the distribution of powers between the different orders of government for the benefit of central authorities. For Hocking, foreign policy should be thought of as a complex systems where different actors at the heart of a federal state structure tangle with each other. Scholars in favor of multilevel governance thus maintain that there are "obligations of cooperation" that exists between central governments and federal states (Paquin, 2010:p.164).

The above scholars suggesting greater openness to constituent units' foreign affairs activities argued primarily from the perspective of constituent units' autonomy, by challenging the constitutional warrant for limiting what would otherwise be a legitimate domain of constituent units' activity and by reassessing the harm that it may inflict up on the nation. Halberstam (2001), on the other hand, brings into picture a slightly different lens through which to examine the limits that might be imposed on constituent unit's

involvement (in foreign affairs) in the interest of the nation. According to Halberstam, there are potential advantages of constituent unit's involvement in foreign affairs and they (constituent units) should participate in foreign affairs to the extent these benefits are realized (p.3).

According to Halberstam, one major benefit of constituent units' involvement in foreign affairs is overcoming bureaucratic inertia at the central level of governance. Although tensions between federal and constituent units' policies do emerge periodically, constituent units' activities often benefit the nation. State officials are frequently in a better position to promote trade and investment opportunities at home. Relative to federal actors, state officials may enjoy an informational advantage relevant to crafting or carrying out international agreements. State officials may assist national policy makers by providing broad political support that differs from the support garnered by organized economic interests. And independent constituent unit's action may induce federal officials to take up international issues that would otherwise not make it onto their policy agenda (2001:p.14).

Halberstam is not the only one to argue for constituent diplomacy from the point of view of national benefit. Andre Lecours (2008), addressing particularly constituent units of the developing world wrote: "for regions in developing countries and countries undergoing a political and economy transition, it makes sense to develop connections with constituent governments in advanced industrialized societies because they can package different types of opportunities" (p.4).

According to Lecours, such connections can benefit the population of the developing regions in several ways. First of all, constituent governments in the west are typically in a position to provide technical expertise in various fields. Second, they can create exchange opportunities in various areas, including higher education. Third, these governments typically look for market and investment opportunities which, under the right conditions, can be beneficial to the developing regions. Fourth, through the development of cultural programs, segments of the population of the developing region can be exposed to a different, politically important culture. For Lecours, finding constituent government

partners in advanced industrialized societies should not be very difficult for a developing region since the opportunity to help out through cooperation assistance is a central argument used by regional officials in developed countries to justify the existence of para-diplomacy (2008:p.5).

There are also some writers who take the position of non-centralists due to the practical difficulty of avoiding constituent units from the area of foreign affairs. According to Ehrenzeller, Hrbek, Maliverni and Theurer (2007),

” the changing nature of the state and its international environment shows that the nation state has become at once too small and too large for many political problems. It is too small in so far as the effects of globalization can no longer be controlled and guided by nation state regulations, which explains why international institutions are trying to regulate what lies beyond the capacity of individual nation states. Yet the nation is too large, according to them, to comply with the wish of many citizens to develop an independent identity within their community. For these writers the federal state is effectively sandwiched between the pressure of international institutions from above and the pressure of its constituent states from below. Hence, new forms of governance are required, as the means of guiding and regulating political processes.” (p.29)

In spite of such strong arguments and practical developments in the area of constituent diplomacy, many federal states still follow the American example and have endowed the federal level of government with exclusive foreign policy competences. The arguments in favor of constituent diplomacy, on the other hand, are not limited to autonomy and national benefit. An anonymous writer argues, even from federalism perspective, the centralist position is questionable. The writer continues, why should the principle of division of powers between the two levels of government, so vital to a federal system, be put aside as soon as the federation steps into the international stage? Or to put it in starker terms, can a federation which takes on the clothes of a unitary state on the international scene truly be called a federation? (2011:p.7).

According to the above writer the US adopted such a system because back then sovereignty as a concept was considered to be one and the same. The theory of sovereignty would simply not have allowed the existence of non-unified international actors. In constitutional theory the traditional sovereignist conception has been under attack and federalism theory seems to require a different solution as well (anonymous, 2011:p.7).

Borah (2014) seems to agree with the above writer in the “sovereignty is under attack” is an outdated argument. According to him, given the trajectory of constituent diplomacy in India, it can be stated that undoubtedly, some conditions have led to the constituent units carving a space to influence foreign policy processes of the country. However, for Borah, this need not mean that the sovereignty of India is under threat as constituent units of the country are also integral parts of India. Moreover, Borah argues, sovereignty of the nation is not threatened as, despite the rise of constituent diplomacy, the central government remains responsible for most foreign policy decisions, which should be made after taking into consideration the national interest of the country as well as concerns and apprehensions of the constituent units (p.142).

Another source of argument for the school of multi-level governance is that they claim a profound evolution in the deep structure of international law has taken place. While (as discussed in section 2.1 of this work) in earlier days, diplomacy was limited to what was called ‘high politics’, which came down to the conclusion of alliances, the power to make peace and war, today international law has entered the domestic household: everything is international law and international agreements now cover a wide range of topics, going from human rights over environmental policy to international trade issues. The argument goes- in the light of this, one could indeed wonder whether the traditional US position is still tenable today. If international law has changed, should domestic constitutional law not follow? If the international scene no longer solely consists of sovereign states, then why should the federal principle-which is considered the cornerstone of the constitutional household in any federation-, be put aside whenever an issue touches on international law? If international law deals with subjects, which domestically belong to the

competence of the member units of a federation, then why would the federal level of government a priori be considered competent? (Anonymous, 2011:p.8).

In light of the above arguments, it is believed by the advocates of multilevel governance that a paradigm shift has taken place. The debate, for them, is what should be the role of constituent units in a federation in the making and implementation of its foreign policy instead of whether or not they should have a say in foreign policy

Both of the above two lines of arguments have strong points. It is true that the role of international law has changed and there is no aspect of a country's life that is not internationalized. The more decision making is taken away from the state- where federal government has a monopoly- the clear consequence is that constituent units' power will be reduced. It is also true that the more matters are to be decided at international forums there is a need for speedy decisions and flexibility. For this writer the fact that constituent units must have some role is acceptable. To what extent, however, should be determined by taking in to account the unity of a country. In Ethiopia, as the Ethiopian Foreign and National Security Policy put it, the main goal is the unity of the federation. Therefore, in discussing foreign relations in Ethiopia the main consideration in this work will be the survival of the federation.

Chapter 3

Constitutional Framework

3.1 General

In chapter 2 of this work we have seen that in what is called the ‘traditional’ (American) model, foreign relations is a “minimum power of the federal government” and many federations belong to this category (even the recently created ones). It has, however, become common to see variations among federations.

Traditionally it was the need for centralization of foreign affairs in the hands of the federal government that (among other things) was the driving force for older federations in their bid to transform themselves from confederations to a federal polity. In fact, one of the reasons for establishing a federation was the need for a unified foreign policy. As a result in many cases foreign relations are the exclusive domains of the federal government. In the older federations like the United States there often is a constitutional provision not only conferring foreign relations to the federal government but also prohibiting the units from exercising foreign relations and if they have to, only with the consent of the federal government. This implied that even in exceptional case of the units having such power depends on the consent of the federal government, which still reaffirms that foreign policy is an exclusive domain of the federal government (Assefa, 2007:p.309-310).

In addition to common interest, the specific form and allocation of the distribution of powers has varied relating to degrees and kinds of diversity within the particular society in question. According to Watts (2008), generally the more the degree of homogeneity within a society the greater the powers that have been assigned to the federal government

and the more the degree of diversity the greater the powers that have been assigned to the constituent units of government. Even in the latter case it has often been considered desirable, however, that the federal government should have sufficient powers to resist tendencies to balkanization (p.84).

Apart from expressing a balance between unity and diversity, the design of federations has also required a balance between the independence and interdependence of the federal and regional governments in relation to each other. The classic view of federation as enunciated by K.C wheare, considered the ideal distribution of powers between governments in a federation to be one in which each government was able to act independently within its own watertight sphere of responsibility. In practice, however, federations have found it impossible to avoid overlaps in the responsibilities of governments, and a measure of interdependence is typical of all federations (Watts 2008:p.84).

Such a strong emphasis upon coordination through joint decision making may carry its own price in terms of reduction in opportunities for flexibility and variety of policy through autonomous decision making by different governments. Indeed, in countries like German and Austria, which represent in extreme form interlocking relationships, there have been recent efforts to disentangle some of these in order to encourage more autonomous initiatives in each level of government. Watts argues there is a need, therefore, to find a balance between the independence and interdependence of government within a federation (2008:p.84).

Crucial in the treatment of foreign affairs is the issue of defining the role of the units in shaping foreign policy as well as the impact of foreign policy on the rather formal division of powers between the federal government and the states. We know that the control of foreign relations includes among other things treaties concluded between the federal government and foreign states (Assefa, 2007:p.310).

In section 2.1 of this work we have seen that treaties are no more only about “high politics” and cover variety of issues that under normal circumstances belong to the domestic power of constituent units.

There is a dilemma, according to Assefa, therefore that on the one hand if foreign affairs is exclusively federal as has been the case in the older federations, then the fear is that the exclusive power of the states may become 'concurrent over time or nil at worst' because federal governments may through treaty making power enter the sphere of the states and affect the constitutional division of powers. This brings to the front the question whether the mere fact of concluding a treaty on a given subject confers on the federal government legislative power over that subject in so far as is necessary to implement the treaty and if allowed (Assefa asks) does not this amount to an intervention in the power of the units over the same subject matter? (2007:p.310-311).

On the other hand, if the states have too much influence on foreign policy then the federal government may not be effective on the international scene to protect national interests. Summarizing the issue Assefa notes, the question put broadly then is whether control on foreign relations should be given in its entirety to the federal government or be divided between the federal government and the states and what mechanisms are available to control the former in the exercise of foreign affairs to reflect divergent interest of the states in the federation? (2007:p.311). A related question, when federal government is given exclusive power, is 'how can the federal government enforce treaties and discharge its international obligation when there is failure to comply by the constituent units? i.e. is there any legal framework by which the federal government can force the states to implement it?

Even though constituent diplomacy currently exists in practice everywhere regardless of constitutional limits- the above discussion indicates that countries respond differently to such development. Some countries changed their constitutions and gave formal power to their constituent units while others chose to maintain federal autonomy on foreign affairs. There is still variations among those which gave formal power to their constituent units regarding to what extent they did so. Dealing with the legal framework regarding foreign relations, we will try to see cases from constitutions that claim to have decentralized foreign policy making and implementation and those (including ours) that opted for centralization.

3.2 A Brief Survey of Some Multicultural Federations' Constitutional Framework

Mostly, constitutions of the federal government bestow on the center with most or all foreign policy making powers and none or less to the constituent units. However, recently some countries have taken constitutional measures which changed the previous trend. Two of such countries (Belgium and Switzerland) are discussed below together with India which represents the highest form of centralization.

3.2.1 Belgium

Since 1993 Belgium is, according to the 1st article of the constitution, “a federal state composed of communities and regions.” Belgian federalism has consequences for the conduct of international relations. The constitutional revision of 1993 which sought to end the debate about the division of powers between the federal state, the communities and regions permits the communities and regions to become real international actors, something which includes the power of representation and to sign treaties with sovereign states (PaQuin, 2010:p.175).

In what Crikemans (2010) likes to call “the Belgian solution regarding foreign policy”, two principles have a central place. First, the so-called principle “in foro interno, in foro externo” and second the idea of the fundamental equality of all the Belgian governments (“no hierarchy of norms”). The principle “in foro interno, in foro externo” refers to the convergence between the internal material and the external competences of the federated entities (p.47).

One of the provisions of the Belgian constitution that deal with division of powers between the federal and constituent governments in foreign policy is Art 167; in

paragraph 1 it states: “the king (federal government) has the lead over the foreign relations without prejudice to the competence to the communities and regions to regulate the international cooperation, including making a treaty, or in the affairs for which they are competent by virtue of the constitution.”

In essence, according to PaQuin (2010), in conformity with Art 167 of the Belgian constitution international cooperation is from now on in the hands of the federal government, the communities and regions, each of which operates within the limits of its respective powers including with respect to the conclusion of treaties (p.175). It seems that the federal government’s lead is to be understood as having priority where the matter cannot be shown to be that of the constituent units. The above principle (of *in foro interno*, *in foro externo*) entails that the Belgian constituent units have to manage their competences-not only in a day-to-day domestic policy, but also on permanent basis in the foreign policy dossiers which touch up on their ‘internal material competences’ (Criekemans, 2010:p.47).

In sum, the constitution recognizes that the federal states of Belgium are sovereign within their fields of competence and this arrangement applies to international relations. This provision rests on the idea of equally applying the principle of exclusivity of powers of federated states observed in the national order to the field of international relations. For this reason the Belgian federal states possess a status of negotiating with international organizations and foreign countries (PaQuin, 2010:p.176). This has the immediate result that a foreign state or a third party can no longer conclude a treaty with the Belgian federal government on matters which fall within the realm of exclusive competences of the Belgian regions and communities. Only they have the authority to decide upon possible external cooperation. According to Criekemans, by virtue of Article 167 of the Belgian constitution, the federated entities have been granted the right to send their own representatives to bilateral posts, to other regions/areas, and to the international organizations (2010:p.48).

As it was stated above, the second principle embedded in Art 167 paragraph 1 of the Belgian constitution and ,according to Criekemans, which guides the “Belgian solution”

is the idea of the fundamental equality among all the Belgian governments (be they federal or federated) i.e. “ no hierarchy of norms.” This means in practice that the internal legislation generated by the federal entities has equal power to that of the ‘federal level’. In foreign policy matters this for Criekemans, thus, means that all Belgian governments are responsible to give substance to and decide upon the foreign policy of the federation. From the above, one can safely say that the ‘Belgian solution regarding foreign policy’ grants a considerable amount of autonomy to the Belgian regions and communities to conduct their own foreign policy (2010:p.49).

No matter how much the “Belgian solution” is celebrated by pro-constituent diplomacy scholars, Criekemans admits that the idea that the Belgian federal government has the lead over the foreign relations of the Belgian federation stands potentially in direct confrontation to the idea embedded within the Belgian federal model that the regions and communities enjoy autonomy in foreign policy matters. This is because if the two governments are not able to find a ‘common ground’ there is in practice no Belgian position. The solution developed for this potential conflict according to Criekemans, is understanding article 167 of the Belgian constitution to mean the Belgian regions and communities do enjoy maximal autonomy so long as the coherence of the foreign policy of the federation does not come in jeopardy. Criekemans further acknowledges that a substantive number of consultative bodies have been created to develop a common position in foreign policy issues between the federal and federated governments (2010:p.50).

3.2.2 Switzerland

With regard to foreign policy of the Swiss confederation, there were four issues which had main impact on the country’s foreign policy. These are neutrality, diversity of Switzerland, direct democracy and inner cantonal diversity. Especially due to diversity, Swiss lacked any kind of foreign policy. Any foreign policy with its neighbors could always be considered as biased for some German, French, Italian speaking regions or for the Catholics or the Protestants. As a result not only that there was no visible constituent

diplomacy by cantons, but they were also prohibited of any political alliance with foreign powers (Fleiner, 2010:p.144).

The new constitution in force since January 1st 2000 (ratified on April 18, 1999) has considerably changed at least on paper the order of competences. The provisions of the Swiss constitution that deal with division of competences in foreign policy and the relation between the federal government and the cantons are mainly articles 54, 55 and 56 of the Swiss constitution. According to article 54 paragraph 1, “foreign relations are a federal matter”. Paragraph 2 and 3 respectively state that “the confederation shall strive to reserve the independence of Switzerland and its welfare; “, in doing so “it shall take into consideration the powers of the cantons, and shall protect their interest”. Article 54 of the constitution, therefore, confers all matters with regard to international relations clearly to the federal government. It thus, according to Fleiner (2010), enshrines the former practice (p.146).

Regarding the role of the cantons in decisions of foreign policy, article 55 paragraphs 1, 2 and 3 respectively provide “the cantons shall participate in the preparations of decisions of foreign policy which concern their powers or their essential interests”. “The confederation shall inform the cantons timely and fully, and consult them”. “The position of the cantons shall have particular weight when their powers are concerned. In these cases the cantons shall participate in international negotiations as appropriate.” The developments in article 55 are part of the general federal development in Switzerland. The cantons have lost some of their powers for self-rule (by the constitution) but in order to keep the balance they got more possibilities of participation in the form of shared-rule (Fleiner, 2010:p.147).

From the above provision it can be seen that the Swiss federation (constitution) envisages a cooperative form of federalism (at least in the area of foreign affairs) by providing a joint role in foreign affairs. In cooperative federalism what is known as “federal loyalty” entails an obligation to adopt federalist behavior within the federation. Nowadays federalism does actually require cooperation both among the constituent units and between the constituent units and central government (Lejeune, 2002:p.170). In this

regard, article 44 of the Swiss constitution provides that: “1 – the confederation and the cantons shall collaborate and shall support each other in the fulfillment of their tasks. 2- They owe each other mutual consideration and support. They shall grant each other administrative and judicial assistance.”

Regarding the participation of constituent units in foreign policy decisions, the Swiss constitution does not leave the matter in general as it is provided in article 55 of the constitution. According to Lejeune (2002) the Swiss constitutional law is probably the most detailed regarding the mechanism for including constituent units in the negotiation of treaties (p.174). The federal law of 22 December 1999 on the participation of the cantons in the foreign policy of the confederation (LFPC) details and clarifies the method by which the cantons can participate in the decisions of the federation on the subject of foreign policy. As stated in the 1st article of this act:

- “1. The cantons shall participate in the preparation of decisions on foreign policy which concerns their powers or their essential interests.
2. The essential interests of the cantons are particularly concerned when the foreign policy of the confederation affects important tasks to be performed by the cantons.
3. The participation of the cantons must not hinder the confederation’s ability to act in the sphere of foreign policy.”

Article 3 dealing with “informing the cantons” provides that the participation of the cantons in the foreign policy of the federation is to be based on the mutual exchange of information and that the federation is obliged to inform the cantons timely and fully of foreign policy plans which concern their powers or their essential interest (Para 1 and 2).

As far as consultation is concerned the federation is obliged to consult either upon its own initiative or at the request of any canton(s) the preparation of foreign policy decisions which concern their essential interests. As a general rule, the federation is expected to consult the cantons before commencing negotiations and this consultation will complete the consultation procedure with regard to international treaties. In taking

the views of the Cantons during consultation particular weight is to be given in areas concerning the powers of the cantons and where the federal government deviates from the views of the cantons it is obliged to communicate to them the main reason for doing so (Article 4 of LFPC).

Regarding the participation of the cantons in the preparation of negotiating positions and in the negotiations, article 5(1) provides that “if the powers of the cantons are affected, the confederation shall involve representatives of the cantons in the preparation of the negotiating positions as well as, as a general rule, in the negotiations”.

Finally, with regard to the competence of the cantons to conclude treaties with regard to other states this issue is regulated under article 56 of the main constitution. Article 56 (1) (2) and (3) respectively reads: “[t]he cantons may conclude treaties with foreign countries within the scope of their powers.” “These treaties may not be contrary to the law or to the interest of the confederations nor to the laws of other cantons. Before concluding a treaty, the cantons must inform the confederation.” “The cantons may deal directly with lower ranking foreign authorities; in other cases, the relations of the cantons with foreign countries shall be conducted by the federation acting on their behalf”.

According to Fleiner, the cantons are given far reaching powers with regard to foreign policy by the new constitution. They have self-rule to conclude international treaties with regard to all matters of their constitutional powers given to them. Foreign policy as such is within the power of the federal state. Thus, they have no real foreign policy except for issues with regard to their proper competences. Fleiner further notes, the cantons have full autonomy with regard to their treaty making power in all issues in which they have autonomous powers. With regard to all these cantonal powers cantons can conclude any treaty with foreign countries; this is part of their self-rule. The federal government has no power to intervene. The only constitutional obligation provided is information of the federal government concerning those treaties (2010:p.152).

To this writer, however, the provisions of article 56(2) seem to pose (in practice) a significant limit on the treaty making power of the constituent units. If the treaties to be made by the Cantons are expected not to be contrary to the interests of the federation, and

it is the federal government that determines whether or not they are, in practice the center has dominance over the treaty making power of the Cantons even in what was said the Cantons' exclusive jurisdiction.

3.2.3 India

In India, the constitution empowers the center with greater powers compared to the powers of the constituent units. Some have described India as a “quasi- federal” state because of the inadequate autonomy it affords to the constituent units. For instance the constitution clearly delineates a union list (97 items) a state list (66 items) and a concurrent list (47 items) where both the state and the center have jurisdiction. However, whenever there is any conflict over the laws on the concurrent list, the center prevails. The center can also legislate on certain matters in the state list. In addition all residual powers rest with the union government. The center, moreover, appoints the governor of each state to oversee the functioning of state government. The parliament is empowered to redraw the boundaries of the states, to divide them, and to create new ones. The center has the power to dismiss an elected state government and in certain circumstances to replace it with president rule. Significantly, the Indian federation has not resulted from any agreement among the constituent units, and the union is indestructible, no unit can secede from it (Borah, 2014:p.35).

With regard to conducting foreign affairs, article 246 in schedule 7, list I (union list) of the Indian constitution defines foreign affairs as “all matters which bring the union into relation with any foreign country.” Therefore, the constitution puts the onus of conducting foreign policy unambiguously on the center leaving little room for constituent units to follow suit (Borah, 2014:p.35).

The Indian constitution gives the federal government complete jurisdiction over issues of foreign policy. Besides, according to Bhagat (2009), the three provisions of the Indian constitution give the federal government full power to match its responsibilities in respect of foreign affairs. First, parliament has power to make any law for the whole or any part

of the territory of India for implementing any treaty, agreement or convention with any country (Art 253). Second, union has full executive powers for the implementation of its laws, treaties and agreements (Art 73). Third, to prevent the state from obstructing the administration of laws by the union, the executive powers of the states are to be so exercised as not to impede or prejudice the exercise of the executive power of the union (Art. 257). Therefore, one can safely say that the Indian constitution confers on the union of India legislative and executive sovereignty. However, it is also fact that the federal government of India can hardly afford to ignore the special interest and wishes of the constituent states (p.5).

3.3 Constitutional Framework: Ethiopia

3.3.1 Division of Powers under the FDRE Constitution

The fact that the Ethiopian constitution provides for dual nature of the federation can clearly be seen from art 50(2) of the constitution which reads “the federal government and the states shall have legislative, executive and judicial powers”. According to the above article the constitution, providing for division of jurisdictions and not competences, intends both governments (federal and regional) to enact, execute and adjudicate laws in their respective jurisdictions.

One can understand that such strict separation of powers cannot be easily exercised by merely looking at the actual constitutional division of powers between the federal and state governments as provided (mainly) under article 51 and 52 of the constitution. The provision of the constitution dealing with powers and functions of the federal government gives the federal government the power to “formulate and implement the country’s policies, strategies and plans in respect of overall economic, social and development matters “(article 51(2) of the FDRE constitution). The federal government is also empowered to establish and implement national standards and basic policy criteria for public health, education, science and technology as well as for the protection and preservation of cultural and historical legacies (article 51(3) of the FDRE constitution).

Art 52 of the constitution, which deals with powers and function of states, under its sub-article (2) (c) provides that states have the power to formulate policies, strategies and plans of the state.

In spite of the list of similar powers both under Art 51 (2) and 52 (2) (c) of the constitution, Endrias (2003) claims that the constitution vests the powers of decision on law and policy in the federal state and regional states mainly enjoy cultural and executive powers (p.26). For Assefa, on the other hand, “there is no doubt that these powers cover the bulk of concurrent power on a vast field of social and economic affairs as stated in other federations” and the big question is to draw the borderline between the two but certainly there is no doubt that the legal framework of most of the policy making remains concurrent (2007:p.303-304).

In a latter work, Assefa (2012) seems to agree that the constitution places primary responsibility on the federal government to determine major policy directions and standards. Still for Assefa, there is obviously much overlap between the powers of the federal government and the states concerning economic, social and development plans, as well as health and education and it seems clear from the provisions that the federal government cannot exhaustively and exclusively legislate on all these matters. He further argues that the wording of Art 52 (2) seems to suggest that states are endowed not merely with administrative power but also with the power to formulate policies (p.446).

Having the above discussion in mind it is also worth noticing that the constitution alleges it has defined federal and state powers. The basic principle of exercising such powers is that ‘the states shall respect the powers of the federal government and ‘the federal government shall likewise respect the powers of the states’ (article 50 (8) of the FDRE constitution).

3.3.2 Foreign Affairs under the FDRE Constitution

The main theme of this work /foreign affairs/ is free from the above ambiguities as far as the question ‘who is in charge of foreign affairs?’ is concerned. Article 51 (8) of the

constitution clearly provides that the federal government “shall formulate and implement foreign policy and (in doing so) it shall negotiate and ratify international agreements”. From the above provision we can learn that the federal government seems to have unquestionable authority not only in formulating the country’s foreign policy but also the entire process of negotiation, signature, ratification and implementation of treaties is concerned.

Regarding the internal division of powers/ competences/among the institutions of the federal government, article 55 (12) provides that the House of Peoples Representatives is empowered to ratify international agreements concluded by the executive. Article 55 (12) seems to indicate not only that the House of Peoples Representatives ratifies treaties, but also that it is the executive branch of the government that concludes (negotiates and signs) them. The House of Federation, obviously, does not have a direct role in foreign policy making and implementation.

In addition to the specific power of concluding treaties, the council of ministers (the federal executive) is also entrusted with the broader task of formulating the country’s foreign policy and exercise overall supervision over its implementation (article 77(8) of the FDRE constitution).As the head of the executive, the office of the prime minister is also empowered to “exercise overall supervision over the implementation of the country’s foreign policy” (article 74(6) of the FDRE constitution). It seems that ‘policy formulation’ that belongs to the council of ministers is absent in the case of the prime minister for the practical reason that formulating policy requires the expertise of concerned ministry.

The constitution, like any other policy domain and institutions, subjects the formulation and implementation of foreign policy and organs entrusted to it to be guided by the principles and objectives specified under chapter 10 of the constitution. The basic principles of external relation are listed under article 86 of the constitution. For convenience, the writer would discuss these principles in the next chapter together with the Ethiopian Foreign and National Security Policy (EFNSP) document.

Now that we know foreign affairs is an exclusive federal jurisdiction, questions to be raised are; 1) to what extent does (can) the federal government intervene in the states jurisdiction in the name of treaty making (i.e. are there any limits to it)? 2) Does the House of Federation not having a legislative role mean states do not have any role in foreign affairs? 3) Does the House of Federation, as the guardian of Nation, Nationalities and Peoples interest, have any say (though not directly) on foreign affairs (especially treaties)? and 4) should foreign policy continue being exclusively federal jurisdiction? Or should there be constitutional change to give constituent units a role in the country's foreign policy formulation and implementation?

As far as the constitution is concerned there is no provision that puts a limit to the federal government's power of treaty making in particular or foreign policy making in general. The experts in the ministry of foreign affairs (Besifat and Haileselassie) also do not think there is any limit to the federal government's treaty making power. The writer could not also think otherwise. But it is clear, at the same time, that the constitution will not allow the federal government to take States' power without any restriction in the name of treaty making. Allowing such excessive intervention will sooner or later put the very survival of the federation in danger. It is the opinion of this writer, therefore, that we should find the guarantees for the autonomy (self-rule) of the constituent units somewhere else in the constitution.

In order to answer the 2nd question (above) it is better to make our reference to the understanding of federalism as a combination of shared and self-rule. In the Ethiopian constitution the fact that foreign affair is not part of the constituent units' self-rule (autonomy) is undisputable. Besides the only institutions of the federal government directly involved (constitutionally) in the country's foreign policy formulation and implementation are the House of Peoples Representatives (HOPR) and the federal executive. Hence, the question is, do constituent units have any (formal or informal) influence over these institutions?

For writers like Assefa (2007) the situation seems very harsh on the constituent units (at least as far as the document is concerned). He argues,

“The Ethiopian constitution, by establishing a non-legislative upper house, runs the risk of concentration of power at the center, to the exclusion of the states, and consequently leaves the states alone. The constitution fails to ensure the constituent units proper place in the institutions of power sharing as well as in the process of policy making at federal level and by doing so it betrays the federal idea significantly” (p.139).

Considering the experience of almost all other federations and the rationale behind establishing a federal house the concern is reasonable. But if one asks ‘who is the center after all?’ the answer will help us understand the situation is not (at least) as harsh as the above writer argues.

The House of Peoples Representatives is the highest authority of the federal government according to article 50(3) of the constitution. The House also is a house of representatives through which the sovereignty of Nations, Nationalities and peoples is expressed (art 8(3)) of the FDRE constitution). It is, then, in this House that the highest form of shared-rule is expected to be manifested (at least compared to the executive).

Regarding the nature of the HOPR, Endrias (2003), notes:

“With a parliamentary form of government, the legislative is the chief organ of federal power. Since virtually all electoral districts are drawn within ethnically defined constituencies with the exception of the federal capital and large cities, the legislative is made of the representative of the regions. A law cannot be enacted or a chief executive (PM) elected that is hostile or indifferent to the interests of sub national groups” (p.17).

What Endrias wants us to think is, then, with the exception of large cities and the capital, the HOPR is as much a house of constituent units (Nations, Nationalities and Peoples) as the HOF itself. Endarias’s argument makes even more sense (regarding the similarity of the two Houses) if we consider the fact that, though not in exactly similar way, population number is the main factor for the number of representatives of Nations,

Nationalities and Peoples (again main bases for regional delineation in State formation) in the HOF.

With a parliamentary form of government it is clear that the nature of the HOPR is highly reflected in the executive. Besides article 39 (3) of the constitution provides that Nations, Nationalities and Peoples' right to self-government extends to the right to 'equitable representation in federal government'. If we follow Endrias's political argument that the nature of HOPR and how representatives are elected is a guarantee for its decisions, it then follows that the House (which is a house of Nations, Nationalities and Peoples) will be cautious enough to appoint members of the executive in as much equitable manner as possible. Therefore, one can safely say that at least in areas (like foreign affairs) that affect the nation as a whole, the exercise of power by the HOPR and the executive could only mean that constituent units are acting together. The HOPR and the federal executive are nothing but the creations and forums of the constituent units.

The above discussion does not in any way mean that this writer thinks the existence or non-existence of HOF does not make any difference at all. But due to the nature of parliamentary federation and its subsequent impact on the relationship between the HOPR and the executive; and the composition of the HOPR (not being significantly different from HOF), the fact that the HOF is not a legislative organ proper cannot be taken as a serious danger to the power of the constituent units.

It's true that the HOF lacks some major features of upper houses in other federations. But it is equally true that the HOF has a power that many of the upper houses in other federations do not have. According to Art 62 (1), the House of Federation has the power to interpret the constitution. This indicates that though the House of Federation is not a legislative body, it exercises fundamental powers of government when constitutional disputes arise; it has the ultimate authority to decide what the constitution requires (Endrias, 2003:p.18).

One area of constitutional dispute is constitutionality of laws enacted by the HOPR itself (and any decision, regulation etc. by the executive). According to article 9(1) of the constitution, the constitution being the supreme law of the land, any law, customary

practice or a decision of an organ of a state or a public official which contravenes the constitution is declared to be of no effect. On the other hand, even though agreements are said to be ‘international’, their applicability in the Ethiopian territory is technically dependent up on their ratification by the HOPR. Once they are ratified they are considered to be “an integral part of the law of the land”.

Since it is the HOF that decides on all constitutional disputes (Article 83 (1) of the FDRE constitution) then, there is no reason why any treaty (as a domestic law at least) cannot be brought before the HOF for constitutionality reasons by anyone (or more of them) of the constituent units. If the HOPR tries to jeopardize the survival of the federation by making a treaty which significantly affects the autonomy of constituent units, the HOF can still be their guardian by exercising its power of deciding on the constitutionality of laws-it can declare that particular treaty or any provision of it to be of no effect. For this writer, the fact that there are no such cases (to his knowledge) is evidence to the fact that constituent units have not (at least yet) felt the ‘invasion’ (if there exists one).

Regarding the role of second chambers (upper houses), Assefa (2007) pointed that “second chambers in federations provide a protective mechanism against federal derogation and the overstepping of delegated authority and the impairment of the interest of one or more of the units” (p.140). Even if the HOF does not do it in a law making manner, its power to interpret the constitution and giving final judgment regarding disputes that arise from it, is a power which can be exercised in a way that protects the constituent units interest. Hence, to this writer the HOF cannot be described as an institution which cannot do anything in relation to protecting the interests of the constituent units.

The final issue we raised is whether foreign policy should continue being exclusively federal or should there be a change in the constitution to give constituent units power in the country’s foreign policy formulation and implementation.

In conducting this work one of the materials the writer came across which dealt with this particular issue was an article in Oromia law journal by Tesfaye Assefa. In fact it was after the writer read this article that he felt it is necessary to frame the issue as a research

question. Tesfaye (2012) argued for what he called “foreign relations decentralization” and proposed constitutional change to this direction. According to him, his arguments are “drawn up on the theories of federalism, effects of globalization, and paramount significances of constituent diplomacy for regional states to exercise their political autonomy and to strengthen their economy” (p.4).

Regarding the relationship between foreign affairs and federalism we have different theories. That is, obviously, why we have different ways of dealing with the issue in different federations. Whether a federation should stick to “old school” ‘internal diversity external unity’ maxim of Alfred Escher or it should divide foreign affairs jurisdiction between the center and federating entities depends on a particular country’s historical, cultural, demographic, economic, etc...circumstances. The particular model cannot be picked by simply asking which model seems to be recent or ‘modern looking’. What is more, the effect of globalization and the economic significance of constituent diplomacy are not necessarily the same for constituent units in developed and developing societies.

Globalization, which is considered by western writers as an enabling factor could be a disabling factor for constituent units of less developed countries (and the federation) if not properly handled. The political autonomy, which should with no doubt exist in the internal relationship between constituent units and the center, may not be beneficial to a federation-where there are secessionist tendencies-when exercised internationally. It is also very important to keep in mind that according to pro-multilevel governance (in foreign affairs) writers; the advantage of constituent diplomacy is not analyzed from the perspective of constituent unit’s interest but from the national interest one.

What this writer is trying to say is not that constituent units should not have constitutionally guaranteed share in foreign affairs, but it is difficult to reach at such conclusion without a deeper analysis of the role of the constituent units in the area (especially to determine what should be their share). It is the belief of this writer that the analysis in this work shows partly why we should not hurry for a change.

First of all, constitution in federations (theoretically at least) is an outcome of negotiation among constituent units (Nation, Nationalities and Peoples in our case). The preamble of

the FDRE constitution reaffirming this process begins by saying “we, the Nations, Nationalities and Peoples of Ethiopia.”

The fact that the Nations, Nationalities and Peoples are not just the authors of the constitution but will always remain sovereign is expressly provided for in article 8 of the constitution. As far as the document is concerned (at least), Endrias (2003) states that the state is a union formed through the free consent of each of the Nations, Nationalities and Peoples. The Ethiopian cultural communities having the right to the highest degree of self-determination, in addition to the foundation of the Ethiopian state its continuance now requires the consent of each of the Nations, Nationalities and Peoples (p.17).

It follows (as Assefa nicely put it) then, that:-

“[t]he division of powers in a federation is the outcome of series of negotiations among the several factors. According to this bargaining, certain powers and functions are given to the federal government and certain powers and functions are left to the states. The negotiations are formally conducted and are enshrined in the federal constitution. The idea of shared-rule is nothing but a reflection of the concept that the constituent states are made part and parcel of the powers assigned to the federal government in general and the federal law making process in particular ...when states transfer certain powers and functions, this implies that they are part of a ‘shared’ rule. They are represented and accordingly participate in those powers”. (2007:p.140)

The above discussion indicates that the division of powers, and that foreign affairs belongs to the federal government, is a conscious decision of the Nations, Nationalities and Peoples of Ethiopia.

It is true that there are people who do not take the Ethiopian constitution as a ‘real expression’ of the will of the people and that it is just an imposition by EPRDF. This argument, however, cannot be raised by someone who argues for constitutional amendment (because recognition of the original document is implied in arguing for amendment). It is, therefore, fundamentally important to show a change in the wish of

Nations, Nationalities and Peoples so that there be a dialogue for change in the constitutional division of power. Even in Belgium, where constituent units are said to enjoy a ‘considerable amount of autonomy’ in foreign affairs, the constitutional revision of 1993 was sought to end the debate about the division of powers between the constituent units and federal government. That is why Crickemans (2010) calls it the “Belgian solution regarding foreign policy.” (p.47)

Secondly, it is also important to realize that sharing foreign affairs (more than any other area) requires a highly developed intergovernmental mechanism. This is because the extent to which inconsistency in foreign policy affects a federation is very high. This fact can easily be understood by looking at the multi-layer nature of constituent diplomacy. If it exists, it exists cumulatively in the political, economic, cultural, etc. life of a country.

The effect of inconsistency in foreign relations is highly underestimated by Tesfaye (2012). To put it in his own words, he wrote: “one undeniable fact is that foreign relation may result in policy segmentation. Segmentation of policy in federation is a necessary evil and must be accepted ...more interestingly federations can overcome the problem of policy segmentation through cooperation” (P.12-13).

What Tesfaye seems to have ignored is that inconsistency in foreign affairs could, in certain circumstances, affect the survival of the federation itself. In a country like Ethiopia where majority (almost all) of the bordering ethnic communities have a cultural /ethnic/identity that is similar to neighboring countries’ bordering communities, there is no limit to the attachment they can create through constituent diplomacy. Such individual relationships with foreign bodies (if inconsistent domestically) could hinder the internal economic, cultural and other relationships that are vital for creating (maintaining) unity i.e. it may go against the constitutional promise of creating one political and economic community. This, in turn, facilitates disintegration (it may even promote secessionist tendencies).

On the other hand, preventing serious inconsistency in foreign affairs requires highly developed intergovernmental relations. Such a mechanism facilitates cooperation to avoid inconsistency and also provides a smooth way out in case it occurs. The fact that Belgium

and Switzerland (known for constitutionally guaranteed constituent diplomacy) have moved for a strong, detailed, formal and binding IGR mechanism tells us how difficult and serious the task (of dealing with possible inconsistency) is. Even in these countries, however, we have seen that inconsistency is unavoidable and the only way out is that in case of contradiction federal position prevails. Such final solution in the most decentralized federations (in the area of foreign affairs) tells us that even if constituent diplomacy in those countries is not nominal, there is no 'full autonomy' regarding foreign affairs in any federation.

In Ethiopia where there is no formal (even informal) intergovernmental mechanism other than the party system, relying on cooperation to deal with inconsistency in foreign affairs is unimaginable. The party channel, no matter how effective it is, cannot be considered as an intergovernmental mechanism in designing a long term system constitutionally. Besides, who wants the party to assume more roles?

Any long term design should envisage a situation where one or more regions (even the center) being governed by one or more opposition parties. For many such a possibility is too far, but it is important to keep in mind that it is EPRDF that called itself a 'Vanguard' and no one else. Therefore, the "cooperation" mentioned by the above writer is not as much easy and underway as he put it to be.

Finally, a point worth mentioning is that what the experience of highly centralized federations like India (even unitary states under authoritarian rule like china) tells us is that, for a constituent diplomacy to exist (if it should exist) constitutional provision giving monopoly to the federal government is not going to be an absolute obstacle. In fact the experiences of federations like Belgium shows that it is the informal practice of constituent units in the area of foreign affairs that finally lead to constitutional change. The Belgian constituent unit's pushed hard which resulted in constitutional change- something that has not been seen in Ethiopia.

Chapter 4

Foreign Affairs in Ethiopia

In this chapter how foreign policy is formulated and implemented in Ethiopia will be the main focus. Before specifically dealing with foreign policy, however, it is important to generally see how decisions are passed and who is in charge in light of the federal system. Section 4.1 is dedicated to it followed by a discussion on foreign policy making and implementation in Ethiopia (4.2).

4.1 Decision Making in Ethiopia

In chapter 3 of this work we have seen that the Ethiopian constitution provides for dual nature of the organs of the government. Both (federal and state) governments having legislative, executive and judicial powers mean that each government is supposed to enact, execute and adjudicate laws regarding matters under its jurisdiction. Even if an overlap is said to be unavoidable in any federation, studies have shown that the Ethiopian practice is far from the constitution (Assefa (2007), Dereje (2009)).

It's true that the justifications (explanations) that we have seen in chapter three regarding the Ethiopian constitution work only if there is compatibility between the constitution and the practice. For example, the fact that the HOPR is an institution of shared-rule works only if decisions are passed by the members of the House, in the House, and not somewhere else. The success of federations, in addition to their careful design (of mainly balancing the forces of unity and diversity), also relies on other related variables like party politics and democratization.

Assefa (2012), discussing factors that are of “great deal” for the success of a federation notes:

“Democracy and federalism are also strongly linked. Indeed it is difficult to envisage genuine federalism’s success without democracy. The adoption of the federation, the adaptation process of federal constitutions to changing circumstances, the continuous interaction between the two levels of government through forums of intergovernmental relations, among others are very much affected by the democratic process.”

He further points that multiple centers of decision making, political pluralism and not least democratic institutions such as the parliament at federal and regional state level are affected one way or the other depending on whether the system is democratic or not (p.437).

In Ethiopia, the federation has not seen another party in power since its formation. What is worse, many writers agree that regional governments have never exercised their powers independently (even being from the same party that rules at the center). This has made it difficult to test whether or not the principles of the Ethiopian federation do fit or not. According to Endrias (2003), one of the difficulties the Ethiopian federation faces is that EPRDF has been a dominant party both in federal and regional governments (p.25). Endrias described EPRDF as “dominant” and not “the only” party due to affiliated parties in Somali, Harari, Afar, Benishangul Gumuz and Gambella which have been the ruling parties in their respective regions.

The difficulty of EPRDF’s dominance, for Endrais, is because it is not easy to disentangle either the possibilities and limits of ethnic federalism or the scope of contest between federal and regional rule. What is more, EPRDF’s dominance reinforces the dominance of the center in law making as well as in economic and social policy. But this, according to Endrais, does not mean that the interest of member states is subordinate to those of the federal state. The reason, he argues, is that most regional states are governed by EPRDF. Moreover, since EPRDF is a coalition of ethnic parties with equal powers of decision on federal matters, there is little risk that the federal state will act contrary to the interest of

the regional states. The danger of dominant party is instead that it imposes limits on political pluralism (p.25).

But is EPRDF ruling in most regional states? If it is based on population number, yes it rules regional states with significant majority in the federation. But five out of nine regional states are run by non- EPRDF (still affiliated) parties. As long as the interest of the four relatively developed and the other regional states is compatible (leaving Harari aside), it is true there is little risk that the EPRDF-led federal state will act contrary to the interest of regional states. But what if there is a difference in the interest of the two groups of states?

Some writers (Assefa, 2007; young, 1991) argue that a ‘two tier system’ of federalism is already emerging in Ethiopia. According to young, although the constitution does not make such a distinction, in practice one is forced to make a distinction between the regional state of Tigray, Amhara, Oromia and Southern Nations, Nationalities and Peoples (SNNP) Regional states with their relatively greater level of political and economic development on the one hand and the other four states, Gambella, Benishangul Gumuz, Afar and Somali which stand out for their lack of development and historical political marginalization on the other (Assefa,2007:p.344).

Regarding from which perspective young’s distinction is made, Assefa wrote: “while the former states, at least until recently jealously guarded their authority and also have better administrative capacity, the latter states are not yet capable of assuming the full responsibility of state government”. The reason, for Assefa, is that in the latter (peripheral) regions the impact of historical legacy of isolation from the center is still felt. In addition, shortage of trained personnel is acute, infrastructures are almost absent and a large section of the people inhabiting these states is pastoralists with no tradition of indigenous settled administration (2007, p.366). Therefore, the above two writers see the difference between the two groups of regions in terms of exercising their autonomy.

Dereje (2009), on the other hand, argues that while the difference is partly attributable to historical factors, it is also a result of the failure of the federal system to effectively deal with such historical legacies. According to this writer, “EPRDF has brought a new spin

on the center periphery mode of relation to the extent that a new peripheral political space is created evident in the creation of four regional states, the GPNRS (Gambella Peoples National Regional State), the BGNRS (Benishangul Gumuz Peoples National Regional State), the Afar regional state, the Somali regional state and the affirmative action connected to that. The basic mode of relation, however, has remained unchanged”. (p.650)

According to Dereje, the fact that the combined population of the four peripheral regional states constitutes only 7.8% of the country’s population prevented them from being counted as ‘significant others’ in the national power game. It seems to this writer, what Dereje is saying is that their number is the main (if not the only) reason why they are not invited to be EPRDF’s additional coalitions. He even questions what others seem to acknowledge as the greatest achievement of the constitution –the recognition of identity in every aspect and the pride resulted from it. According to him, “the social economic and political discriminations which the discourse of color signifies have greatly undermined the borderlands sense of belonging to Ethiopian national identity. Reacting to this peripheral attitude of the Ethiopian center they have variously identified with alternative national identities across the border where they aspire to be first class citizens’ (p.650).

For the above writer, therefore, in addition to their inherent problems, the four less developed regions have been greatly affected by the EPRDFs dominance at the center. As a result, there is a contradiction between a highly acclaimed project of decentralization based on a generous constitutional provision for self-government on the one hand and infringement of regional autonomy (by EPRDF) on the other. His solution is political pluralism.

With all the differences among the above (and many other) scholars, there seems to be a consensus that decision making is highly centralized. Such centralization trend due to the nature of party system is not unique to Ethiopia. According to Assefa (2007), the general view (when a single party controls regional and federal governments and has a centralized party structure) is that it results in loss of regional autonomy (p.392). Though, the less developed regions of Ethiopia are run by non-EPRDF parties, their degree of

affiliation shows that the situation is not any different from regions under the direct control of EPRDF.

The largely centralized party structure in Ethiopia stands in direct contradiction to a division of power that is typical feature of a federation. The party structure in Ethiopia undermines the federal division of power and subordinates the regional government to the federal government. As a parliamentary federal system, the party discipline combined with democratic centralism seems to have great impact on how decisions are taken within the party central committee that rules the ruling coalition (Assefa, 2007: p.393).

The fact that centralized party structure is contradictory to the principle of federalism is shared by the former member of TPLF (EPRDF) central committee, Seye Abreha. According to Seye (2010), even though the constitution of the EPRDF was designed in a way it avoids concentration of power at one center, the articles of association of Tigray People Liberation Front (TPLF) and Ethiopian People's Revolutionary Democratic Front (EPRDF), which were designed in light of democratic centralism, are direct opposites to the principles of federalism in the constitution. As a result, Seye continues, EPRDF had to choose and the choice was made to impose democratic centralism on the federal system (which by its nature was supposed to provide for multiple centers of decision making) (p.48).

Substantiating his point, Seye produces as an evidence how Gebru Asrat (also a member of central committee of TPLF) was 'evicted' from his presidency of Tigray national regional state in 2001. According to Seye, Tsegai Berhe (latter president of Tigray regional state), few other regional officials and TPLF leaders received orders from the then prime minister Meles Zenawi (chairman of TPLF and EPRDF at the time) and declared Gebru dismissed from his position against (even) the constitution of the Tigray regional state. Seye further pointed that at the same time the presidents of the Oromia and SNNP regional states (Kuma Demeksa and Abate Kisho respectively) were also dismissed in a similar a manner (Seye, 2010:p.48).

It seems that (even though the central committee was as far as writers like Assefa go), Seye, one of the founders (in EPRDF) of democratic centralism, alleges that the

centralization goes beyond the central committee and points to one man rule. Gebru Asrat, Seye Abreha and Meles Zenawi were equally members of central committee as far as TPLF is concerned and if the late prime minister gave orders alone, then Seye is saying ‘go high enough and you will find one man.’

Seye’s ‘one man’ story is shared by his fellow former TPLF central committee member and former president of Tigray National Regional State Gebru Asrat. Gebru (2015), discussing TPLF central committee meeting in 2000-2001, listed decisions that he claimed were taken by Meles Zenawi alone without the consent and even knowledge of both TPLF and EPRDF leadership.

According to Gebru, such decisions include agreement between Ethiopia and Eritrea regarding common defense, delivery of weapons to the Eritrean government during Eritrea-Yemen war (by virtue of the mentioned agreement) and the deportation of Eritreans from Ethiopia during the Ethio-Eritrean war (p.263). Such one man rule, however, has not been alleged to exist by anyone (to the knowledge of this writer) since the death of the former prime minister.

Regarding implementation, despite the formal constitutional division of powers and the dual executive system, mechanisms for enforcing federal laws and policies are weak in Ethiopia, if not completely non-existent, in many areas. But such fact is not without reasons. Once again implementation of federal laws is also facilitated by the party channel. This is perhaps the most pervasive scheme used by the federal government to influence state governments as well as to guarantee uniformity of policies (Assefa, 2007:p.391).

The above discussion indicates that the roles of democratic institutions in Ethiopia (such as the HOPR -impressive by design) that are expected to reflect the will of the people are reduced to the approval of party programs and party nominees. “In a democracy power ultimately emanates from the people served through democratic and elected institutions. In Ethiopia, the party dictates the institutions of democracy, hence, the party-not the people-is sovereign (Assefa, 2012:p.459).

4.2 Foreign Policy Making and Implementation

In the previous two sections (3.2 and 4.1), we have seen policy making and implementation processes. The 1st section dealt with the constitutional framework while the latter was about the practice in the Ethiopian federation. It is now time to see what the content of the Ethiopian foreign policy is. Having a foreign policy document is one clear advantage of the area being under exclusive federal jurisdiction. In Belgium, for example, “there is no document in which the federal government together with the federated entities explains the goals which they together want to achieve in international relations” (Crikemans, 2010:p.64).

Treaty making is the basic way of converting the policy in to actionable document. Therefore following the discussion on the Ethiopian foreign policy document, an attempt will be made to see how treaty making and implementation works in Ethiopia. The implementation of a country’s foreign policy requires the participation of many organs and individuals. Such participation on the other hand by itself may or may not require formal power. Therefore, areas of foreign relation other than treaty making and implementation are also worth considering. Finally we will see the role of constituent units in foreign affairs in the Ethiopian federation in a sort of comparative manner.

4.2.1 Ethiopian Foreign and National Security Policy (EFNSP)

Abebe (2015), giving recognition to the success of the Ethiopian federation so far, pointed out that “the consistent implementation of the constitution and its capacity to accommodate and address new demands and demand bearing groups may decide the continuity and improvement of the stability so far attained. ... [T]he management of Ethiopian foreign and national security policy should also be verified in terms of legitimacy and policy (implementation) capacity” (p.1).

The legitimacy aspect of Abebe’s concern seems to relate to whether the Nations Nationalities and Peoples of Ethiopia have - through their institutions of shared- rule - have adopted the policy (as we have discussed in section 4.1) or it is simply a result of

EPRDF's leadership. In any case, Ethiopia has a foreign policy document (Ethiopian Foreign and National Security Policy) which was adopted in 2002-immediately after the leadership crisis of the TPLF, according to Abebe.

The constitution puts guidelines of all national policy areas. The one that deals with foreign policy provided that one of the principles of external relations is “promot(ing) policies of foreign relations based on the protection of national interest and respect for the sovereignty of the country” (article 86 (1) of the FDRE constitution).

The constitution further lists the principles of external relations under article 86 from sub-article (2)-(6) respectively as follows: “(to) promote mutual respect for national sovereignty and equality of states and non-interference in the internal affairs of other states”, “(to) ensure that the foreign relation policies of the country are based on mutual interests and equality of states as well as that international agreements promote the interest of Ethiopia”, “to observe international agreement which ensure respect for Ethiopia's sovereignty and are not contrary to the interest of its peoples”, “to forge and promote ever growing economic union and fraternal relations of peoples with Ethiopia's neighbors and other African countries and “to seek and support peaceful solutions to international disputes.”

The Ethiopian Foreign and National Security Policy (EFNSP), above all, gives emphasis that it is the survival of the federation that everything should be directed to. The core points of the policy-“economic development and democratization”- are considered by the policy as instruments of maintaining unity. The document on page 1 reads “there can be no doubt that attainment of speedy economic development, democratization and peace is fundamental to the survival of our country which finds itself in a state of abject poverty and backwardness. ...unless the overall policy direction pursued by the government takes this basic reality into account our national existence and security will face great danger.”

According to the document, it seems that now that our separate issues (related to language, culture etc...) are addressed, the next step is dealing with our common issue. Our common issue-“national interest” according to the document-is “the interest of the

entire people no more, no less” and what is crucial to the interest of the entire people is rapid development that benefits the population (EFNSP, p.2).

Abebe, however, seems to have issues with EFNSPs common interest of the entire people. He argues that though all entities might have common aspiration and interest, it is also highly likely that they may maintain distinct desire in terms of political, economic, social and security demands. According to Abebe, rapid economic development may mean different to entities of different culture, resource and population (p.16).

In addition to rapid development, according to EFNSP, it is also in the interest of the people as a whole that democracy and good governance take root. Therefore, if we are to formulate a foreign policy to protect our national interest, we will have to elaborate a policy that facilitates rapid development and democratization (p.7). The specific goal of such elaborated foreign policy, then, is to ensure international conditions to achieving our development and democratic objectives. It follows that both the basis and goal of our foreign and national security policy is realizing development and democracy (p.23).

In describing how foreign policy can be specifically directed to such goals, the EFNSP states that in order to realize development within the framework of globalization we need extensive market opportunities, investment and technical support (also grant and loan). Technical and financial support is also said to be crucial to build and strengthen institutions of democratic governance.

To put it in exact terms, according to EFNSP, “our main objective will be to create an enabling environment for development and democracy and, in this context, to identify markets, attract investment, solicit grants, loans and technical support and maximum utilization of all possibilities. (Therefore) our diplomacy should be in the main, that of economic diplomacy” (p.24).

Regarding implementations, EFNSP notes that putting our foreign policy into practice needs, first of all, the full participation of the entire nation. Still, the document recognizes that without the professional staff functioning within an organization, policy implementation would not be satisfactory. It is essential that qualified professionals be deployed in an organized manner.

According to EFNSP, government ministries and institutions that are directly or indirectly concerned with foreign affairs should coordinate their work. In addition, ministries of foreign affairs, defense and security should coordinate their work with ministries and institutions in the economic and the social sector in view of the fact that economy is central for diplomatic work. It is utmost priority for these ministries to develop their manpower, their organizational structure and procedures so that they are effective in carrying out their responsibilities, including the responsibilities in dealing with foreign affairs. Isolated efforts, as EFNSP underlines it, will not bring results. These institutions need to coordinate their work and realize themselves accordingly.

As far as the standards set by the constitution are concerned, the EFNSP translated the 'national interest' under article 86 (1) of the constitution to mean the unity of the country (the survival of the federation). And the necessary conditions are understood to be rapid economic development and democratization.

4.2.2 Treaty Making and Implementation

Previously (under section 3.2) we have seen that there is no dispute over the issue of who is in charge of the power of treaty making in the Ethiopian federation. The federal government is not constitutionally limited by any provision in making treaties. One area of controversy in many federations is the impact of treaties on the powers of the constituent political communities. Treaties concluded by federal government (where foreign affairs is its exclusive jurisdiction) are binding on the states in most cases even if the matter falls (in domestic order) within the exclusive jurisdiction of constituent units. Consequently, treaties and agreements can and have become vehicles for expanding federal powers, sometimes at the expense of constituent units' powers (Kinkaid, 2005: p.21).

In response to the potential centralizing effects of treaties, constituent political communities in most federations have sought certain protection and participation rights (Kinkaid, 2005:p.21).In general federations have the treaties that impinge upon their sub-

national units' area of competence approved by the second chambers which represent them (Lejeune, 2002:p.177). In Canada the federal government has been compelled to engage in extensive consultations with provincial leaders during international negotiations on matters that affect the provinces, however, the federal government has declined to share with the provinces its formal powers to negotiate and sign treaties (Kinkaid, 2005 :p.21).

In Ethiopia, however, the House of Federation does not have any say in the approval (ratification) of treaties whatever their nature. Even though there are indications that the federal government consults states when it affects their jurisdiction (interview with MOFA experts Hailesellasié and Besfat), there is no formal intergovernmental forum, neither is the consultation binding. It seems that the only guarantees for constituent units are the nature of HOPR and the executive (that they are institutions of shared-rule) and the power of the House of Federation to decide on constitutionality of laws.

The fact that the federal government is making treaties in the areas of exclusive jurisdiction of states is not disputable. Experts of MOFA (Hailesselasié and Besfat) confirmed during an interview that the federal government has repeatedly done so. Birhanu and Kuma (Oromia Investment Commission) informed this writer that the federal government's intervention even in individual contracts is creating adverse effect in the Region's development. This, according to them, is that since the gradual loss of autonomy is felt by the general public, the community is denying cooperation to those investors who established their relationship with the federal government.

The writer also came across numerous legislations which ratify such agreements. Examples are proclamation No 880 /2015 'Cooperation Agreement in the Field of Culture between the Government of the Federal Democratic Republic of Ethiopia and the State of Qatar' and proclamation No 900/2015 'Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the Republic of Namibia on Economic, Technical, Scientific and Cultural Cooperation' ratification proclamations.

Since the FDRE Constitution under article 51(3) provides that the federal government can only establish and implement national standards and basic policy criteria for the protection and preservation of cultural and historical legacies, entering into a detailed agreement in this area by itself shows that federal government is making treaties in the area of State jurisdiction.

One specific example of the federal government entering in to international agreement in the area of exclusive state jurisdiction is the ‘Agreement on Cultural and Arts Cooperation between the Government of the Federal Democratic Republic of Ethiopia and Government of the State of Kuwait’. The agreement in addition to providing a general direction that ‘the parties shall encourage and develop cooperation in the fields of culture and arts’, also provides detailed provisions of it will be implemented. According to article 2 of the agreement, the parties are expected to promote friendly relations by ‘exchange of artistic troupes and cultural delegations’ 2(a), ‘participating in cultural and artistic exhibitions held in both countries’ 2(b), ‘exchange of experiences visits of arts, writers and specialists in the cultural and arts affairs’ 3(c), and ‘promoting cooperation between their national library and main libraries, research centers and cultural institutions (the document is annexed at the end of this paper).

The federal government also entered into a number of double tax avoidance treaties. One example being ‘Agreement between the FDRE and the Arab Republic of Egypt for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income’ on 15 September 2011. Agreements like this one seek to eliminate the double taxation of certain income where resident of one country derives income from a source in another country. They do this either by assigning the whole claim to one of the governments or prescribe the base on which the tax claim is to be shared between them. (Zelalem, 2012: p.16)

According to Zelalem (2012) article (2) (2) of the above treaty provides that the agreement is not confined only to income taxes imposed by the federal government. It is also applicable on income taxes which are under the competence of constituent units. This clearly is evidence that the federal government’s treaty making powers –if not exercised with due care – can cripple the constituent units.

The federal government even makes agreements regarding the management of specific projects, an example is proclamation no 913/2015 ‘Kuwait Fund for Economic Development Loan Agreement for Financing the Axum Water Supply Project’ ratification proclamation. Here one may be tempted to ask: why would the federal government go this far and assume each and every obligation on behalf of regions? Is there any other explanation than the constitutional distribution of powers? The following discussion on international law might give us a possible explanation.

Even though this writer couldn’t access them, there are a number of investment, environmental, tourism related and other agreements attached and discussed by the above writer. After evaluating such agreements Zelalem (2012) concluded:

“As the treaty analysis demonstrates the federal government concludes bilateral and multilateral and multilateral treaties which may affect the power and interest of the regional governments. Some treaties are concluded on the residual powers of constituent units. There are also some treaties like double tax avoidance treaties the subject matter of which may affect the exclusive powers of the regional governments. Concurrent powers of the regions are also subjected to international agreements. Therefore all forms of power allocated to the regional governments are touched and affected by the treaty making power of the federal government”. (p.26)

Federalism, mentioning it once again, consists of a delicate balance between the unity and diversity of its components. Although the principle of the unity of the federal state under international law does not go against the development of external relations specific to the sub national units-whether or not they are governed by international law-it does, however, imply fulfilling the state’s international obligations and safeguarding the coherence of its foreign policy (Lejeune, 1988:p.13).

Regarding the foundations of foreign policy (especially treaty) competence, ‘traditional’ scholars argue that a rift is held to exist between domestic constitutional law on the one

hand and international law on the other hand. According to these scholars, in order to act internationally, a polity requires an authorization to do so by both legal orders (Anonymous, 2010-2011). The authorization by international law is called 'capacity' the authorization by domestic constitutional law is called 'competence'. It is legally possible for a polity to enjoy international capacity but lack constitutional competence. The reverse option is, however, less frequent since international law has the tendency to refer to domestic constitutional law when dealing with the question of international legal personality (Shaw, 2003:p.218).

According to Shaw, historically, the question of international legal personality corresponds with the question of statehood. This made sense in a world in which sovereign states were the only actors under international law. Even though much has changed, states remain the main actors, and in treatises on international law the section on the question of international legal personality in most cases starts with the topic of statehood (p.197).

As far as the criteria used under international law to grant or recognize international legal personality is concerned, Malcolm M. Shaw considers international legal personality to be a relative phenomenon varying with the circumstances. He adds that 'international personality is participation plus some form of community acceptance' (p.197). The question of international status of member units of a federation can be answered in the light of the constitution of the state concerned and the state practice (p.218). In other words, in a first stage, international law refers to domestic constitutional law. In a second stage, one should look at the position of foreign states: have they or have they not recognized the member units as valid international actors? (Anonymous, 2010-2011:p.17).

Even though the Ethiopian federation has made foreign affairs an exclusive jurisdiction for its own purpose, the above discussion helps us understand that involving constituent units in treaty making by itself is a complicated task.

As far as implementation is concerned, international law is not concerned with the way in which countries organize this implementation, but it does not allow them to invoke

provisions of their internal legal systems to shirk their international obligations. It is therefore for the constitutional law of each federation to determine which of its organs are competent to implement treaties, but a federal state may not plead provisions, practices or circumstances existing in its internal legal systems in order to justify a failure to comply with its obligations under international law (Lejeune,2002:p.178).

Earlier we have seen that conclusion of treaty is the competence of the federal executive. Within the executive organ the ministry that is specifically designed to deal with foreign affairs is the Ministry of Foreign Affairs (MOFA). Hailesellasié (an expert in MOFA) claims that since the MOFA itself is representative of the Nations, Nationalities and peoples (As far as its staff are concerned), it reflects shared-rule in some way. According to article 10(1) (a) of the proclamation defining the powers and duties of the executive organs (proclamation no 916/2015), each ministry initiates policies and laws, prepare plans and budgets, and upon approval implements them in its area of jurisdiction. In doing so, each ministry is also empowered to enter into contracts and international agreements in accordance with the law (article 10 (1) (f)).

Even if each ministry is given the power of making treaties, according to Hailesellasié, the MOFA coordinates and facilitates the process for them. This role of the ministry is provided for under article 15(8) of the proclamation. The proclamation also provides for specific situations where some of the ministries engage in treaty making. For example, the ministry of finance and economic cooperation has the power to mobilize, negotiate and sign foreign development assistance and loans and follow up their implementation (article 18(1) (e); the ministry of trade has the power to establish foreign trade relations, coordinate trade negotiations, sign and implement trade agreements (article 22(4)); and the ministry of water and energy has the power to undertake studies and negotiation of treaties pertaining to the utilization of boundary and trans-boundary water bodies and follow up their implementation (article 28 (1) (d)).

The above proclamation and the entire treaty making system is an evidence that the enlargement of the stakes on the international scene means that at the level of taking decision concerning foreign policy, all ministries, from the least to the most important have at least part of their activities that are internationalized. According to PaQuin, this

implies that ministry of foreign affairs no longer have the ability to centralize decision-making, representation and control functions concerning foreign affairs (2010:p.161).

4.2.3 Non-Treaty Making Foreign Affairs

It is true that conclusion of international agreements and their implementation lie at the heart of foreign policy making and implementation. Still, it is a subset of it. The implementation of foreign policy involves acts other than treaty making and implementation. In order to have full picture of the role of constituent units and that of the federal government in foreign policy (foreign affairs), it seems necessary to cover these acts as well.

According to EFNSP, the task of foreign relations cannot be left to few professionals or politicians. People as a whole can, in a manner, participate. Our foreign policy and strategies, including our relations with various countries should be made transparent to the public so that various sections of the community discuss these policies, improve on them and reach a common position.

The document (EFNSP) acknowledges that the enforcement of the country's foreign policy needs the participation of the entire public. But, such participation does not mean everybody's acts will have the same legal status. That is why the document uses the phrase 'in a manner'-to describe the type of participation of non-officials.

In addition to the participation of the general public and deployment of professionals, achieving the desired result (according to EFNSP) needs the participation of higher education institutions and scholars who will have a significant role in enriching policies and implementing them. The document further notes that:

“Ethiopians in the Diaspora could also play an important role in carrying out research and investing at home. In addition, they could win friends for Ethiopia and try to influence their country of residence to cooperate with our country. They could act as a bridge between Ethiopian

companies and firms in their land of residence, thereby promoting investment and trade ties while seeking markets for Ethiopian products”
(EFNSP 2002:p.54).

What we see from the EFNSP is that in order to develop an effective foreign policy and implement it everybody's input is not only welcome but also needed. It follows that, for stronger reason, the constituent units of the country will have a role in the country's foreign affairs 'in a manner'. But is this the role we have, so far, been discussing? If it were, the answer could have been 'let alone the constituent units, even the diaspora, scholars and higher education institutions have a role in foreign policy formulation and implementation' in Ethiopia.

The question is then, is 'foreign affairs' in this regard to be interpreted in a strict way referring only to the treaty making power and the right to send and receive representatives (diplomats) to other countries and international organizations? Or can it be interpreted more loosely, encompassing de facto international activities, such as the conclusion of gentlemen's agreements with foreign government and administrations, the creation of network of delegations abroad which do not necessarily enjoy diplomatic status? (Anonymous, 2010-2011:p.17) or can it cover what the EFNSP call participation of the general public "in a manner"?

The main focus of this research is the power relationship between the federal government and the constituent units as it is manifested in the area of foreign affairs. Therefore, any definition that should be adopted here should (as its main element) focus on who can exercise an act that amounts to power? For this writer, whether or not an act can be considered as a power can be tested by its binding effect on the government or (in case of representatives) by checking if the delegates are to be treated as the official representatives of the country and their voice is to be counted as that of the state. Based on this understanding the participation of the general public (including higher education institutions) cannot be taken as an act of foreign affairs. It is the opinion of this writer to consider any act that is to be taken as an act of the government (federal) or endorsed by it should be taken as an act of foreign affairs in Ethiopia.

We have seen in section 3(2) of this work that policy formulation including (foreign policy) and implementation mainly belongs to the executive branch of the government. We have also seen in the previous section (4.2.) that each ministry has (in collaboration with MOFA) the power to make treaties in its area of jurisdiction (proclamation No 916/2015 Article 10 (1) (f)). The rest of foreign relations business belongs to the MOFA. According to article 15(10) of the above proclamation, the MOFA safeguards “the interest and the right of the country in connection with its foreign relations and ensure that they are respected by foreign states.”

The above legislation also expects the MOFA to “ensure that the country’s good relations with neighboring countries are strengthened” (article 15(2); “through pursuing economic diplomacy (the main element of EFNSP), cooperate with concerned organs in : a) promoting the country’s foreign trade and tourism; b) identifying and attracting foreign investors; c) facilitating the mobilization of external financial and technical assistances” (Articles 15(12)); and “ensure that the interest and the rights of Ethiopians residing abroad are protected; encourage and support association formed by Ethiopian communities and friends of Ethiopia (Article 15 (13)).

As far as this area of foreign affairs (non-treaty making) is concerned, a specific legislation is enacted which in its preamble stated “...it has become necessary to put in place a legal framework that would enable to administer the foreign service in a consistent and coordinated institutional mechanism to realize the objectives provided for by the foreign affairs and national security policy and strategy of the federal democratic republic of Ethiopia.”(Foreign Service Proclamation NO 790/2013)

The fact that the non- treaty making area of foreign affairs belongs (even within the federal government) exclusively to the MOFA can be seen from the preamble of the same proclamation which (again) states that “...it is deemed important to introduce a system that would allow to carry out the foreign service related activities of different government offices in a coordinated manner”; and article 2 (1) of the proclamation which provides that “foreign service means the service provided by the ministry of foreign affairs and missions abroad.” The detailed provisions of the proclamation further indicate that all the

representatives with official capacity and the offices are accountable to, hired and sent by MOFA.

In federations where constituent units share the power of foreign policy making and implementation with the center, the situation is different.

4.2.4 The Role of the Constituent Units in Foreign Affairs

In federal democratic systems (whether or not foreign affairs is an exclusive federal jurisdiction), officials of constituent governments have always tried to maintain an influence or a significant role in federal foreign policy making. Interdependence, globalization and the shift of decision making away from the nation state have only intensified this need. (Habegger, 2002:p.274). According to Criekemans (2010), comparing the diplomatic activities of constituent units is a difficult undertaking. The constitutional and institutional framework is very different in each country. Based upon history, culture and political practice, every state has developed its own solutions. If one compares cases which already have a similar constitutional setting, it is possible to develop a more in- depth analysis (p.2).

According to Borah:

“The phenomenon of constituent units playing a role in the making of any kind of foreign policy is at odds with the practice of most federations where the center is constitutionally assigned the function of foreign policy making and its implementation. There are instances where such constituent units, in varying degrees and capacities, have indulged in the foreign affairs of countries. Such roles of states traverse manifold issues and several trajectories; from influencing neighborhood policies to attracting foreign investments and many more. Constituent diplomacy has been identified as an emerging trend in the political landscape of several nations across the world” (2014:p.34).

The rise of constituent diplomacy seems not to have been hindered by the monopoly of federal government over foreign policy or even by the degree of democracy in a state. For instance, in Russia, considerable constituent diplomacy was visible during the campaign of its constituent units from the Far East region of Sakhalin, which sought to prevent the Russian central government from transferring the south Kuril Island to Japan during the 1990s. In China, it has been noted that its provinces, municipalities, and autonomous regions have indulged in constituent diplomacy as they have “.... gradually taken a key position in not just outward FDI, but also aid in Africa, Latin America, and south East Asia” (Borah,2014:p.34).

In India, while the earlier decades had been characterized by constitutional rigidity on federal matters, the new era ushered in creative and accommodative federalism (Jain, 2009:7). The central government as well as foreign audiences have acknowledged the role of the states of India in external engagements and negotiations relating to foreign affairs. Indian states with an international boarder and others with commercially driven agendas are particularly at the forefront of such foreign policy pursuits. Coalition to influence the Centre on foreign policy decisions is also another manifestation of constituent diplomacy in India (Borah, 2014:p.35&42).

In India, according to Jain, there is a change regarding the outlook and attitude of central leadership regarding the accommodation and aspiration of regional views (2009:p.9) Borah, however, pointed that although there are several foreign policy analysis who attest to the rise of constituent diplomacy in India and rising influence of some states on the country’s foreign policy, there are voices which state to the Contrary. Some analysts are of the view that instead of states assuming greater role in foreign policy making, the reverse is happening. States are actually losing their jurisdiction over important state subjects. They point out that while states can now negotiate with foreign investors and even as the center becomes less able to intervene, it still assumes the role of a regulator of commercial activities of states (Barah,2014:p.41).

In Ethiopia, one can say that the constituent units’ involvement in foreign policy making and implementation can be manifested directly or indirectly. They can participate directly as regional governments. The other form of involvement is through the institutions of

shared-rule. We have seen in section 3.2 that constituent units (Nations, Nationalities and Peoples) are not only the constituencies of the upper house (HOF) but also the lower house (HOPR). We have also seen how (though in general terms) the constitution of FDRE under article 39(3) provides for the representative nature of the executive. In this section, however, we will see whether or not states directly participate in foreign policy making and implementation.

According to Tesfaye (2012), currently, “regardless of the formal constitutional and institutional arrangement, Ethiopian regional states are involving in (the) federation(’s) foreign relations and their own foreign relation”(p.3). By ‘federation’s foreign relations’ and ‘their own foreign relations’, it seems that Tesfaye is referring to the exclusive jurisdictions (other than foreign affairs) of state and federal government respectively and that the States are indulging even in the exclusive power of the Federal government in conducting constituent diplomacy.

Regarding specific activities, Tefaye points that Regional States lead overseas missions in the areas of investment, trade, culture, training, technical assistance, etc.... They also meet with heads of governments, sign treaties with other sub-national actors, represent the federal government in some cases, and “voice their views in foreign policy” (Tesfaye, 2012:p.3).

According to the above writer, Ethiopian delegates were frequently represented by the Regional States presidents in various meetings with adjacent countries in boundary development meetings. For instance, in the 12th Ethiopian joint boarder development meeting held in Mekelle, Tigray Regional State, the Ethiopian delegation was led by Tsegaye Berhe (the then president of Tigray Regional State). The Southern Nations, Nationalities and Peoples Regional State hosted the 26th Ethio-Kenya joint boarder development commission meeting held in Feb, 2010. The then SNNP Regional State president Shiferaw shigute gave the opening speech (Tesfaye, 2012:p.28).

According to Tesfaye, Regional States have also been in contact with foreign embassies residing in Addis Ababa, international organizations, regions and cities of different

countries (though twinning). He provides a long list of twinning agreements by the Regional Governments or cities (p.32-33).

The Harari National Regional State is a very good example for establishing relationships with foreign bodies for different purposes. ‘The Decentralized Cooperation Convention between the Town of Charleville Mezieres (France) and the Harari Peoples National Regional State (Ethiopia), Signed on May 6, 2006’ (the document is annexed at the end of the paper) is one of the agreements. According to the above agreements the two parties agreed that the Town of Charleville-mezres will work with the Harari national Regional State by giving training, making a donation etc.. in the areas of women’s activities generating income, water, education and other activities.

Another manifestation of Harari’s engagement in constituent diplomacy is its twinning agreement with the Turkish city of Sanliurfa in April 2002. According to the agreed minutes between the two parties the Turkish City of Sanliurfa undertaken to work in cooperation with Harari in the areas of Tourism, Protection of Cultural Heritage Water Supply and Management and Capacity Building (the document is annexed at the end of the paper).

The fact that constituent units in Ethiopia are actively involving in the country’s foreign relations is also confirmed by Haileselasse and Besfat (experts in the MOFA). According to Besfat, bordering regions enter into an agreement regarding security with their adjacent counterparts of neighboring countries. This, he said, is mainly because they are the ones who implement it. Regional officials also make official visits to other countries especially for the purpose of investment. But, according to Besfat, the MOFA supervises everything. Haileselassie further notes that even though regional government are parties to ‘housekeeping’ agreements with neighboring regions (of neighboring countries), representatives of Ministry of Defense, MOFA, Federal Police, etc... participate in the meetings.

The idea of direct supervision by the federal government of States’ foreign relations is shared by Oromia investment promotion officials. According to Birhanu and Kuma (Oromia Investment Commission) even in those cases when the matter concerns only

Oromia and the initiative is taken by the Region nothing can be done without the federal government's 'blessing'.

The fact that the constituent units conduct their external relations through the knowledge (supervision) of the federal government can be seen from one of the letters sent by the Ethiopian Embassy to Djibouti to the Harari Peoples National Regional State President's Office. According to the letter dated on April 15, 2007 (the document is attached at the end of this paper), the Embassy created contact with Arta Region of Djibouti and discussed the conditions of creating twinning agreement and requested the Harari Regional State to send a letter of invitation to the officials of Arta Region of Djibouti. The Embassy also sent the copy of the letter to the African Affairs Directorate General and Public Diplomacy and Communication Directorate General of the Ministry of Foreign Affairs.

The overall picture of the constituent units' involvement in foreign affairs in Ethiopia indicates that, States conduct an act of foreign affairs in the economic, political and cultural matters - the three layers we identified in the literature part of this work.

The involvement of the states goes from establishing independent contacts with foreign bodies to sending delegates to other countries and even entering into informal international agreements-though not ratified by HOPR. Examples of such agreements [annexed by Zelalem (2012)] are: 'Agreed Minutes of the Fourth Meeting between the National Regional State of Tigray and Kassala (Sudan)' signed on May 2007 and 'agreed Minutes of the Joint Meeting of Amhara National Regional State of Ethiopia and Gadariff and Sinnar States of Sudan' signed on October 2008. These agreements though signed by Regional officials, they are signed with the knowledge and supervision of the federal government- earlier it was mentioned (based on an interview with Hailesilassie) that MOFA, Federal Police and Ministry of Defense are participants in the meetings. Even though States do not have competence to enter in to international agreements the practice indicates that the federal government -in addition to facilitating the meetings and participating in them- has strong interest in their implementation.

We have already seen that in Ethiopia only the federal government has constitutional authority on foreign affairs. This indicates that it is centralist's theory that is reflected in the Ethiopian constitution. As we have seen at the beginning of this section (the case of Russia, China and India), however, constituent diplomacy exists in practice no matter what theory the system follows. Factors that affect constituent diplomacy in Ethiopia are also various. As the main goal of our foreign policy being economic development; search for investment opportunities, technical assistance, loan, foreign aid etc. are the main economic factors. The need for maintaining effective security is also an important factor which necessitates the involvement of constituent units in border management. The rich cultural diversity, that we have here, is also an important factor for constituent diplomacy manifested in the form of cultural cooperation. A very good example is the state of Harari, which established such relationship with multiple foreign constituent units (cities) through twinning agreement (Tesfaye, 2012:p.33).

Regarding the involvement of the states, one may ask if the 'two tier system' that was mentioned by John Young and Assefa Fisseha extend to the constituent diplomacy as well. In India, for example, some states have influenced the foreign policy more than others (Borah, 2014:p.38). One of the reasons according to Jain (2009) is that boarder states have their own problem regarding illegal migration and cross border terrorism. Because of these problems, Jain continues, they have come to negotiate special treatment in the federal structure (p.9). Another factor by Borah is that states led by parties which are part of central coalition nationally gained utmost importance in foreign policy matters affecting their respective constituencies or states (2014:p.38).

In Ethiopia, we have earlier seen that, the constitution provided for dual federal structure. We have also seen that in practice, the federal government is acting as a policy maker while regions are mainly implementers. The federal government (the party) formulates policies both in the area of federal and state jurisdiction and states implement both types of policies (with few exceptions where the federal government established executive organs like customs and revenue authority in regions (Assefa, 2007)).

It has also been mentioned that, since the main 'intergovernmental body' is the party system, states in implementing policies are under direct supervision through the party

channel. On the other hand, the experts in MOFA pointed that even if Regional Governments are tacitly allowed to make international agreements, they do so under the supervision of the MOFA. This tells us that the situation in constituent diplomacy (even though all the regional governments are exercising it) is not done autonomously. Besides, as the four relatively developed, EPRDF member parties- led, regional government are in a better position to attract investment, de facto asymmetry in the area of constituent diplomacy is inevitable.

In addition to domestic circumstances, the role of constituent units in a country's foreign relations is also affected by external circumstances. Unlike the loss of autonomy by some regional states in the domestic sphere, circumstances may necessitate the active role of regional governments in constituent diplomacy.

According to Lecours (2008), constituent diplomacy can help manage situations of cultural diversity cutting across international borders that are prevalent in Africa which generate ethnic tensions and irredentist aspirations (such as the idea of Greater Somalia that would include Somalis living in Kenya, Ethiopia and Djibouti). Lecours further notes, trans boarder connections between people who consider that they belong to the same ethnic group, or national community, can lessen the appetite for secession and 'national unification' because they make questions of belonging less of a zero-sum game (p.6).

Strengthening his argument, Lecours pointed out that for a minority ethnic group isolated from political and perhaps even economic power in a state and looking towards its kin across the border, the possibility of forging meaningful political, economic and cultural links may be enough to discourage secessionist and irredentist politics. In other words, rather than seeking to isolate a population from their kins across an international border, states may wish to consider offering the possibility of meaningful connections through some form of constituent diplomacy as a way to reduce tensions and centrifugal forces (2008:p.6).

According to Dereje (2013), even though a radical switch from a deeply entrenched Unitarian to a federal system has partly unleashed centrifugal forces including a

secessionist political agenda among some of the armed ethnic liberation movements in Ethiopia; except in the Somali region which has been more susceptible to external influences, political dissent in the peripheral areas, particularly in the first decade of the federation, did not have centrifugal tendencies. On the contrary, Dereje notes, it was rather a call for deepening of the democratization process at the regional level with greater demand for self-rule within constitutional bounds (p.177).

For the above writer, the absence of secessionist tendencies by no means indicates that the peripheral regions are not marginalized. He argued that even though the Ethiopian federation has carried out affirmative actions with appreciable results in political, cultural and social domains, it is yet to redress the issue of the continued marginal position that peoples of the periphery occupy in their respective regional economies. For Dereje, the solidarity principle of the Ethiopian federation is currently largely confined to issues related to ethno-national or cultural justice and the same principle should be extended to the economic domain (p.181). It follows from his line of thinking that allowing peripheral regions to have enough space in the area of economic diplomacy, especially with neighboring people of the neighboring countries will make a significant difference.

Hagmann (2005), shares Dereje's view that the Ethiopian Somali region is an exception regarding the issue of secession and constituent diplomacy may not be the right answer. According Hagmann, ever since the incorporation of the Ogaden in to the Ethiopian Empire, politics in the Ethiopian Somali region has been fashioned by the region's double identity, first as a peripheral part of the Ethiopian nation state and second as a division within the larger Somali political economy including the former Somali Democratic Republic, Djibouti and north-east Kenya (p.510).

For Hagmann, the EPRDF granting of national self-determination to Somali Ethiopians, though significantly altered political interactions between the Ethiopian highland and its Somali periphery, did not lead to effective pacification of the region (p.510). In describing the situation, he wrote:

“Since 1991, politics in Region 5 (Somali) have been characterized by a concomitance of Somali-Ethiopian resistance, subversion, and integration,

respectively of federal coercion, manipulation, and co-optation.the federal patron fears any strong and legitimate institution within the region on which it cannot exert influence, and which might one day work towards secession as happened in 1994. ... It must constantly fear eventual secession of the region to a 'Greater Somalia' in case of rebirth of Somalia. While the EPRDF might genuinely work for stability, peace, and development in the Somali region; it remains extremely suspicious of any political organization within the region gaining political strength, popular support, and military equipment” (p.530).

Preventing secessionist tendencies is not the only issue that may justify the involvement of the peripheral regions (at least other than Somali Region) in constituent diplomacy. A different lens, through which to examine the role of the constituent units in foreign affairs, is security.

In the past, international conflicts have basically been military confrontations, driven by political conflicts. However most conflicts and protracted political crisis today do not occur between sovereign states, but are of internal or regionalized type. The countries of the Horn are confronted with varieties of endemic and protracted violence, as well as numerous potential conflict at all levels: interstate, local and national. However, sources of and factors in war have changed significantly over time. A conflict exists whenever incompatible activities occur, and the most common source of conflict is control over resources (Medhane, 2007:p.2).

Borderlands in the Horn of Africa have long been the focus of conflict, partly because they are ill-defined, but more because they are areas where government authority tends to be minimal. The shared frontier lands of Sudan, Ethiopia and Eritrea, for example, have never been under the complete control of central governments and as a result have long provided a suitable environment for criminals and rebels who often exchange or overlap these roles (Young, 2007:p.12).

In Gambella for example, according to Medhane (2007), against the background of limited and largely failed integration of the local people during the Imperial and Derg

regimes, the implementation of ethnic federalism by the EPRDF led government in 1991 created a new political space and institutional design to further promote local empowerment (p.4).

Despite the above measure by EPRDF, Medhane attributes the conflict in Gambella to weakly institutionalized political systems; unrepresentative political arrangements; a sense of alienation and marginalization; the presence of weak political parties; including their political exploitation of ethnic differences; and weak conflict management institutions and mechanisms. For Medhane, the regional government has been unstable and inefficient, unable to create a popular support and participation. One might ask whether local politicians are accountable to local people, and are pursuing their own ends or the agendas of external actors (p.11).

Regarding the solution, Jhon Young (2007) notes : “ until the states of the region undergo a democratic transformation and develop the capacity to police their frontiers, and genuine efforts are made to empower the disenfranchised that provide the support base for rebellions, for the emergence of armed groups” (p.13).

By now the reader may ask ‘what does this has to do with constituent diplomacy?’ Earlier in the literature part of this work, we have seen that constituent units’ involvement in diplomacy helps the national government to organize popular support. The local officials can only make a difference when the people feel that the officials can do something for them. If the people feel that the officials are nothing but are puppets of the center, they will stop paying attention to their representatives and resort to their own measure which produces suitable ground for conflict.

Giving the peripheral regions enough space for constituent diplomacy will (if we follow the argument of the above scholars) compensate for the marginal position they suffer domestically. This in turn will enhance their economic performance, democratization (because the people will have a chance to decide on something), and also promote their culture through mutual cooperation with people of the same ethnic (language) group in the neighboring countries.

Fiseha (2014) underscoring the importance of democracy in the success of a federation by citing the Indian experience wrote:

“In the earlier years of the Indian federal arrangement many scholars predicted that the reshaping of India based mainly on national identities was doomed to fail. Nonetheless, the system survived and continued to flourish even after the congress party that pioneered the system lost power. This is because the system was getting shaped and reshaped in response to the real demands of the diverse peoples of India.[T]he system managed to create spaces for the exercise of power at different levels unlike the earlier days...when power was concentrated at the center.

Democracy and federalism have flourished hand-in-glove in India. Federations short of democracy, such as USSR and Yugoslavia did fail terribly.”(p.48)

According to Fiseha, the constituent units in Ethiopia do exercise tangible and important powers that the previous regimes did not offer them. Still, he agrees, that there are doubts around the effectiveness of democratization process. (p.54)

While arguing for change, According to Lecourse (2008), it is still important to appreciate that constituent governments in developing countries operate in a substantially different economic, political and social environment than their counterparts in developed countries. “Therefore, as tricky as Paradiplomacy can be in developed countries, it faces more fundamental obstacles in developing countries” (p.8)

Chapter 5

Conclusion

The study of constituent diplomacy, so far, largely depended on theoretical foundations and few case studies. The available literature mostly represents the economic, political and social realities of the developed (western) world. Even so, since the development is few decades old, evaluation of the activities of constituent units' involvement in foreign relations and their effect hardly exists.

Generally, scholars argue about the advantage/disadvantage of constituent diplomacy based on theoretical bases. 'Autonomy' and 'benefit to national interest' are the main bases for pro-foreign policy decentralization scholars; while efficiency and avoiding inconsistency are for those who support federal monopoly of the area.

Apart from the theoretical debate, however, the participation of constituent units in a country's foreign affairs seems to be unavoidable for practical reasons (we have seen that it exists in centralized federations in no less manner than decentralized ones). The only question being-to what extent should they involve and how formal and binding it should be.

The degree and formalization of constituent units' involvement, on the other hand, depends on many cultural, social, economic and political factors as well as external circumstances that determine a country's relationship with neighboring states.

In any case, it seems that at the end of the day the center must have some dominance over the federating entities if a country should conduct an act of foreign affairs effectively. In Belgium, which is known as the most decentralized in foreign affairs, constituent units are given power to formulate their foreign policy and implement it as far as the area belongs to their internal jurisdiction. But, we have seen that such degree of decentralization prevented the country from having a uniform foreign policy. As a result inconsistency between the federal government's foreign policy and that of the constituent units and among the constituent units themselves became unavoidable. Even though the Belgians are trying to solve such problem by building strong intergovernmental relations

institutions, their last resort seems to give federal foreign policy prevalence over that of constituent units' in case of irreconcilable differences.

Such reality tells us that giving constituent units equal status with the center in the area of foreign relations makes it very difficult (if not impossible) for a federation to conduct its day to day foreign relations activity.

In a country like Ethiopia-where the main target of foreign policy is economic development efficiency should be given the utmost weight. The greater the autonomy of the federal government to conclude treaties, the larger the number of agreements the government may conclude and the quicker it can respond to urgent situations. Besides, since the House of Peoples Representatives and the federal executive are (theoretically at least) designed to be representative of the Nations, Nationalities and Peoples of Ethiopia, efficiency doesn't have to be brought at the cost of legitimacy. The problem we are witnessing is related to the enforcement of the existing constitution regarding the nominal power of the institutions of shared rule which is substituted by party rule.

It is also important to note that federal monopoly in Ethiopia is the will of the Nations, Nationalities and Peoples of Ethiopia. Even if constituent diplomacy is few decades old and older federations may have to re-check the consent of their constituent units, the Ethiopian federation/constitution is younger than the period marked as the beginning of the rise of constituent diplomacy (1960's). This shows that the authors of the constitution had the opportunity to consider foreign policy decentralization but deliberately ignored it.

In addition to the lack of justification for constitutional change regarding foreign policy, it is also important to note that the constitutional power division in Ethiopia between the center and regions, and its impact could not be properly tested. In addition to the federation's infancy, this is due to the fact that: 1) there has been one party rule so far at the center (Endrias, 2003) and even coalition politics has not been seen to test the principles of ethnic federalism properly; and 2) the constituent units haven't yet exercised their autonomy (at least) fully (Assefa 2007). Such factors make it difficult to distinguish between the impact of constitutional power division and the impact of the practice (which

is far from the constitution). As a result it is not yet the time to discuss constitutional change in Ethiopia regarding distribution of power.

Since the practice in Ethiopia shows that constituent units are involved in the country's foreign relations, the advantages of constituent diplomacy are being exploited without a legal basis-which in turn means that there is no urgency to deal with the issue.

In Ethiopia the most pressing issue currently is not constitutional change (in foreign policy or any other area), but the actual representativeness of the federal executive, lack of real power of the institutions of shared rule, exercise of autonomy by the constituent units, the electoral system (which should open doors to the opposition), etc.. The above factors are deemed to be important and should be dealt with before any long lasting constitutional change. This is because it is only when the constitution is properly implemented that it can be learned whether or not change is necessary.

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Annexes

1. Agreement on Cultural and Arts Cooperation between the Government of the Federal Democratic Republic of Ethiopia and Government of the State of Kuwait.
2. Amendment No. 1 to the Decentralized Cooperation Convention between the Town of Charleville Mezieres (France) and the Harari Peoples National Regional State (Ethiopia), signed on May 6, 2006.
3. Agreed Minutes between the Turkish City of Sanliuarfa and Harari Peoples National Regional State, signed on December 12, 2002.
4. A Letter from the Ethiopian Ambassador to Djibouti (Suleiman Dedefo) to the Harari Peoples Regional State President's Office, Ref. No. 3/5/07/E-2901 dated on 15/04/07.