

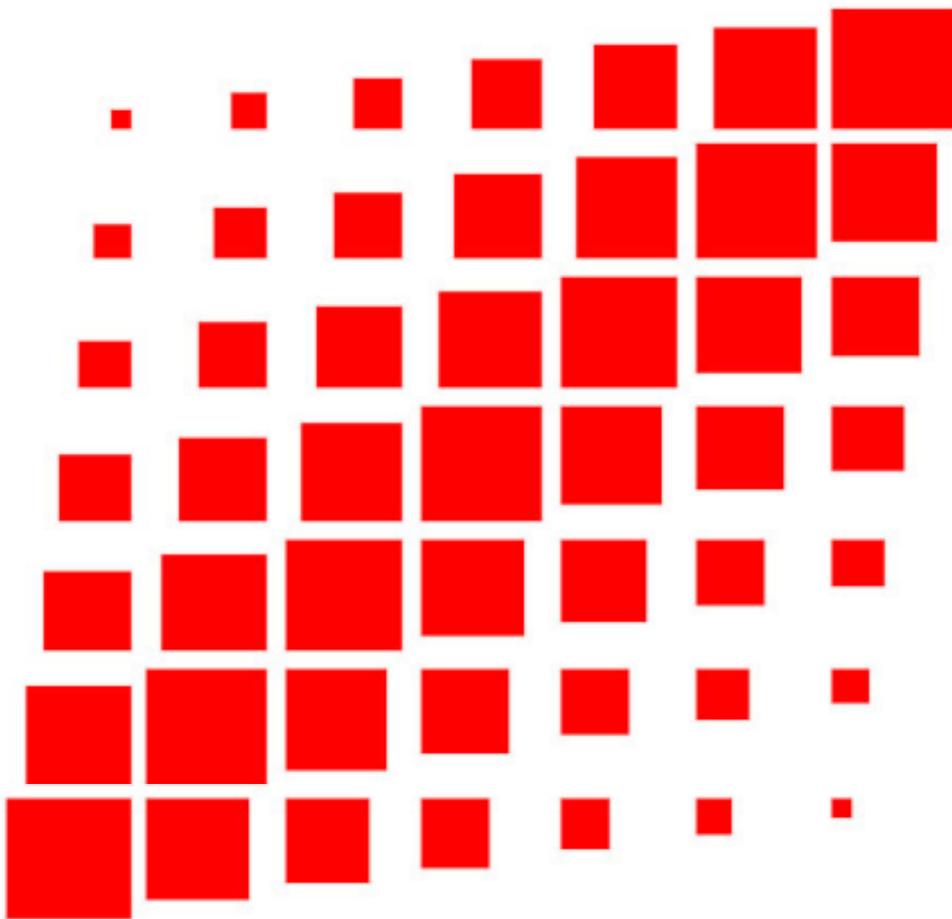
Politorbis

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Zentrum für Analyse und prospektive Studien (ZAPS)
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Vorwort

Ulrich LEHNER *

Föderalismus als Thema einer Politorbis-Nummer? Was sich rein vom Titel her vielleicht als staubtrockene Materie ankündigt, erweist sich bei näherer Betrachtung als eine äusserst interessante Auslegeordnung zu einem hochaktuellen Thema von internationaler Bedeutung. Und genau das ist der Sinn und Zweck der vom ZAPS herausgegebenen Publikationsreihe "Politorbis": Eine Plattform zu bieten für vertiefte Diskussionen zu aktuellen Themen der schweizerischen Aussenpolitik. Kennern der Materie soll die Gelegenheit geboten werden, ihre fundierten Analysen einem grösseren, an (Aussen-)Politik und internationalen Beziehungen interessierten Leserkreis bekannt zu machen - und das ohne einschränkende Vorgaben, d.h., dass ihre Meinung keineswegs deckungsgleich mit der Haltung des EDA sein muss. Die Beiträge der Autoren sind Ausdruck ihrer persönlichen Einschätzungen. Diese Formel erlaubt es, aus der "Steifheit" der offiziellen Kommunikation auszubrechen und einen Beitrag zu leisten zu einer lebendigen Diskussion eines bestimmten Themas.

Die vorliegende Politorbis-Nummer beinhaltet Texte der Internationalen Föderalismuskonferenz 2002 in St. Gallen und ist vollständig von den Organisatoren dieser Konferenz gestaltet worden. Den spezifischen Inhalt werden sie deshalb in ihrem Editorial näher erläutern. Wir möchten der Projektleitung der Föderalismuskonferenz ganz herzlich für die zur Verfügung Stellung der Texte danken und wünschen allen Lesern eine anregende Lektüre!



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Neue Perspektiven für den Föderalismus

Raoul BLINDENBACHER, Yves ROBERT *

Liebe Leserin, lieber Leser

Ende August 2002 hat in St. Gallen die vom Bund und von den Kantonen gemeinsam organisierte Internationale Föderalismuskonferenz 2002 mit rund 600 Teilnehmer/innen aus 60 Ländern stattgefunden. Verschiedene Staaten waren prominent durch Staats- und Regierungschefs oder Minister vertreten. Der Schweiz ist es in St. Gallen gelungen, aufzuzeigen, dass sie in der Diskussion über die optimale Ausgestaltung staatlicher Strukturen – ein zentraler Teil des aktuellen, umfassenden Bemühens um „best practices“ im Bereich des Staates – wesentliche Impulse vermitteln sowie wegweisende Erfahrungen und Erkenntnisse einbringen kann. Wie die zahlreichen Reaktionen aller interessierten Kreise in der Schweiz und im Ausland gezeigt haben, wird auf ein solches Engagement auch Wert gelegt. Die Schweiz selbst ist an einer engeren Zusammenarbeit mit föderalistischen Staaten interessiert. Der Bundesrat hat das EJPD und das EDA beauftragt, in Zusammenarbeit mit dem EDI und der KdK entsprechende Abklärungen vorzunehmen. Mit der Intensivierung der Zusammenarbeit wird dem Anlass in St. Gallen die gewünschte Nachhaltigkeit verliehen und dazu beigetragen, dass die zahlreichen Impulse für die Föderalismusdiskussion, die dort gegeben worden sind, längerfristig zum Tragen kommen.

In Kontrast zum internationalen Interesse, wird der Föderalismus in der Schweiz ausserhalb interessierter Kreise – teilweise auch in den Medien – oft als ein Thema wahrgenommen, das in erster Linie die schweizerische Innenpolitik betrifft. Dies ist in zweierlei Hinsicht falsch. Erstens ist Föderalismus nicht ein rein schweizerisches Phänomen: über 40% der Weltbevölkerung leben in föderalistischen Staaten rund um den Globus. Zweitens hat die Beschäftigung

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mit föderalistischen Lösungsansätzen längst ihren festen Platz in der internationalen Debatte über Frieden und Stabilität in der Welt. Für unser Land bedeutet eine Intensivierung der auf föderalistische Lösungen ausgerichteten internationalen Zusammenarbeit eine Stärkung der Instrumente der schweizerischen Sicherheits-, Friedens- und Entwicklungspolitik.

Die vorliegende Ausgabe von „Politorbis“ bringt eine Auswahl von Texten, welche die Bedeutung des Föderalismus im internationalen Kontext zum Ausdruck bringen. Die Rede von Bundesrat Joseph Deiss stellt das Thema in den Kontext der aktuellen schweizerischen Aussenpolitik. Der Artikel von Prof. Ronald L. Watts¹ zeigt die Relevanz des Föderalismus im Zusammenhang mit der fortschreitenden wirtschaftlichen und politischen Globalisierung auf. Die anschliessenden Texte widmen sich den drei Themen, die im Rahmen der Internationalen Föderalismuskonferenz 2002 behandelt worden sind. Sie geben einen Überblick über den gegenwärtigen Stand der wissenschaftlichen Forschung im Bereich des Föderalismus. Die Texte wurden im Rahmen der wissenschaftlichen Vorbereitung erarbeitet und werden im kommenden Frühjahr zusammen mit den Ergebnissen der Konferenz und weiteren Materialien in überarbeiteter Form publiziert².

Die drei themenbezogenen Artikel machen deutlich, wie stark in der heutigen Welt innen- und aussenpolitische Belange miteinander verflochten sind. Es ist symptomatisch, dass das vermeintlich „ausserpolitische“ Thema *Federalism and Foreign Relations* sich intensiv mit der „innenpolitischen“ Frage der Teilhabe der Gliedstaaten an der Aussenpolitik der Föderation auseinandersetzt, während die Themen *Federalism, Decentralization and Conflict Management in Multicultural Societies* sowie *Assignment of Responsibilities and Fiscal Federalism* im Rahmen einer umfassender werdenden „Weltinnenpolitik“ (Sicherheit, Menschenrechte, Entwicklung und Zusammenarbeit) zunehmende aussen- bzw. entwicklungspolitische Relevanz erlangen. Es ist denn auch folgerichtig, wenn die Schweiz ihr weiteres Engagement im Bereich des Föderalismus nicht einseitig innen- oder aussenpolitisch abstützt, sondern auf die Vernetzung eidgenössischer, kantonaler oder auch ausserbehördlicher Stellen nach innen und nach aussen setzt. Das ermöglicht es, eine Vielfalt an Erfahrungen und Sichtweisen in den Dialog einzubringen, die dem dynamischen und pragmatischen Wesen des Föderalismus Rechnung tragen.



¹ Der Artikel von Prof. WATTS ist auf der Konferenz-Website (<http://www.federalism2002.ch>) auch in englischer und deutscher Sprache erhältlich.

² Die Publikation erfolgt bei McGill-Queen's University Press (<http://www.mqup.mcgill.ca>).

Föderalismus in der schweizerischen Aussenpolitik

Joseph DEISS *

Ansprache von Bundesrat Joseph Deiss anlässlich der Internationalen Föderalismuskonferenz 2002 vom 28. August 2002

Dass die diesjährige Föderalismuskonferenz in der Schweiz stattfindet freut mich nicht nur, sondern weist wohl auch darauf hin, dass die Schweiz mit dem Föderalismus aufs Engste verbunden ist. In der Tat sind die Schweiz und der Föderalismus nicht zu trennen. Oder lassen Sie es mich anders ausdrücken: Die Landkarte der Schweiz – sofern es sie dann noch gäbe – sähe ganz anders aus ohne den Föderalismus. Nehmen Sie meinen Heimatkanton Freiburg. Wie hätte der ländliche katholische Kanton, umringt von reformierten und wirtschaftlich zumeist mächtigeren Kantonsnachbarn, wohl ohne den Föderalismus überleben können?

Und wen könnte ich als verlässlicheren Zeugen für die Eignung des Föderalismus in der Schweiz zitieren als Napoleon Bonaparte, der vergeblich versuchte, der Schweiz eine zentralistische Struktur zu verordnen. Er sagte in seiner Ansprache an den Ausschuss der Helvetischen Consulta im Jahre 1802:

"Je mehr ich über die Beschaffenheit Eueres Landes nachgedacht habe, desto stärker ergab sich für mich aus der Verschiedenheit seiner Bestandteile die Überzeugung der Unmöglichkeit, es einer Gleichförmigkeit zu unterwerfen; alles führt Euch zum Föderalismus hin."

Und ein etwas wenig schmeichelhaftes zusätzliches Argument gegen eine zentralistische Schweiz schob er gleich nach:

* Bundesrat, Chef des Eidgenössischen Volkswirtschaftsdepartements, ehemaliger Chef des Eidgenössischen Departements für Auswärtige Angelegenheiten.

„Wie wolltet Ihr eine Zentral-Regierung bilden? Dazu besitzt Ihr zu wenig ausgezeichnete Männer. Schon einen tüchtigen Landammann zu finden, würde Euch schwer genug fallen.“

Dieses zweite Argument möchte ich nicht kommentieren. Seine zuerst zitierte Einsicht jedoch galt 1802 und gilt auch heute noch mehr denn je.

Neben der direkten Demokratie ist der Föderalismus zu einem der wichtigsten Charakteristika des politischen Systems der Schweiz geworden. Der Föderalismus wurde uns Schweizern aber nicht in die Wiege gelegt. In blutigen Auseinandersetzungen ist in der ersten Hälfte des 19. Jahrhunderts über die Ausformung unserer Staatsform gekämpft worden. Und heute ist die Schweiz eines derjenigen Länder, die über eine lange und reiche praktische Erfahrung im Bereich des Föderalismus verfügen. Und darauf bin ich stolz. Stolz, dass die Macht auf den Bund und die Gliedstaaten verteilt ist. Stolz, weil dadurch die Kantone ihre Bedürfnisse und ihren Willen selber formulieren und umsetzen können. Und ich bin auch stolz, dass dadurch die Vielfalt der Sprache, der Kulturen und die regionalen Eigenheiten bewahrt geblieben sind. Lassen Sie mich ein kleines Beispiel erwähnen: Gerade in diesem Jahr hatte das Bundesparlament über die Sitze von zwei neu geschaffenen Bundesgerichten zu entscheiden. Ich habe mich über diese kontroverse und spannende Debatte gefreut, trotzdem der Entscheid schliesslich gegen meinen Heimatkanton fiel. Die Debatte war aber für mich ein Stück gelebter Föderalismus, als verschiedene Kantone mit vorwiegend föderalistischen Argumenten um die Heimat der neuen Gerichte stritten. Und dass schliesslich die Gerichte in den beiden dezentral gelegenen Städte Bellinzona und St. Gallen eingerichtet werden, ist Ausdruck von Rücksicht und Respekt unter den Kantonen.

Entsprechend dem schweizerischen Föderalismusverständnis darf demnach die Staatsgewalt nur regeln, was ihr zuvor von einer Mehrheit der Bürger und der Gliedstaaten mittels einer Verfassungsbestimmung übertragen worden ist. Und eine Verfassungsbestimmung tritt nur in Kraft, wenn die Mehrheit der Bevölkerung und der Gliedstaaten diese in einer Abstimmung befürwortet.

Oder lassen Sie es mich weniger juristisch ausdrücken: Föderalismus bedeutet Machtverzicht, denn er teilt die Macht des Bundes mit den Gliedstaaten. Dieser Verzicht fällt vielen Regierungen auf dieser Welt offensichtlich nicht leicht. Und darunter leiden unzählige Bevölkerungsgruppen. Viele Minderheiten bezahlen den Preis für die Machtgier Einzelner mit Hunger, Unterdrückung und Missachtung. Ich aber bin überzeugt, dass geteilte Souveränität für niemand ein Verlust ist. Ich behaupte sogar das Gegenteil: Sie ist ein fundamentaler Gewinn für die Bürger und somit – so sollte man meinen – auch für die Regierungen.

In den vergangenen Jahren ist die Diskussion über die föderalistische Struktur der Schweiz intensiver geworden. Die zunehmende Überlappung von Wirtschaftsräumen und die gelegentliche Infragestellung über die Zweckmässigkeit unserer Mikro-Gliedstaaten in einer globalisierten Welt sind Ursachen für dieses grössere Interesse. In der Tat kann man sich fragen, ob sechsundzwanzig verschiedene Schulsysteme und ebensoviele Gesundheitspolitiken in unserem

kleinen Lande Sinn machen. Die Diskussionen drehen sich aber immer nur um die konkrete Ausformung des Föderalismus. Der Föderalismus als Staatsform für die Schweiz steht für mich nicht zur Debatte. Aber über Verbesserungen und Anpassungen muss ständig diskutiert werden. Nur so bleibt der Föderalismus lebendig und zeitgemäss. So wurde in den letzten Jahren in meinem Bereich der Aussenbeziehungen auch über die Mitwirkung der Kantone in der schweizerischen Aussenpolitik intensiv diskutiert.

Die Rolle der Kantone in der schweizerischen Aussenpolitik

Bekanntlich ist die traditionelle Trennung zwischen Aussen- und Innenpolitik im letzten Jahrzehnt zunehmend schwieriger, ja sogar unsichtbar geworden. Die Lösungen von innerstaatlichen Problemen haben sich vielfach auf die internationale Ebene verlagert. Die Aussenpolitik behandelt somit auch zunehmend Sachgebiete, die in der Schweiz in die Zuständigkeit der Kantone fallen. Aus diesem Grunde war es für mich folgerichtig, dass die Schweiz in der neuen Bundesverfassung von 1999 und durch ein Gesetz über die Mitwirkung der Kantone in der Aussenpolitik die Gliedstaaten vermehrt in den Meinungsbildungs- Entscheidungs- und Vollzugsprozess miteinbezogen hat. Dieses Gesetz trat im Jahre 2000 in Kraft und verfolgt unter anderem folgende Ziele:

- Gewährleistung der Mitwirkung der Kantone in der Aussenpolitik;
- Sicherstellung der Information über die Aussenpolitik zuhanden der kantonalen Regierungen;
- Integration der kantonalen Interessen bei der Vorbereitung und Umsetzung aussenpolitischer Entscheide;
- Bewahrung der kantonalen Kompetenzen, die durch bilaterale und multilaterale Staatsverträge betroffen werden; und
- Erhöhung der Akzeptanz der Aussenpolitik in den Kantonen.

Für die Aussenpolitik hat dieses Gesetz keine neue Kompetenzübertragung an die Kantone, sondern deren Mitsprache gesichert. Die Verantwortung und Führung der schweizerischen Aussenpolitik liegen beim Bund. Aber auch die Kantone haben in einzelnen Bereichen selbständige Kompetenzen über die Landesgrenzen hinaus.

Grenzüberschreitende Zusammenarbeit als kleine Aussenpolitik

Lassen Sie mich auch diesen Bereich der Aussenpolitik gebührend erwähnen, in welchem primär die Kantone in eigener Kompetenz Träger der Aussenbeziehungen sind. Ich spreche von der grenzüberschreitenden Zusammenarbeit als Teil der "kleinen Aussenpolitik" der Schweiz. Wie in der Innenpolitik zählt auch in der Aussenpolitik der Grundsatz der Subsidiarität. Die Kantone haben

im Rahmen ihrer Zuständigkeiten demnach auch in den Aussenbeziehungen die Kompetenz, ihre eigenständigen, grenzüberschreitenden Interessen zu wahren. Grenzen werden heute nicht mehr als Hindernisse, sondern als Chancen und nutzbringende Vorteile verstanden. Mit ihren 15 Grenzkantonen hat die Schweiz der grenzüberschreitenden Zusammenarbeit seit jeher Bedeutung zugemessen. Heute sind die Kantone in den Bereichen der Kultur, des Tourismus, der Energie, der Raumplanung, des Transports, des Bevölkerungsschutzes usw. über die Landesgrenzen hinaus aktiv. Die grenzüberschreitende Kooperation ist demnach auch mehr und mehr institutionalisiert worden. Ich möchte hier in St. Gallen als Beispiel die "Internationale Bodenseekonferenz" erwähnen. Sie wurde im Jahre 1972 gegründet und besteht aus Vertretern der Regierungen der Kantone St. Gallen, der beiden Kantone Appenzell, Schaffhausen und Thurgau auf schweizerischer Seite, aus den Regierungen des Freistaats Bayern und Baden Württemberg auf der deutschen Seite, aus Liechtenstein und aus dem Vorarlberg in Österreich.

Als Aussenminister bin ich überzeugt, dass diese Aussenpolitik der Kantone im kleinen Rahmen effizienter und massgeschneiderter erfolgt, als wenn ich von Bern aus die Geschäfte über diese regional wichtigen Fragen zu führen hätte.

Alle unsere Erfahrungen mit dem Föderalismus, die positiven und auch die negativen, möchten wir mit unserer Friedenspolitik und unserer Entwicklungszusammenarbeit mit anderen Ländern teilen. Ich bin froh, dass wir nach unserem anstehenden Beitritt zur UNO in knapp zwei Wochen dieses Wissen international noch wirksamer einbringen können.

Föderalismus als Instrument der schweizerischen Friedenspolitik

Lassen Sie mich vorerst den Bereich der Friedenspolitik erwähnen:

Heutige Konflikte können sehr unterschiedliche Ursachen haben. Oft liegen ihnen aber zwei verhältnismässig einfach identifizierbare Hauptursachen zugrunde: Einerseits sind dies Spannungen im Zusammenhang mit dem Identitätsverständnis von Personengruppen. Zum Beispiel deren Zugehörigkeit zu bestimmten Ethnien, Religionen, Kulturen oder Sprachgemeinschaften. Andererseits können Fragen betreffend der Verteilung von ökonomischen, politischen oder sozialen Ressourcen konfliktauslösend wirken. Häufig treten diese beiden Ursachen auch gleichzeitig auf.

Ich kann ihnen aus dem Stehgreif kaum einen Konflikt der jüngeren Vergangenheit nennen, der sich nicht um Fragen der Machtverteilung und des Minderheitenschutzes drehte. Die meisten der Konflikte bestehen aus dem Dilemma zwischen dem in der UNO- und in der OSZE – Charta verankerten Selbstbestimmungsrecht der Völker und dem Grundsatz der territorialen Integrität.

Aus diesem Grund hat die Schweiz entschieden, ihr Expertenwissen im Bereich der Verfassungsgebung, Dezentralisierung, Machtteilung und des Minderheitenschutzes zu vertiefen und die Zusammenarbeit mit externen Experten-

netzwerken zu intensivieren. Im Laufe der 90er Jahre gelang es uns, in verschiedenen Konflikten glaubwürdige Anstösse zur Lösung von Problemen in den erwähnten Bereichen zu geben.

Lassen Sie mich kurz einige Beispiele erwähnen:

Die Schweiz konstituierte auf Anfrage der somalischen Übergangsregierung im Jahre 2000 eine Arbeitsgruppe, die sich seither um verschiedene technische Fragen der Verfassungsreform kümmert. Die Aufgabe dieser Arbeitsgruppe besteht im Wesentlichen darin, verschiedene Verfassungsmodelle zu prüfen. Diese Arbeitsgruppe wird von einem Schweizer Verfassungsexperten des Föderalismusinstituts der Universität Fribourg präsiert.

Auch im Hinblick auf eine Friedensregelung sowie eine allfällige Nachkriegsphase in Sri Lanka wird die Schweiz verfassungsrechtliche Expertise verfügbar machen oder Experten für Fragen des Föderalismus zur Verfügung stellen.

Für den Sudan hat unser Sonderbotschafter für Konfliktverhütung eine umfassende "Friedensarchitektur" entworfen. Und er setzte darin auch einen Schwerpunkt auf die Lancierung eines Prozesses, der auf die Schaffung lokal verankerter Institutionen für die sechzig verschiedenen Stämme abzielt. Anfangs dieses Jahres wurde zudem eine Militärdelegation aus dem Nord- und Südsudan in die Schweiz eingeladen. Hier konnte diesen am Beispiel der schweizerischen Armee veranschaulicht werden, dass föderale Ansätze auch im militärischen Bereich funktionieren.

Auch in Südosteuropa stehen in den schweizerischen Programmen Projekte im Vordergrund, mit denen der Schutz der Menschen- und Minderheitenrechte verbessert wird. Auch hier, und davon bin ich überzeugt, schafft man dies nur durch die zu verbessernde Verständigung der verschiedenen ethnischen und religiösen Gruppen. Und dies geschieht langfristig vielfach eben nur durch die Schaffung föderalistischer Strukturen.

Meine Damen und Herren

Sie sehen, die schweizerischen Beiträge zu Friedensordnungen entstehen nicht im luftleeren Raum. Unvermeidlich fliesst ein Teil unserer eigenen politischen Identität in derartige Beiträge ein. Und der Föderalismus ist ein Bestandteil unserer Identität. Ich will aber diese Staatsform nicht als eine "Deus ex machina" in Konfliktgebieten anpreisen. Föderalismus kann nicht exportiert oder verordnet werden. Föderalismus ist auch nicht immer das geeignete Mittel zur Konfliktprävention. Aber wir versuchen, die Vorzüge und Nachteile dieses Systems aufgrund unserer Erfahrungen in einzelne Friedensprozesse einzubringen.

Diese Erfahrungen wollen wir auch in unserer Entwicklungspolitik anwenden.

Dezentralisierung und Entwicklung

Als Reaktion auf das Scheitern von diversen Zentralregierungen ist die Dezentralisierung, und damit meine ich die Entwicklung hin zu föderalistischen Strukturen, zu einem Trend geworden. Ich verspreche mir von der Dezentralisierung insbesondere vier Vorteile:

1. Stärkung der demokratischen Entwicklung;
2. lokal angepasste und bedürfnisorientierte Dienstleistungen
3. Besserer Schutz der Minderheitenrechte;
4. Grössere Effizienz

Unsere Entwicklungszusammenarbeit unterstützt seit langem lokale Dezentralisierungsbemühungen in verschiedenen Ländern des Südens und auch in Osteuropa und in den GUS-Staaten. Und wir unterstützen auch die Weltbank in diesen Programmen. Die Unterstützung von lokaler Entwicklung ist aber nur erfolgsversprechend, wenn sie auf die Bedürfnisse der Bevölkerung ausgerichtet ist. Die relative Nähe zur Bevölkerung erlaubt der Lokal- oder Regionalregierung örtlich relevante Probleme zu identifizieren und zu lösen. Diese Regierungen sind denn auch zumeist effiziente Partner in der Entwicklungszusammenarbeit.

Aber auch hier gilt: Dezentralisierungsvorhaben sind kein Allheilmittel zur Lösung sämtlicher Probleme, denen Zentralregierungen heute machtlos gegenüber stehen. Ich will hier betonen, dass schlechte Dezentralisierungsprogramme regionale Unterschiede vertiefen können. Deshalb muss jedes Land eine eigene, den Verhältnissen angepasste Mischung zwischen zentralstaatlichen und dezentralisierten Lösungsformen suchen. Auch hier kann Dezentralisierung nicht von heute auf morgen bewerkstelligt werden.

Dezentralisierung ist eine politische Kultur. Sie erlaubt es allen Menschen und Gruppen, ihre Identität in einem Geist der Toleranz und des gegenseitigen Respekts zu bekräftigen. Eine Kultur die hilft, mit Gegensätzen zu leben und damit umzugehen. Wenn dies mit den Dezentralisierungsprogrammen gelingt, ist Föderalismus eine nachhaltige Antwort auf die Herausforderungen unserer Gesellschaft. Und dies in allen Regionen dieser Welt.

Schluss

Darf ich zum Schluss noch einmal noch einmal aus der Ansprache von Napoleon Bonaparte zitieren: Er sagte:

"Glückliche Ereignisse haben mich an die Spitze der französischen Regierung berufen, und doch würde ich mich für unfähig halten, die Schweizer zu regieren."

Darauf möchte ich ihm antworten: Die Schweiz existiert immer noch. Und dies in Prosperität und Stabilität. Dies verdanken wir keinem Kaiser und keinem

Imperator, sondern dem Föderalismus. Und diese Erfahrungen möchten wir mit der Welt teilen.

☺ ☺ ☺

La pertinence de l'idée fédérale dans le monde contemporain

Ronald L. WATTS*

Dans le monde d'aujourd'hui, le fédéralisme en tant qu'idée politique revêt de plus en plus d'importance, parce qu'il est perçu comme un moyen de réconcilier pacifiquement l'unité et la diversité à l'intérieur d'un système politique.

Les développements intervenus dans les transports, les communications sociales, la technologie et l'organisation industrielle ont engendré des pressions, dans les grands Etats comme dans les plus petits. Il en est résulté deux puissantes tendances, profondément interdépendantes tout en restant différentes, voire antagonistes: le désir de construire un Etat moderne, efficace et dynamique, et la recherche d'une identité distincte. Le premier est généré par les objectifs et les valeurs que partagent la majorité des sociétés d'aujourd'hui, qu'elles soient occidentales ou non: un désir de progrès, d'élévation du niveau de vie, de justice sociale et d'influence dans l'arène mondiale, joints à une conscience croissante des interdépendances existant à l'échelle du globe, à une époque où les avancées de la technologie rendent possible à la fois la construction de masse et la destruction de masse. La seconde découle de l'aspiration à des unités politiques plus petites, autogouvernées, plus proches du citoyen, et à l'expression des rattachements primaires du groupe - liens linguistiques et culturels, connections religieuses, traditions historiques et usages sociaux - des rattachements qui donnent son fondement propre au sentiment commun d'identité et au désir d'autodétermination.

Vu la dualité de ces pressions dans le monde – en faveur d'unités politiques plus grandes d'un côté, capables de favoriser le développement économique et d'augmenter la sécurité, et plus petites de l'autre, réagissant avec plus de sensibilité à leur électorat et capables d'exprimer la spécificité locale –, il n'est guère surprenant que la solution fédérale exerce autant d'attrait. Le fédéralisme offre une technique d'organisation constitutionnelle qui permet à un

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gouvernement bicéphale d'agir parallèlement à l'action autonome des unités constituantes, dans des buts communs relatifs au maintien de leurs spécificités, chaque niveau étant directement responsable envers son propre électorat. De fait, quand on songe au Canada, aux Etats-Unis et au Mexique en Amérique du nord; au Brésil, au Venezuela et à l'Argentine en Amérique du sud; à la Suisse, à l'Allemagne, à l'Autriche, à la Belgique et à l'Espagne en Europe; à la Russie qui s'étend de l'Europe à l'Asie; à l'Inde, au Pakistan et à la Malaisie en Asie; au Nigeria, à l'Ethiopie et à l'Afrique du Sud en Afrique - sans oublier l'Australie - on s'aperçoit qu'environ 40 pour cent de la population mondiale vit aujourd'hui dans un pays qui peut être considéré comme fédéraliste ou se réclame du fédéralisme. En outre, nombre de ces fédérations sont clairement multiculturelles, voire multinationales dans leur composition.

Il semble en effet qu'il se soit produit, au cours des dix dernières années, un véritable bourgeonnement international de l'intérêt pour le fédéralisme. Les leaders politiques, les intellectuels et même quelques journalistes en parlent de plus en plus comme d'une forme d'organisation saine, libératrice et positive. Des pays comme la Belgique, l'Espagne, l'Afrique du Sud, l'Italie et le Royaume-Uni paraissent ainsi se diriger vers des formes fédérales que l'on peut qualifier de novatrices. Dans de nombreux autres pays, le regain d'efficacité qu'on est en droit d'attendre de l'incorporation de certains éléments fédéraux, sans forcément adopter toutes les caractéristiques d'une fédération à part entière, suscite une certaine attention. De plus, l'Union européenne, avec l'arrivée de nouveaux Etats membres, semble avoir regagné un peu de l'élan perdu dans l'évolution de ses institutions hybrides, uniques dans la mesure où elles sont à la fois confédérales et fédérales.

À quoi peut-on attribuer ce regain d'intérêt pour le fédéralisme ? Un facteur essentiel a été la reconnaissance du fait que la globalisation de l'économie a déclenché des forces politiques et économiques centrifuges affaiblissant l'Etat-nation traditionnel et renforçant les pressions à la fois internationales et locales. Il en est résulté que les gouvernements nationaux sont de plus en plus souvent confrontés au désir de la population d'être considérée simultanément comme des consommateurs globaux et des citoyens auto-gouvernés locaux. Mais l'Etat-nation devient à la fois trop petit et trop grand pour répondre à ce besoin.

Cette évolution a nourri l'intérêt actuel pour le fédéralisme, non pas en tant qu'idéologie, mais en termes de questionnement pratique sur la façon d'organiser le partage et la distribution des forces politiques, d'une façon qui permette de répondre aux aspirations collectives des gens, tout en respectant la diversité de leurs situations et de leurs préférences.

Cet intérêt pour les systèmes politiques fédéraux diffère toutefois de la prolifération enthousiaste des fédérations dans les anciennes régions coloniales, durant la première décennie qui a suivi la Seconde guerre mondiale. L'expérience accumulée depuis lors a engendré une approche plus prudente et plus réaliste.

On peut en retirer trois importantes leçons. Premièrement, si les systèmes politiques fédéraux fournissent bel et bien un moyen pratique de combiner, par le biais d'institutions représentatives, les avantages de l'unité et de la diversité, quand on considère tous les maux politiques de l'humanité, ils ne sont pas la panacée. Deuxièmement, le degré auquel un système politique fédéral peut être efficace dépend de l'étendue avec laquelle la nécessité de respecter des normes et des structures constitutionnelles est acceptée, mais aussi de l'accent mis sur l'esprit de tolérance et de compromis. Troisièmement, son efficacité dépend également de la plus ou moins bonne adéquation avec laquelle les demandes et desiderata de la société concernée sont exprimés, en fonction de la forme ou de la variante particulière de système fédéral adopté ou élaboré.

Il n'y a pas une forme idéale de fédéralisme. La concrétisation de l'idée fédérale peut donner lieu à plusieurs variantes. Preuve en sont les différences existant, à l'intérieur des fédérations, dans les degrés de diversité culturelle ou nationale qu'elles tentent de concilier, le nombre et la taille des unités constituantes, la répartition des responsabilités législatives et administratives et des ressources financières entre les niveaux de gouvernement, le degré de centralisation ou de décentralisation et leur degré d'intégration économique, le caractère et la composition des institutions centrales, les processus des relations intergouvernementales, et dans les rôles réciproques des gouvernements fédéraux et constituants dans la conduite des relations internationales. Le fédéralisme ultime est une technique sage et pragmatique dont l'applicabilité, dans une situation donnée, peut dépendre de la forme spécifique dans laquelle elle est adoptée ou adaptée, voire du développement d'innovations dans son application.

Trois innovations récentes méritent d'ailleurs d'être évoquées ici. La première réside dans le caractère hybride de la structure institutionnelle de l'Union européenne résultant du Traité de Maastricht, qui combine de manière intéressante des caractéristiques confédérales et fédérales.

La deuxième est la tendance croissante des fédérations elles-mêmes à devenir des membres constituants de fédérations plus larges ou d'organisations supranationales. L'Allemagne a été un pionnier en la matière, ajustant ses relations fédérales internes à sa qualité de membre de l'Union européenne, mais il en a été de même en Belgique, en Espagne et en Autriche. Les trois pays membres de l'ALENA – le Canada, les Etats-Unis et le Mexique – sont tous des fédérations, une réalité qui a joué dans les relations intergouvernementales qu'ils entretiennent à l'intérieur de leurs frontières.

La troisième tendance novatrice contemporaine est l'acceptation de l'asymétrie, c'est-à-dire de différences dans la relation entre les unités membres particulières existant à l'intérieur d'une fédération ou d'une organisation supranationale, dans le but de faciliter l'intégration politique. On en trouve des exemples en Espagne, en Belgique, au Canada, en Malaisie et dans l'Union européenne.

À la lumière de ces exemples, l'analyse comparative des variations, des solutions et des innovations possibles à l'intérieur des fédérations, de même

que l'échange d'expériences entre les praticiens des différentes fédérations, apparaissent particulièrement intéressants aujourd'hui. L'étude de la pathologie des fédérations, confédérations et autres formes fédérales, afin d'identifier les circonstances susceptibles d'engendrer des difficultés, est tout aussi importante. L'examen de ces exemples, positifs aussi bien que négatifs, devrait contribuer à une compréhension plus réaliste de l'efficacité ou de l'inefficacité, réelle ou potentielle, des différentes sortes d'arrangements et de processus fédéraux.

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Federalism and Foreign Policy³

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1. Basic themes and guiding ideas

1.1. *The traditional notion of foreign policy*

For a long time, international relations were synonymous with relations between sovereign states with clearly defined national borders, where the nation state was 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, their immunity, and the prohibition of intervention (Thürer, 2001). For the state, the fact that sovereignty constituted its claim to power meant 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 and Albert, 1995). Hence, the first objective of foreign policy was to safeguard the independence of the nation state in its territorial integrity.

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Alfred Escher, the 19th century Zurich statesman, reduced the federalist conception of the Swiss Confederation to the succinct formula “external unity, internal diversity”, which makes the basic idea of the federalist state in the traditional world of states clear: To stand together against the world outside in a potentially threatening international environment while safeguarding diversity within the confederation, a diversity that refers to a certain measure of the constituent parts’ (member states) independence, and their specific diverse cultural and regional identities.

The need for a state to take 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. Moreover in all states, the conduct of foreign policy was considered the real and proper domain of the executive power, even in states with a parliamentary system of government, or where parliament was an independent power alongside the executive (as in the presidential system in the United States, for instance). After all, traditional international law held that only the executive power had the right to represent the state as a whole. As such, this comprehensive scope of jurisdiction far exceeded the formal power of representation (in terms of Art. 7 of the Vienna Convention of the International Law of Treaties), and ultimately included the fundamental power to shape the foreign policy of the state as a whole on all levels of state organization, in a binding manner.

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 international relations, by the changing nature of what constitutes statehood, and by the growing influence of non-governmental actors on international relations. The following sections will explore the developments bringing about this change, and the effects of reconfigurations of the international system.

1.2. The basic notion of federalism

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, and decision shaping and making of the federation. In the first instance, the constitution of the federal state shares out powers between the federal level of the confederation and its constituent states through a vertical separation of powers, allocating a considerable degree of freedom to member states to shape politics and policies. In a federal state, constituent states thus have autonomy that derives directly from its federal constitution. While different levels are related hierarchically with constituent 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.

However, the federalist idea is no longer confined to the constitution of federal states. It is increasingly coming into play in other forms of state organization, in the first instance in the form of decentralization of state power, (e.g. devolution in Great Britain). The principle of federalism is also gaining influence within international organizations, and even – in the social sphere – within transnational organizations. In this respect, the guiding tenet has been the principle of subsidiarity. That is, higher levels of the state become active only in those fields required by the interest of the state as a whole (in particular to create equal standards of living, to safeguard the state's legal and economic unity, for example Art. 72 Basic Law Germany), or if subordinate levels are overtaxed by political problems bound up with the performance of their duties. This principle defends the autonomy of sub-national levels against encroachments from above, by requiring the higher level to justify the use of its powers, or even its inclination to exercise them.

This paper maintains that a federalist order is always a *constituted order*. Federalist systems of political order thus neither mean simply that a multitude of *de facto* levels of jurisdiction exists, nor that the various bearers of power within a state are taken into account. Rather, federalist systems presuppose that an adequate foundation has been laid in a constitutional text, or in some other form of social consensus that has been accorded a similarly fundamental status. Different combinations of these forms are also conceivable, as is their supplementation with informal structures and procedures. The constitutional federal state meets this requirement in particular. However, the constitutional character of the federalist system gets watered down when transferred onto an international level. International or supra-national organizations may be said to take on a federalist shape when they display the basic elements of a federalist system, and wherever these elements have acquired sufficient legal firmness to amount to a quasi-constitutional order.

Besides the allocation of power to different levels, what federalism really means and where its significance lies, is its pursuit of a particular system 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, federalist systems 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.

Federalism often stimulates creative competition amongst a federation's constituent states. However, on balance federalist entities appear to be more complex than centralist ones. The long-term view among both political

scientists and politicians is that in principle a federal political system has a greater capacity for solving problems than its centralist counterpart.

1.3. The guiding idea of this concept paper

Federalism is not only an internal structural and organizational principle of the nation state; more and more it is also a notion with a growing formative influence in both international relations and international organizations. In the changing international system, as in any national framework, federalism embodies not only an ordering principle, but also a system of values, notably a demonstration of due and mutual respect for the "Other". Traditional foreign policy, which is to say the foreign relations between sovereign states, is being superseded by a structured system of international and transnational relations. In this system all levels of action undergo integration, from the communal to the supra-national, and a multitude of different actors participate, exercising influence and cooperating beyond national borders. This leads to a twofold process of change. Firstly, while nation states continue to play a central role in international relations, the previously frequently invoked unity of the nation state, in particular that of federal states, towards the world outside, is yielding to state power that is becoming more highly differentiated in its foreign relations. Today, we would actually have to adapt Escher's formula to speak of diversity within the state, as well as towards the world outside. In this way, the nation state is losing in part its monopolistic claim to representation in foreign policy making, being pushed – on the international level too – into acting as a mediator and an equalizer between the various levels of the state. Secondly, international organizations, and supra-national communities in particular, are themselves subject to increasing pressures of internal decentralization and federalization. They must learn to deal with the growing number of players within a state (and on a sub-national level) with all their different interests, to grant them space to fashion themselves, and to integrate them in their decision-making processes. In view of the growing significance of international relations, which withdraw power from the nation state and blend domestic with foreign policy, it is even more important in terms of achieving balance, that endeavors to advance federalism on an international level should pursue the same objectives as those sought thus far on the national level. That is to say, supra-national federalizing tendencies ought to safeguard the cultural diversity of national, regional and local identities, and promote political pluralism and all due regard for the Other. In addition, they should ensure a closer relationship with citizens through transparency in arriving at political decisions.

The dynamic process of federalizing state power in foreign relations depends to a large extent on a state's historical, cultural, economic and political conditions, takes different forms, and occurs on a different scale in different countries and regions. That is, it will not inevitably follow only one particular direction. While federalizing foreign relations means more autonomy for the sub-national entities in observing their own interests, it does not mean the dissolution of the nation state's power and recognition of the right of secession of particular ethnic groups. In this respect, the EU is without doubt an exemplary case with

regards to the integration of federal states and the creation of federal structures on a supra-national level.

2. Change in the international system

The past few years have seen strikingly large-scale changes in the international system. Constant change is not remarkable in itself, since a system of this kind is never static but in constant motion. Yet certain changes have occurred on a scale that has caused historians, political scientists, experts on international law, and economists to speak of a qualitative leap in the course of world history (Delbrück, 2001). In the first place comes globalization, that complex and controversial concept which succinctly sums up these radical changes. Further, the new penetration of state boundaries and the institutionalizing of international politics, account for the shift of structures and processes in both the global and regional frameworks. On the supra-national level, international organizations are advancing into ever-new fields of regulation, and are bringing more and more legal ruling into international relations. The development of the EU is both characteristic of, and decisive for, Europe in that it furthers a process of integration that makes for denser, more enmeshed systems of associations in which different levels of system (national, regional and local, but also supra-national) become interrelated.

2.1. Globalization

The processes encompassed under the concept of globalization, which serves now as their universal umbrella term, have fundamentally changed the framework of conditions for international activity. First and foremost, globalization is conceived as the interlinking of financial markets and national economies, as well as the process of their increasing integration worldwide. Globalization originated in the economic sphere, but has since expanded rapidly into other areas, such as advances in telecommunications or in the new technologies. It also encompasses a growing awareness of global issues, such as environmental protection or international security in the face of crime, terrorism and war. Further, globalization means a certain tendency towards an approximation of societal and community ways of life, identity and culture beyond national borders. In this respect, the change in everyday life all over the world is probably the most revolutionary and most sustained effect of globalization (Giddens, 2001). In general, we can assume that cross-border interactions are both increasing and intensifying, a factor which links national societies more strongly, and demands new measures for controlling and guiding politics beyond nation-state regulations and settlements.

Globalization changes the very perception of political processes. The growing sense that meeting opportunities and solving problems are now global issues, leads to the realization that a state-centered view is no longer adequate for coping with the tasks that present themselves.

The increase in the number of actors shaping international relations is characteristic of the changes brought about by globalization. Within the scope of the nation state, for instance, constituent member states or parliaments are demanding more opportunities to participate. In addition to nation states, represented by their respective governments, a number of other players have made their appearance on the international stage: international or even supra-national organizations, less institutionalized forms of cooperation, such as international regimes, multinational corporations, or interest groups and newer social movements in the shape of so-called non-governmental organizations. It is precisely such "transnational politics" (Karl Kaiser, 1969), or cross-border politics of social and non-governmental organizations, that are taking on an increasingly important role in international relations. The conventional diplomacy of the nation state is made relative, and changes against the background of these developments. As an element of the "technological revolution", the new modes of communication in particular (internet, mobile telephones, etc.), make it easier to establish contacts across national boundaries. "Global Networking" has thus become possible for many players and is no longer reserved for the nation state and its diplomatic apparatus. Many sub-national entities establish direct contacts in the most diverse areas with foreign partner organizations.

This turn away from a state-centered perspective opens up possibilities for the expansion of the levels of action. Kohler-Koch's thesis of "Regieren in entgrenzten Räumen" (Kohler-Koch, 1998) calls into question the territorial state as a universal yardstick, and also refers to how necessary and beneficial it is to consider the emergence of radically new political areas ("neue politische Räume"), their structures, and how decision-making processes take place within them. These areas include supra-national levels (both global and different regional ones, depending on the particular part of the world), as well as sub-national levels (regional and communal).

2.2. The process of "the penetration of boundaries" (Entgrenzung) and interdependence

To date, the international system has constituted itself in terms of states whose territories are clearly demarcated. Changes in the characteristic association between the nation state and its territory point to a fundamental change in international relations. This change can be analyzed as a process of boundary penetration (Brock and Albert, 1995). National borders are becoming more permeable, and states are less and less able to defend themselves against this development by taking measures to insulate themselves. In addition, a growing interdependence enhances the process of boundary penetration, and ultimately leads to states taking measures to isolate themselves, which appear to be dysfunctional and hence fail to be meaningful any longer.

While the unified and clearly defined nation state comprising a fixed territory is not about to dissolve, it is nonetheless losing its function as the unique or uncontested frame of reference in both its regulation of the domestic sphere,

and its participation in the international arena. The hierarchy of legal systems that has been ensured by the territorial structuring of national units (from the municipality to the supra-national level) is called into question by the overlapping of borders. The principle of clearly defined borders (Bussjäger, 2000: Prinzip des Nicht-Schneidens von Grenzen”) is violated by flexible borders, such as those that the EU has drawn with reference to regional subsidies, which eclipse traditional national borders. The process of boundary penetration thus means that new domains emerge which do not coincide with the traditional borders that have developed over the course of history. This incongruence of political, economic, cultural and social habitats is a central factor in the radical change in the conventional form of the international system as a world of states. Moreover, these new conditions make it necessary for states to adapt themselves to an ever-increasing interdependence, which confers a particular dynamic on international relations.

2.3. Institutionalizing international politics

2.3.1. International institutions

Institutionalized forms of international cooperation had already begun to develop towards the end of the 19th century. Only since the end of the Second World War has it been commonly accepted that global problem scenarios require a systematic coordination of policies and appropriately adjusted institutions on a global level. Today, hardly any areas of politics and policy making remain undiscussed in some shape or form on an international level. Many problems are treated, in an institutionalized and very systematic form, within institutional forums set up specifically to that end. Thus, Keohane observes: “*To analyze world politics in the 1990s is to discuss international institutions*” (Keohane, 1998). The need for regulation and monitoring that is bound up with the process of globalization has only reinforced the impression of the “complex interdependence”, observed in the 1970s by Keohane and Nye (1977). International institutions appear in various forms, and differ essentially with regard to their political sphere and their legal form (i.e. their degree of institutionalization). In the context of this paper, it is important to realize that they have become the most important players in international politics, alongside the nation states. However, international institutions do not necessarily compete with nation states. Rather, they provide the states (which establish such institutions as a rule) with new and different possibilities for reaching their objectives and interests in a cooperative manner if and when they are unable to do so on their own, as is increasingly the case.

2.3.2. Regional integration

The attempts of states to meet global challenges by institutionalizing supra-national forms of regulation and monitoring are not confined to the global level, but have led to many regional communities and organizations with

corresponding institutions. This development is particularly apparent in Europe. The process of European integration has strongly determined the order of Europe, beginning with Western Europe in the second half of the 20th century. Today, the preliminary outcome of this integrative process, the EU, presents itself as an entity that has extended its jurisdiction and sphere of co-responsibility to virtually all areas of politics and policy making. In the meantime, the EU also embraces all areas of foreign and security policy, including its military components, and, most recently, defense policy. As a result of increasing global interdependence, it is also becoming apparent that many other policy fields that have been "Europeanized" have an international dimension, such as agricultural policy, environmental policy, or policies for regulating competition, so that third-party countries perceive the EU as an independent player in international politics. The expansion of the EU's jurisdiction and sphere of co-responsibility, have gone hand in hand with an increasing differentiation of the EU decision-making process (involving a multitude of institutions, procedures and players), which underlines the organization's ongoing dynamics of integration.

3. The changing nature of the state and of statehood

Like the international environment, the state (understood as that which has hitherto defined statehood) is about to undergo radical change. As discussed above, today's nation states are *"integrated in an ever-increasingly ramified and denser network of transnational and inner-societal dependencies and relations of negotiation"* (Scharpf, 1991).

Traditionally, the state has been defined by three elements: its people, its territory and its state 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 their power (i.e. their sovereignty) with others within the scope of international organizations, although more so within the scope of regional communities. This is known as "pooling of sovereignties". The notion of a fixed state territory is called into question by changes in the territorial structures of the nation state, especially as a result of process of boundary penetration. The international integration of the state, and the Europeanization of the EU member states in particular, are additional factors that call into question the traditional notion of the state. Governments are hardly able to offset the resulting loss of their powers of regulation and monitoring, precisely because, together with the demand for more democracy in (foreign) policy matters, more players are staking claims to participation and co-determination. Even though the developments outlined in the following certainly apply in their tendency, they should not be considered inevitable. In political and economic emergencies for instance, counter-movements that guide development towards strengthening the power of the nation state still remain conceivable.

3.1. Changes in the territorial structures of the nation state

In Europe, as well as in other parts of the world, tendencies towards decentralization and regionalization can be discerned very clearly as responses to state centralism. There are various reasons for the critique of centralization, and for the demands that sub-national units be revalued. First of all, the inefficiency of centralist solutions is lamented, since problems are often identified too late, and the solutions chosen are unable to do justice to the particularities of individual regions. Further, a perceived lack of legitimacy follows from a lack of consideration for historical, ethnic and cultural circumstances. Within the scope of the EU, it is also argued that an internal market leads to competition between locations, demonstrating that sub-national units require more powers and spheres of autonomous action.

The increasing integration of nation states on an international level has led within nation states, through a parallel process as it were, to a kind of disintegration of political structures and forces, and thus to a relativizing of the centralized state's monopoly of foreign policy (Malinverni, 1998). The trend towards strengthening sub-national units (regions and municipalities) is not limited to former centralized states, but is also discernible in federal states. Federalism, sub-national regionalism, or decentralization bring about even more boundary penetration, since constituent states or regions are entering more and more frequently into relations with neighboring foreign member states or regions (Bussjäger, 2000). Decentralization, regionalization, and similar processes reaching all the way to federalization, thus enhance the value of sub-national levels and turn these territorial units, which differ considerably in their legal status and political quality, into "participants in state power also in the sphere of foreign policy" (Aldecoa/Keating, 1999) and into players in the political process on national, international and supra-national levels.

3.2. External dimensions of domestic policy

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. Obviously, international influence on the shape of national politics does not have the same weight everywhere. Whereas it is simply no longer possible to take economic or transport policy decisions without taking international framework conditions into account, states continue to have considerable independent authority to take decisions in education or public health, for instance. However, at the same time, these rather more domestic areas of politics and policy making are being influenced more strongly by international developments. 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.

For the state, this means a clear-cut loss of influence on the shaping of politics. The decisions of the individual state are subject to numerous constraining framework conditions, which lie beyond its immediate influence. The situation is just as demanding for sub-national levels, in particular for the constituent states of a federation. While they continue to be responsible for an area of jurisdiction in accordance with the allocation of powers within the domestic sphere, certain international standards strongly curtail their freedom of action. As a rule, constituent states have only very limited possibilities to intervene in the fashioning of aims on an international level. Yet because they are strongly affected by corresponding developments, they attempt to find possibilities for intervention and for exercising a right of co-determination.

In summary, it can be said that the nation state is integrated in a network of international relations (Tomuschat, 1978: "Geflecht internationaler Beziehungen") that renders a division between domestic and foreign impossible, and makes it increasingly difficult for nation states to be able to undertake an autonomous shaping of all policy areas.

3.3. International integration of the nation state

As discussed above in the section on the institutionalization of international politics, states are integrated into an enormous number of regulatory and monitoring systems on both the global and regional levels. In this way, the state becomes part of a multi-level system extending to the global level, through both regions and the international plane. For the state, global interdependence (i.e. the mutual dependence of states on each other in the international system) does in fact mean a certain restriction of its freedom to act, but in turn it also offers opportunities to participate in this complex new environment. To begin with, nation states establish international institutions that compensate for their loss of autonomy by effectively bringing their respective objectives and interests onto international levels of action. Thus, the loss of independent shaping power is partially offset by membership of global institutions (UN-System, WTO, various international regimes, etc.), as well as by attempts to seek integration on a regional scale (EU, NAFTA, Mercosur, etc.).

In Europe, it is membership of the EU that opens up new possibilities of co-participation and influence for nation states. The erosion of traditional statehood is being accelerated and even reinforced by the European process of integration, which various commentators characterize either as a division of sovereignties, or a so-called pooling of sovereignties.

European integration, the objective of which is the increasingly closer union of the peoples of Europe (Art. 4 Para. 2 EUT), also has far-reaching consequences for the shaping of politics and for the institutional structures of member states in the EU. The keyword, "Europeanization", refers to the adjustment of all aspects of politics within EU member states to the EU and its own particular features, from institutions (polity) to the creation of political intent (politics) to

areas of policy making (policies) (Sturm/Pehle, 2001). This does not mean that national political systems are relieved of all functions or replaced by a European political system. Rather, Europeanization links nation states and the EU as levels, by means of increasingly stronger bracketing and integration. Hence, Europeanization means very close links between the national and the community level. Some speak of (political) entanglement and the emergence of a large new system of interconnections and associations. In a system of this kind, a nation state is no longer able to shape its politics and policies autonomously. Nonetheless, the EU explicitly professes to respect the identities and shared traditions of its constituent (member) states and their constitutions.

3.4. Demands for participation by additional governmental and non-governmental players

The process of globalization in the international system typically increases the number of players who want to participate in shaping international politics. On the national scale too, more and more players are entering the political process. In general, the demands for more democracy and enhanced participation apply to all areas of politics, including foreign policy. In the traditional conception of national foreign policy, such policy was the undisputed province of the executive power. With the demands of various players for more opportunities for co-participation in foreign policy, this view has become increasingly weaker. Today, more societal, or non-governmental players, such as interest groups, parties, NGOs, MNCs etc., are engaging in foreign policy and international politics as national and transnational players, thereby changing the structure of decision-making systems, and the course of decision-making processes. International associations of parties with similar basic agendas, international labor unions or international NGO networks are all cases in point. The demands for co-participation by these non-governmental players, who are organizing themselves on a transnational scale in order to have greater impact, have made an essential contribution to the changing nature of foreign policy and international politics.

Today, national parliaments are also trying to exert more influence on foreign policy decision-making processes in order to lend them greater democratic legitimacy. The constituent states are also countering their loss of influence through the internationalization of politics, by laying claim to more co-participation in the federal state, as well as by establishing and shaping independent foreign relations of their own accord.

4. New structures and forms of governance

What are the conclusions one should draw from these developments, and what consequences can we expect for the federal state, the regional-constituent state level, and the emerging federal structures of the international system?

4.1. A multi-level system

Most fundamentally, we observe the emergence of a multi-level system in which the different levels of political action (global, regional, national, and sub-national) are in close cooperation. We believe that under these changed circumstances, the use of the principle of federalism is a very effective way to contain the proliferating trends of globalization and regional differentiation, while maintaining effective forms for the exercise of government.

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 (Bell, 1973; Watts, 1999). 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 (Linder, 1999). Yet the nation state is also too large to comply with the wish of many citizens to develop an independent identity within their community. 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. Cooperation between all levels of the emerging multi-level system is central, including the inclusion of the various governmental, and the many non-governmental players in politics, business and society. The development of a large variety of networks in many different areas of politics, but also the networking of similar institutions from different states (constituent states, parliaments, courts), point to the enormous importance of transnational cooperation for achieving political objectives, and for the effective guidance of political processes in the age of globalization.

Many of the tried and tested structures and procedures for guiding political processes are no longer able to meet the new demands, or have become inadequate. Today, politics takes place on various levels, in a "five-story house" (Cottier/Germann, 2001) so to speak, which comprises the various constitutional tiers: the communal, inner-state-regional, nation-state, international-regional and global levels. In its vertical configuration, this multi-tiered structure bears a certain resemblance to the federalist principle of organization. But here superiority and subordination are not meant to be seen in the typically hierarchical way, but rather as an interconnection of politics on different levels, which forms a new polyarchic structure with dynamic centers of action.

This differentiation of many levels of the exercise of power leads to the application of the principle of subsidiarity. With this principle, federalism proposes to contain the proliferating developments of globalization and regional differentiation, while maintaining effective forms for the exercise of government (Sidjanski, 2000). This differentiation of levels of action through subsidiarity leads to distributions of power that are very closely in line with the idea of federalism, and thus to the safeguarding of basic values, such as democracy, cultural pluralism and human rights.

However, a word of caution against exaggerated expectations from the principle of subsidiarity is very much in order. It is legally almost intangible and virtually unmanageable (i.e. no corresponding decisions of the European Court of Justice are yet to hand); rather, it is to be understood as a guiding political idea or principle of planning.

These findings have consequences for the federally organized state. Changes on the international level bring into sway the delicate balance between the federal level of the state and its constituent members. The institutionalizing of international politics shifts the *de facto* centers of decision making from the carefully attuned (federal) state framework, to organizations acting in much wider spheres that are hardly able to take regional particularities into account, and which actually tend towards centralist solutions. Constituent states therefore attempt to influence foreign policy in order to influence international decisions that concern them directly. The basic principle mentioned at the beginning, unity towards the outside world, diversity within, only approximately captures the reality of the foreign relations of federal states: in reality diversity exists not only within but also moves out towards the rest of the world.

On all levels mentioned, altered systems of order, together with new integrative systems, are needed to cope with changed requirements. The objective is to establish capabilities for movement and monitoring among the numerous players intent on bringing their interests and values to the shaping of foreign policy. In essence, it is a matter of integrating state power, the boundaries of which have been dissolved into new structures and forms of governance that are still capable of taking action. Ultimately, an order conceived in this way can function effectively on an international level and be recognized as legitimately democratic, only if it is constituted in a certain way, or has a quasi-constitutional character at least in its basic outline, one that lends itself more and more strongly to an intensifying process of constitutionalization.

4.2. Consequences of change for the federal state

Changes and developments on the international as well as the state level have important consequences for the federal state. Firstly, the institutionalizing of international politics shifts the centers of decision making from the federal state framework into organizations acting in much wider spheres. The nation state thus cedes parts of its legislative and executive powers especially to the supra-national level. Secondly, constituent states attempt to influence national foreign policy in order to influence international decision making. At the same time, they demand that the nation state takes their interests into close consideration.

Nevertheless, it is crucial to recognize that the nation state at present remains the principal foreign policy player, the most important guarantor of human rights, and the sustainer of the constitutional state and a basic democratic order. The basic legitimation for political action still emerges from the nation state.

However, in view of diverse foreign and domestic developments, the state has become an “intermediary community” (Thürer, 1998). This overarching process casts it in a double role: the state is obliged to live according to, represent and promote the same basic values both in the domestic sphere and towards the outside world. On the strength of its constitution, the state is thus obliged to safeguard and enhance the law, democracy, prosperity and basic life resources of its citizens, and support a peaceful, democratic, equitable and environmentally friendly order on the international level. Today, the nation state is able to enjoy self-determination only by safeguarding both national interests and acknowledging its responsibility towards the international community of states. It is evident, however, that a state’s foreign policy depends essentially on how it is constituted within itself. States with a federal organization are also required to consider their constituent states’ interests and sensibilities in conducting their foreign relations. This close tie is strengthened even further by sub-national entities participating in a country’s foreign policy.

The allocation of legislative powers to supra-national levels, in particular to supra-national institutions, presupposes that sub-national units within nation states are put increasingly in charge of the application and enforcement of supreme law. This function, very often linked with considerable scope for discretion, is becoming increasingly political with regard to the recognition and legitimation of the international law that must be brought to bear. Whereas this phenomenon has so far had meaning only in inner-state relations, such as between constituent states and the federation, the political potential of this mandate to effect the application and enforcement of law is now also becoming apparent on supra-national levels. The necessity for a “cooperative federalism”, in which the different levels recognize each other as equivalent and take each other into account, becomes evident.

In traditional relations between the different levels, the subordinate level enjoyed certain powers of regulation granted by the constitution (self-determinate federalism); it was fitting, however, that the superior level enjoyed the privilege of legal precedence, at least insofar as it made use of its powers (in terms of a system of competing powers and the power of the central level). The lower levels were thus fully integrated with the higher ones. Today, important changes in this interaction, that is in the change from a dual to a cooperative federalism (Malinverni, 1998), result from the fact that the new habitats and domains of activity no longer coincide with traditional state structures. The higher level still takes precedence, but is obliged to take the actual interests of the lower state levels into greater consideration, and to pay heed to other emergent situations. A case in point rises from Articles 54 and 55 of the Swiss Federal Constitution, in accordance with which “the Rights of the Cantons shall be safeguarded and their interests taken into account” in determining the federal state’s foreign policy (similarly for Germany, see Article 23 Basic Law; Austria, see Article 23d Basic Law; and Belgium, see Article 143/167 of the Federal Constitution).

In this way, the nation state cedes part of its legislative powers to the supra-national level, while at the same time it is more obliged to take the interests of

its member states into consideration. It thus appears that the nation state has certainly lost influence. However, it would be incorrect to assume that the nation state is really being crushed between the advancing supra- and sub-national levels. Without doubt, nation states will remain the centers of (as well as the sources which legitimate) political power in the future (Cottier/Germann, 2001). Essentially, the role of nation states will depend on the form taken by lower and higher levels, and on which powers will be allocated to them. The nation state's task will increasingly be that of an intermediary, coordinating, equalizing and mediating between the different levels (Saladin, 1995). It will participate in negotiations between these levels, take on the moderator's role, and enhance its exoneration from certain duties by non-governmental organizations and other players.

4.3. Consequences of change for the regional-constituent state level

The changes we have noticed are also exerting a strong influence on sub-national levels of the constituent states and municipalities. As discussed above, the various processes that are bound up with globalization are also triggering countertrends. Many people are orienting themselves towards smaller frames of reference (Norris, 2001) in order to meet their need for security and identity in a rapidly changing environment. In many states, processes of decentralization, regionalization and federalization taking this concern into account can be observed. Territorial division need not be conceived as static. New habitats are emerging all the time with the growth of large cities and conurbations, or through growing cross-border relations between constituent states. The new habitats are laying claims to political recognition and acceptance, and are thus becoming another decision-making center in the new polyarchic system of national and international decision making.

The sub-national levels of this system are seeking to respond to their loss of ability to shape events (brought about by politics becoming more international), and the resulting shift of decision making away from the nation state onto the international level. In essence, three developments are shaping the regional-constituent state level.

First, the constituent states are trying to make use of their own proper sphere, in which they are autonomous, both beyond their borders and on an international level. Hence, they are fostering a variety of contacts with constituent states and regions abroad, usually their neighboring countries. Without doubt, these foreign relations offer an attractive instrument to sub-national levels for safeguarding their interests in several different areas of politics (Duchacek, 1990). This also applies, in a similar form, to where larger cities in particular establish relations with other cities and regions abroad.

Secondly, constituent states are increasingly asserting their rights to participate in the foreign policy decision-making process of the federal state. Since the nation state continues to be the most important player in foreign policy, for constituent states autonomous foreign relations can be seen more as a

complement to, rather than a substitute for, active participation in the decision-making processes of the federal state. It is only by making use of their inner-state rights of participation that constituent states can bring their interests to bear effectively.

Thirdly, constituent states are anxious to obtain and preserve as much freedom to shape their affairs as possible with regard to the implementation and enforcement of international law, a function that is becoming increasingly political in its significance. Only in this way can they avoid being degraded to mere executive authorities within the mandate to implement and carry out international law. In order to counteract this danger, and to offset losing their powers on a national level, constituent states are most interested in the federalization of international organizations, so that they can participate independently in the international decision-making process, and become directly involved in the development of international law (which would comprise the federalization of participation on an international level as well).

4.4. Federal structure of an international system

As shown above, in a world of permeable state boundaries, nation states and member states are currently adjusting their structures and character of governance to the altering overriding conditions. Likewise, a look at the supra-national levels reveals the need for more effective forms of governance. It should be borne in mind that on an international level too, a system can only be effective and recognized as democratically legitimate if its main features bear at the very least a quasi-constitutional character. The protection of common interests among different nations, and the safeguarding of human rights, democracy and the maintenance of the rule of law on an international level, demand fundamental agreement on the most essential questions among the parties involved. Moreover, societies' need for integration while safeguarding their respective cultural identities, and their desire for an international division of power, show how relevant the federalist idea is to the task of constituting an international system that is at once efficient and able to safeguard basic values.

Given the depth of integration possible among all comparable endeavors on a regional level, discussion of federalization on supra-national levels centers first of all on the future design of the EU. In this respect, the structure of the EU embodies the tensions and integrations among the different territorial levels mentioned (i.e. all levels from the member states to the regions, and from the constituent states to the communal level). Thus, the EU is the only international (supra-national) organization that has, or even shows the first signs of having, its own federal structures. At any rate, it has strengthened its federal character more and more in the past few years, and there is a strong tendency towards recognizing that a democratic Europe can be achieved only as a federal association of states. It stands to reason that this issue lies at the heart of the debate on the possible creation of a European constitution. However, there is considerable disagreement with regard to the specific design of such a constitution.

Without a doubt, several factors favor an interpretation of the EU as an entity organized along federal lines.

- The EU has a jurisdictional system. Although many consider this to be insufficiently clear and to need greater precision, it does make distinctions between the powers of the Union and those of the member states; it also recognizes competing forms of jurisdiction.
- The allocation of legislative powers on the community level corresponds with the obligation to enforce and implement these decisions on the level of the constituent states (the regions and constituent states within the federation).
- The decision-making system and the rules of procedure are shaped by the cooperation of the institutions of the Union and its member states.

Further evidence for the existence of federalist structures includes among other things the common budget with its redistribution effects recalling the mechanisms of fiscal adjustment in a federal system. It also includes the debate on the principle of subsidiarity in the EU, which the 1992 Maastricht Treaty embodied explicitly in the Community Law (Article 5 EEC), and which was supplemented by the protocols of the 1997 Amsterdam Treaty. The principle of subsidiarity is a further strong indication of the significance of federalism for the Union. Necessarily, this also includes the member states' corresponding rights of participation, in particular of the constituent states, regions and municipalities. Only these arrangements make possible forms of governance that are both efficient and accessible to citizens.

As well as this anchoring of the principle of subsidiarity, the establishment of a Committee of the Regions took another step in this direction within the scope of the EU that found its way into the Community System with the Maastricht Treaty (Article 263-265 EEC). During the past few years, the Committee of the Regions has endeavored to consolidate and extend its position within the institutional system of the EU, as well as to increase its muscle with the Council and Commission. However, there is still a large gulf between the objective envisaged and the Committee's actual political weight (Hrbek, 2000).

There are clear indications that regions and constituent states not only in Europe, but also in North America, are expanding their foreign policy activities not only within the scope of international organizations, such as the North American Free Trade Agreement, but also in other forms of cooperation (Brock/Albert, 1995). The establishment of cross-border institutions and the resulting new patterns of communication indicate that it is extremely viable for sub-national levels to build up their own foreign relations, and that as shown above, this usefully complements their inner-state participation in the decision-making processes of the federation.

Without a doubt, the federalist principle can be said to have a promising future on a national as well as an international level. It remains suitable as a concept for organizing and shaping nation states, as well as for creating new systems of organization and the resulting governance on an international level. However, one cannot overlook the fact that the basic values inherent in the principle of federalism – precisely as regards the shaping of international relations – may clash with other basic values to which the international community is equally committed, such as the universal protection of human rights. Conflicts can also arise between the overriding demands on the power of international institutions to act, and the precept to safeguard the identity of regions and constituent member states. Hence, it must be the role of a constituted international system shaped by federalism to create genuine possibilities for representative bodies (acting in the interests of constituent states and regions), while making provisions for effective decision-making mechanisms that integrate these bodies in the overall objectives of the respective international or supra-national organizations.

5. Subthemes of the Leading House I⁴

Within the scope of the main topic of the Leading House I, the following four important aspects will be discussed in more detail:

1. The Foreign Policy of Sub-national Units
2. Participation of Sub-national Units in the Foreign Policy of the Federation
3. Implementation of International and Supra-national Law by Sub-national Units
4. Foreign Policy and the Federal Structures of International and Supra-national Organizations

The first subtheme (*The Foreign Policy of Sub-national Units*) deals with the foreign policy activities of the sub-national level of the federation. The main emphasis is on the possibilities and limits of arranging and diversifying the power of the state towards the world outside. In essence, this covers two manifestations of this so-called constituent diplomacy (“*kleine Aussenpolitik*”). On the one hand, there is cross-border regional cooperation on a communal, regional and member state level, which takes place primarily on the contractual level between sub-national units of different states. On the other hand, there are the many other more political possibilities, usually non-contractual in kind, such as unilateral sanctions or foreign policy acts of legislation, that these sub-national units have in order to conduct foreign relations beyond regional cooperation in a well-directed manner.

⁴ Each of the three themes of the International Conference on Federalism 2002 was academically prepared by a so-called Leading Houses (internationally composed group of academics). In addition to the coordinators of the Leading Houses (the authors of the present articles), the Leading Houses also included authors who contributed articles on the subthemes discussed during the conference worksessions. Each theme was divided into four subthemes. The subtheme papers are going to be published together with the conference proceedings in spring 2003 (cf. Editorial).

The second subtheme (*Participation of Sub-national Units in the Foreign Policy of the Federation*) inquires into the different possibilities for participation as regards determining foreign policy through the federalist organization of the state. There are various models, ranging from that of federal participation within the scope of the constitutional organs of the Federal Government (“Model of the ‘Bundesrat’ in Germany”), through the cooperation of regional and federal organs (Belgium), to the member states creating their own institutions on a contractual basis in order to safeguard common interests (KdK-Model in Switzerland; KdK: Konferenz der Kantonsregierungen (conference of the cantonal governments)).

The third subtheme (*Implementation of International and Supra-national Law by Sub-national Units*) concerns the various systems, forms and means through which member states can implement community norms, in particular those pertaining to international law (and the consequences of non- or delayed enforcement).

While the first three subthemes inquire into the consequences of a state’s organization as a federation for its foreign policy, the fourth (*Foreign Policy and Federal Structures of International and Supra-national Organizations*) considers the federalization of international systems of regulation, essentially of the EU, and possibly of the North American Free Trade Agreement. By analogy it inquires into the consequences of federal structure for inter- and supra-national organizations’ foreign policy. On the one hand, the possibilities of giving a federal shape to the structures of supra-national organizations are raised for discussion (with specific reference to the current debate on a “European constitution”); on the other, attention is given to the significance of, relationship with, and area of conflict between the foreign policy of supra-national communities and the still-existing foreign policy of member states.

These four subthemes, which are ultimately intrinsically connected, can be considered from two different points of view:

- First, the aspect of sovereignty among nation states being made relative (i.e. how they conduct foreign policy in relation to the outside world) (see subthemes 1 and 4), and with regard to the domestic sphere how they shape foreign political will and enforce international law. (see subthemes 2 and 3)
- Secondly, the perspective of continuous and dynamic growth (from the small to the large) and change in the federalist system within the scope of foreign policy, which reaches as far as the emergence of an altered international system with new federalist “macro-structures” on international and supra-national levels.

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Federalism, Decentralization and Conflict Management in Multicultural Societies

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1. Introduction

Almost 95% of people in the world today live in multicultural states, fragmented into different cultural communities. 40% of these people live in federal states. The others are in unitary states, with greater or lesser degrees of decentralization. Multiculturalism has become a challenge for most states in our world with divided and fragmented societies. Particularly after the fall of the Berlin Wall they have to cope with problems and conflicts that were formerly overshadowed by the potential for conflict between capitalism and communism, which split mankind into two worlds. In a “glocalized” international order, the question that now confronts many states is how best to bring together and to hold together multicultural societies.

Until recently, questions of public power focused on good governance. In constituting a state, the principal questions were how people should be governed and how governments should be organized. Now, additional and much more controversial issues need to be determined. Who should govern whom? What majority or majorities should rule over what minorities? Who should control the political power of the state, and with regard to whom? Underlying these issues is another, more fundamental and difficult still: Who should decide the procedure by which it is settled who should govern whom?

Federalism is an approach to government that divides public powers not only horizontally, but also vertically. Federalism is traditionally considered to be a

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useful way of limiting governmental power. Thus it has been viewed as one particular solution to the organization of power in order to secure good governance. However, at the same time, it has also been criticized as detracting from efficiency and equality.

We understand federalism as a constitutionally established balance between self-rule and shared-rule. Viewed in this light, federalism offers an additional answer to the burning question of what can be done to bring or to hold multicultural societies together. Not only does it provide a solution to the traditional questions of governance, but it also assists with the problem of who should govern whom. Thus federalism is one of the main options to be taken into account in determining systems of government for multicultural societies.

2. Why is multiculturalism a problem?

2.1. Culture and equality

Most modern concepts of the state are based on the idea of a secular state based on a social contract of the people. Political power draws its legitimacy from the sovereignty of the people. Popular sovereignty is rooted in the liberal concept of universal *Homo sapiens*, distinguished from other species by a capacity to reason.

Different political theories view man variously as:

- egocentric (Hobbes),
- bearers of inalienable rights (Locke),
- rational citizens (Rousseau's "*Citoyen*"),
- exploiters or exploited (Marx),
- *homo politicus*: made for the political community (Aristotle, Thomas Aquinas),
- *homo oeconomicus*: driven by economic concerns (Adams Smith, Rawls).
- All of them, however, rest on the assumption that human beings essentially are equal. This also is the assumption on which the secularized democratic state now is based.

Acceptance of the equality of all people on the basis of a common humanity is in tension with acceptance of the diversity of individuals or communities by reference to culture, tradition or language. Given the equality of individuals, there is an obvious threshold question about the basis upon which certain people come together in a political community, excluding others. In a multicultural context, the question becomes even more difficult. On what basis is it legitimate for the will of a majority to override that of a minority, even where the minority is convinced that its essential cultural interests are threatened? On the basis of what criteria does a political unit include particular communities within the state, and fail or decline to include others? By way of example, why did the international community celebrate the unification of East

and West Germany after the fall of the Berlin Wall but forbid the unification of Germany and Austria after World War I?

2.2. *Diversity and the nation concept*

Today the peoples of the world are organized in “states”. The people from whom each state draws its legitimacy are often referred to as a “nation”. Citizens, as rational beings, are deemed to have come together in a social contract. At least three different approaches can be detected to the way in which nationhood is conceived and the values on which the state consequently is based. All of them are hostile to multiculturalism and diversity.

- Nation made by the Constitution. In some cases the nation is made by the state. Such a nation excludes diversity by reducing humans to the rational “citoyen”. The state is held together by universal political values; for example, the republican values proclaimed by the constitutions of France or Turkey. All individuals can join it, notwithstanding their cultural background. However as soon as any group seeks to introduce cultural values into the political debate, the very basis of the political unity of the nation is threatened. The underlying rationale of such states requires them to deny the political relevance of culture.
- State made by the nation. In a second category, the state is made by a nation, which claims pre-state unity based on culture, history or religion. A state made by pre-constitutional cultural unity, must exclude diversity, because it endangers the very roots of the mono-cultural people’s sovereignty. If people are held together by culture, multiculturalism becomes a real threat of the unity of the nation. Germany is an example as can be seen in the preamble to the German Constitution: “the German People have adopted, by virtue of their constituent power, this Constitution”.
- Immigration countries. Finally, some states comprise peoples who have come together and are held together for social and economic reasons. Typically, these are the countries in the so-called “new world”, formed by successive waves of immigration. They are constituted by reference to the peoples within their territory: “We the people of the United States”, for example. Such states must ignore different cultures (including, problematically, the culture of their indigenous people) as political values. Economy has priority over culture. Culture is expected to integrate into the melting pot of society, driven by concern for common welfare.

From this analysis, it can be seen that states are either held together by one homogenous culture, which excludes other cultures, or by acceptance of one homogenous set of political or economic values, which exclude culture as a political consideration. In either case, diversity becomes a threat to the nation concept.

These days, almost all constitutions proclaim universal values. Underlying them, however, are varying conceptions of nationhood, all of which exclude multicultural diversity. Either they ignore it, deny it, or eliminate it. Constitutions have become instruments proclaiming political values for all individuals equally. A nation, on the other hand, separates its community from other nations by reference to its specific nation concept. Constitution makers have to confirm, provide and proclaim within the constitution, values that are good for all and in that sense universal. What is good for all excludes diversity. Values that are good for all are also good for us.

Those who establish a constitution for a pre-political cultural nation do not have to ask what can hold society together, because it is held together by nature. Thus they also proclaim universal values within their constitutions, knowing that the nation is not in fact held together by these values but by the uniting factor of nature.

2.3. Taking cultural diversity seriously

It has been seen that none of the principal state and nation concepts take cultural diversity seriously. Culture is either denied or ignored, or is so central to the nation that all other cultures are excluded. The multicultural nature of the state is not a significant factor in constituting the political order. To a degree, of course, the different nation concepts contradict each other. The important point for present purposes, however, is that none of them readily accommodates different cultures within their concept of political unity.

If a nation is held together by political values, it can incorporate other cultures as long as no political recognition is claimed for them. The multicultural nature of the state is ignored as a structural factor that might serve to unite or decentralize the political society. For this reason a political nation denies culture as a nation-building factor. The nation can exist only on the basis of the equality of individuals. This implies that individuals are conceived as rational human beings who ignore their cultural roots. Nations that deny culture thus assume rational citizens, who may not pursue their cultural identity as part of the political identity of the state. On this basis, a secularized school forbids young Muslim girls to wear veils. All rational *citoyens* are equal with regard to each other. Their cultural identity is of no political value.

If the unity of a polity is focused on the territory, as in immigration countries ("we the people of the United States"), culture or history are considered as irrelevant as nation-building factors. Here too, culture may be considered a threat to the state, but in this case it is likely to be ignored. The basis on which immigration nations are typically established assumes the need to separate political unity from cultural unities, including the culture of any indigenous peoples. Immigrants belonging to different cultures can identify with the political state, because it has given them a new spiritual, cultural and economic freedom. However, should they seek political recognition for their culture (e.g.

recognition of their language in schools), their claim is likely to be rejected as leading to political fragmentation.

An immigration state can accommodate the different cultures of its immigrant citizens on the basis of private pluralism, but not as political instruments that fragment the unity of the state. This solution is possible only if cultural communities can accept the rationale for the political legitimacy of the state, and if they can be accommodated within the melting pot. Cultures that consider themselves excluded, and in particular those that previously inhabited the territory, may not find the ideology of the melting pot acceptable, and to that extent may threaten the legitimacy of the state.

If individuals are held together by their common history, culture or religion, the cultural community will have priority within the territory, as in Germany, Albania and Serbia. In this case, the fragmentation that results from the cultural diversity of traditional minorities or from immigration becomes a major issue threatening the natural unity of the nation. Because the state has been made by the pre-constitutional cultural unity of the nation, other cultures must be excluded as nation-building factors. Cultural nations are held together not by reflection and choice, but by nature. State unity derives from the natural cultural identity of the nation. This state consequently cannot accommodate other cultures. At best, it can tolerate non-integrated minorities as guests, but not as equal citizens. The status of a fully recognized citizen can be attained only by integration. Those who want to become citizens must also change their cultural identity.

States with nations held together by “nature” usually proclaim within their constitutions universal political values. As a political document, the constitution itself may contribute to identity by promoting a sense of constitutional patriotism. However, whenever it comes to questions of cultural identity, represented in these cases through full citizenship, the problem presented by other cultures once again comes to the fore (e.g. Art. 116 German Constitution).

If a cultural minority demands political recognition and identity, the state must reject the claim. Because it is unable to accommodate a fragmented political identity, it will ultimately come into conflict with its minorities. Either the minorities must be integrated within the majority culture, destroying their original cultural roots, or minorities must be denied the opportunity to enhance their cultural identity through political means. A fragmented political identity is rejected as a solution, because of its threat to the unity, homogeneity, and the very roots of the state’s existence.

Thus every nation held together by universal values, hosting several cultures, may sooner or later run into significant conflict on account of its multicultural society. Multicultural states will often be unable to accommodate cultural diversities through universal political values.

3. The causes of conflict within multicultural states

Today's world is threatened by innumerable conflicts between ethnic communities or states and minorities. Some conflicts are open and violent. Some are hidden and may erupt at a later date. Any attempt to find and promote tools to prevent, manage and resolve such conflicts, must first identify what has caused them.

The causes of ethnic conflict, however, typically are hotly disputed. Depending on the circumstances, the real stimulus may be:

- economic injustice,
- historic revenge for lost self-determination, past discrimination, or other past wrongs,
- intervention by neighbouring states with links to the ethnic minority, sometimes through shared fundamental religious beliefs,
- unscrupulous manipulation by warlords seeking power or money,
- illegitimacy of the state or the nation in the eyes of an ethnic minority, because it excludes recognition of the minority culture,
- fear and mistrust caused by historically continuing conflict between the state and an ethnic minority, generating terrorism.

Whatever the immediate cause, there is generally ready agreement that ethnicity somehow is inducing the conflict.

One of the major reasons for the phenomenal advances of medical science in the 20th century is that at the end of the 19th century, researchers began to focus on the causes, and not simply the symptoms of illnesses. Similarly, effective tools for conflict management or resolution require an understanding of the causes of ethnic conflict as well as the capacity to mitigate its symptoms. In the absence of consensus on cause, the symptoms will be obvious, but no satisfactory, lasting solution is likely to be found.

4. Globalization and ethnic conflict

It is sometimes suggested that, given the rise of the global market, nation-state sovereignty will fade away. The private market will erode the need for political and social policies. In these circumstances, controversies over who should govern the state and in what manner would lose much of their purpose. The political power of the state would have withered away and governments would have lost much of their capacity for political maneuver. Admittedly, ethnic claims might in these circumstances find a new "enemy" in the global market. Nevertheless, there would be no need for a national government if the state turned private.

In reality, however, the needs and claims of human beings today are more complex, and present some contradictory features. Consumers favor a global market for their needs and expenses, and citizens claim the universality of

human rights. At the same time however, people seek local security and have emotional needs that create local ties with their religious, language, historic, or cultural community. While there is a global market for many products and finances, the greater part of economic production and distribution of goods and services, including the labor market, remains regional. Despite growing migration, social security, public health systems and many other public goods are the domains of the national state.

These contradictions suggest two opposing tendencies, between globalization and universalism on the one hand, and localization on the other. The more global the world, the greater the pressure to accommodate local needs and claims. It is not possible to analyze solutions to political and social problems by reference to globalization or localization in isolation from each other.

This perception has particular significance for multicultural states. It suggests that the need for local identity and local security must be met not only through the privatization of local needs, but also by political structures which can accommodate the demands of human beings rooted within their local communities, and seeking conditions for their families that can only be met locally. Therefore, as the global market expands, demands for local justice can be expected to increase accordingly. Local conflict will not fade away. On the contrary, it may become more open, more violent and more explosive. While cost-benefit driven *homo oeconomicus* seeks advantage in the global market, *homo politicus* will require local compensation for the injustice for which globalism is responsible. There is no reason to expect that the challenges of multiculturalism will diminish in the future.

5. How can multicultural states meet the challenges that they face?

In the previous section we argued that as globalization increases, localization is likely to increase accordingly. The fragmentation of multicultural states thus will continue. If they do not develop the capacity to meet these new challenges, they will be unable to meet increasing demands for localization, and will be confronted with major conflicts. In this section we suggest that to overcome these conflicts, states must achieve legitimacy in the eyes of the vast bulk of the individuals and communities living within their territory. States that wish to hold multicultural societies together must ask not only “what is good for all?” but also “what is good for us?” “Us” must be understood to mean all citizens and all peoples living within the territory of the state.

It is no longer sufficient to seek only good governance. In multicultural states, we must also decide who should govern whom. This requires a decision about what majorities should, in what instances, govern what minorities, and who should make these choices. The answers must be acceptable to all people and all communities in the manner that we have described. Only in this way will a multicultural state achieve the legitimacy that it needs.

In the past, states have used a variety of different tools, instruments and procedures to meet the challenges of multicultural societies. In order to evaluate the usefulness of these tools, it is necessary to explore the causes and not merely the symptoms of potential multiethnic conflict. In other words, it is necessary to decide what really is needed to hold or to bring the multicultural society together.

5.1. Policy of tolerance

One option is for states to adopt tolerance as a major policy to hold or bring communities together. Someone who is tolerated will never feel fully accepted as an equal partner in a political community. On the other hand, tolerance at least entitles everyone to mutual respect as a human being with human dignity. Tolerance allows everyone to live within the community as a respected individual, free from discrimination on the grounds of race, religion or language.

In the context of a legal system, tolerance implies the guarantee of human rights as individual rights. Protection of the human rights of individuals prevents the authorities of the state from discriminating against individuals who belong to minorities, on grounds of their language, religion or race. Those who are only tolerated, however, cannot constitute the "We". For members of minorities, such a state is "their" state, not "our" state. "They" have no legitimacy to define the policy of the "We". Diversity must be respected, but it is not a political value. Minorities are protected because that is required by the universal values enshrined in the constitution. Diversity is neither a policy nor a goal of a state that does not want to go beyond tolerance.

Tolerance of minorities is a minimum requirement in every state that respects human dignity and the universal principles of human rights. Some states may go beyond tolerance by extending it not only to individuals but also to their communities, through a policy of affirmative action, falling short of collective rights. Affirmative action is directed to individuals who have unequal opportunities because they belong to a minority against which there is or has been discrimination. Affirmative action has the potential to discriminate against those who constitute the majority. Typically, this dilemma is resolved by taking into account the *de facto* discrimination against minorities, and the *de facto* privileges of majorities.

5.2. Policy of reconciliation

The preamble to the Constitution of South African states that one purpose of its adoption "as the supreme law of the Republic" is to: "Heal the divisions of the past and establish a society based on democratic values..." This points to a second option. Protection of individual rights, in whatever form, may not be adequate to bring and hold multicultural communities together. Reconciliation also is needed to assist with conflict management, contribute to better

understanding, and foster cooperation between communities. In recognition of the importance of this tool, Section 235 of the South African Constitution seeks a balance between the self-determination of the entire South African people “and any community sharing a common cultural and language heritage”.

The history of the constitution-making process in South Africa demonstrates the importance of paying attention to the means of reconciling communities who fear and mistrust each other at this critical stage. The South Africans adopted a two stage constitution-making process. First, they negotiated an interim constitution in a way that accepted the concept of power sharing between communities equal in rights, but unequal in size and history. At the second stage, the Constitution was adopted on the basis of the democratic majority principle. Even at this stage, however, the Constitution had to comply with the constitutional principles settled in the interim constitution. In the case of South Africa, time was available to transform enemies into adversaries. It was used to advantage to find procedural support for reconciliation.

5.3. *Equalizing minorities and majorities*

Democracy is based on the majority principle. However, the majority should not abuse its democratic power by tyrannizing its minorities. If a state wants to hold its whole society together, the majority must recognize the right of the minorities to be treated equally both as individuals and as communities. A recent draft of a new Constitution for Serbia recognizes this, by acknowledging in its preamble the need to be: “Conscious of the state tradition of the Serbian people and determined to *establish the equality of all the peoples* [author italics] living in Serbia”.

A state that implements this fundamental principle must translate the concept of equality into effective collective rights. Thus Article 232 of the Brazilian Constitution recognizes that Indians have standing to sue and to defend their rights not only as individuals but also as a collectivity. How does the Serbian draft Constitution, to which reference has already been made, implement its promise of the equality of its people? The answer, according to Draft Chapter III, is that: “Persons belonging to a national minority shall have special rights, which they exercise individually or in community with others.” If peoples of fragmented societies are to achieve equality, the instrument of collective rights is available for the purpose.

Taken to extremes, however, collective rights may limit and even violate individual rights. To what extent is this justified in the interests of collective rights? In Switzerland the federal tribunal has held that an individual language right can be limited by the collective right of a threatened language community for the sake of peace among the different communities. This provides yet another perspective. States that wish to hold multicultural societies together may need to recognize peace among communities as a goal of the state, in addition to individual liberty. Nevertheless, there are limits. Protection of minorities cannot be allowed to derogate from the essential content of human

rights guarantees, which according to the covenants can never be limited, even in cases of emergency.

5.4. Enhancing diversity: the federalism option

A multicultural state can promote diversity as a mechanism for holding its society together. Thus Article 2 of the new Swiss Constitution requires the confederation to “promote the... inner cohesion, and the cultural diversity of the country.” What tools are available to enhance such a policy? It calls for the different communities to have powers and autonomy as well as rights and freedoms. These tools must be provided and secured through a constitutional framework.

Decentralization gives communities limited autonomy and thus self-government. But central power continues to be exercised in accordance with the majority principle, and the decision as to what minority should have how much governmental power continues to depend on the majority. Only a balance between self-rule *and* shared rule can give communities the opportunity to promote their cultures within their territories. Only on this basis is it possible to provide the necessary base for the balanced development of all communities, together with the majority of the citizens and the people. Such a result can be constitutionally achieved only through a federal design.

Any of the different tools, procedures and institutions that are available to assist states to deal with cultural fragmentation require an important change in state policies. If states want to meet the challenge of bringing or holding multicultural societies together, they must take cultural diversity seriously. They can neither ignore nor deny culture as part of their political order. Nor can a state based on the natural unity of a people continue to exclude other cultures. To take cultural diversity seriously means that constitution makers must seek values that are good for all their communities and citizens as well as values to which all human beings are entitled.

Federalism offers a constitutional mechanism that not only tolerates but can also promote diversity. Not only does it limit state power, but it also enables diverse communities to participate in government. A federal state need not exclude culture, but can use the value of cultural diversity to enable the whole society to participate in the endeavor of the state to seek justice, promote peace and protect liberty. Thus understood, federalism is a tool for a multicultural state to derive maximum benefit from diversity. It is the constitutional implementation of the principle of unity in diversity. The diversity of a state becomes an advantage that merits protection and enhancement. While necessarily committed to universal values, such a state has an additional focus on its own specific values. It is equipped to answer its citizens’ question: what is good for us and for our communities?

6. What are the issues?

Our earlier analysis of the underlying challenge to multicultural states and options available to deal with ethnic conflict raises a range of important questions. As yet, there are no clear answers to any of them. All merit further examination, by practitioners and scholars, and from the perspective of different multicultural states. The goals should be to advance understanding of the means by which ethnic conflict may be diminished, in the interests of all peoples, and to enable the advantages of cultural diversity fully to be realized.

Four of the principal issues are as follows:

- How should systems of government be designed, and constitutions made for multicultural communities, so as to ensure the legitimacy of the state, promote reconciliation and build a lasting polity?
- Can federalism and decentralization bring and hold multicultural societies together, and if so, why? To what extent do federalism or decentralization provide specific tools for use by states fragmented by multicultural societies?
- By the standards of the 20th and 21st centuries, a democratic society is the *sine qua non* of a legitimate state. To what extent does a society fragmented into different cultural communities have a civil society capable of legitimizing and controlling state power? Do we also need different political, legal and conceptual tools for this purpose, in order to encourage a “united and composed diversity”?
- Since the fall of the Berlin Wall, internal conflicts in multicultural states have caused increasing concern to the international community. In some cases it has intervened with military force. In a few it has gone so far as to install a quasi-protectorate, using international forces. With regard to these new developments, the following questions are pertinent. On the basis of what concepts or principles does the international community intervene in multicultural conflicts? Are there any concepts and principles that justify international rule of multicultural societies, and international intervention to bring and hold together separated societies?

7. The four subthemes⁵

Each of these four issues coincides with the perspective of one of the main players in most multicultural conflicts: the state itself, its decentralized or autonomous units, civil society and the international community.

⁵ see footnote 4 (page 35) for an explanation of the notion of „subthemes“ in the context of the International Conference on Federalism 2002.

7.1. Constitution making and nation building

In the simplest terms, the challenge of state making and nation building in multicultural societies can be defined as finding a political compromise between two forces that results in an institutional equilibrium. A political compromise has to be found between a cultural majority having enough power to define a majority regime on the one hand, and cultural minorities seeking recognition in the constitutional framework and participation in political decision making on the other. The institutional equilibrium is always a compromise between a majority regime and institutional forms of minority protection and power sharing.

As has been mentioned before, federalism is not the only means of achieving institutional compromise. In democratic regimes, recognition and participation of cultural minorities can be achieved through:

- emphasis on the political rather than the cultural base of the nation,
- separation of state and religious or other socio-cultural powers,
- emphasis on human rights as protection of minorities,
- emphasis on separation of powers, formal and informal,
- executive power sharing,
- multiparty system and proportional rule in elections of the parliament,
- decentralization or federalism, including bi-cameralism, as a means of vertical power sharing.

Most of these elements are in contrast to the widespread model of Anglo-Saxon “Westminster democracy”. They suggest the different model of “Consensus or Power Sharing Democracy”, which in the terms of the political scientist Arend Lijphart is more suitable for coping with multicultural conflicts. Federalism and decentralization offer some of the most important elements, insofar as they guarantee the vertical elements of power sharing.

In state making and nation building, it may be difficult to end up with institutional arrangements of power sharing. This is particularly true for the process of federalization. As federalism involves participation of the member states in the decision making of the central government, it goes far beyond decentralization. If “centralizing” and “decentralizing” forces coincide with cultural divides, federalization is confronted with major challenges. Some of them can be described as follows:

- fundamental change of a constitutional system with considerable risks. There must be sufficient confidence on both sides. How can such a process be stimulated as a social process in a more bottom-up way?
- In young democracies, federalization is often considered as an obstacle to the consolidation of nation building. Is this perception correct? Is there empirical evidence that, in the past, federal nations have had more difficulties in their nation-building process than unitary states?

- While “centralizing” forces fear that minorities will have too much power, “decentralizing” forces argue that minorities are protected only in member states where they constitute a political majority. Obviously, federalism has a chance only if both parties see more advantages than disadvantages. What are the conditions for a successful federalist compromise?
- In geographically segmented societies, federalism offers national minorities the chance to become majorities in some member states. From an optimistic perspective, this is an advantage for both sides, the cultural minorities as well as the majority, because it stimulates changes of political roles and the learning processes of the political elites. Is this true?
- In highly polarized societies, parties may agree to design the geographic boundaries of the member states along the geographical boundaries of ethnicities. Critics say that this is a policy of ethnic separation that increases intercultural conflict potentials instead of reducing them. What does experience suggest?
- Federalization means giving “veto points” to member states and their political majority. Central governments can introduce veto points through a simple majority. Subsequently, however, they are likely to be difficult to take back. Federalization, in this sense, is an irreversible process. Is this only a theoretical or also a practical problem?
- Under subsistent political tensions, federalist systems are in a precarious equilibrium between unitarianism and secession. How should, and how can, secession be avoided or accepted and handled?

7.2. Decentralization and good governance

When states decide to hold their multicultural society together by decentralization and by delegating governmental power to local authorities, what can and should be done as well as decentralization to guarantee good governance within the autonomous units? What are the conditions and pitfalls associated with the success of decentralized governance, especially in multicultural societies?

The creation of local governments helps to manage conflicts in at least two situations. First, ethnic, religious or linguistic minorities are often not concentrated in a particular region of a country but their members live in many of its parts. Second, where the central state is very weak, the introduction of federalism might lead to secessionism or even to the dissolution of the country, because some sub-national units are strong enough to challenge the central government effectively. Here, the introduction or strengthening of local governments allows accommodation of diversity without jeopardizing stability and endangering national unity. Finally, decentralization has a preventive function. If it is true that today’s conflicts have much to do with political power and access to economic goods, and that ethnicity, language and religion are used as instruments to mobilize people in such conflicts, then decentralized forms of government help to dilute potential conflicts by giving some political power and some control over economic resources to all parts of the population, including minorities.

Decentralization undeniably leads to vertical power sharing. But what are the consequences for horizontal power sharing on the local or regional level? If decentralization leads to more socio-cultural segmentation, local democracy is under a structural challenge to assure political pluralism. But how does local democracy deal with political elites?

What conditions and instruments are necessary for, and conducive to transparent and accountable governance at the local level? How can the optimal use of the often-scarce resources available to local governments be guaranteed? Is it easier or more difficult to combat corruption at the local level?

The legitimacy of the state at the local level can only be strengthened if authorities are able to respond to the legitimate needs of the population. Decentralized government has some well-known advantages in this respect, but regularly meets technical and political difficulties, which are not easy to overcome.

Decentralization must face not only the issue of social inequality in general, but also the problem of inequalities between poor and rich regions. Moreover, the tension between human rights and local traditions can be considerable, and conditions to guarantee human rights and social equality difficult.

If decentralization is used as a tool to manage conflicts, another requirement should be mentioned. Where forms of decentralized governance are only granted to specific minorities, but not those belonging to the majority population, there is the danger that these minorities will feel excluded from mainstream politics, and thus marginalized. There is an equal danger that such asymmetric forms of decentralization will help to introduce or reinforce ethnicity as the main factor in legitimizing political action.

7.3. Communities – civil society and conflict management

This issue concerns the role of civil society in multicultural states, and the interaction between the concept of civil society and the various tools for managing multicultural conflict.

The very principles of the rule of law and the guarantees of inalienable rights are oriented towards the individual and not towards groups. The indispensable partner of the modern state is a civil society based on individuals. This raises a series of questions in its application to multicultural states.

- Do the boundaries of federal units have to be identical with the different ethnicities? Is ethnic federalism a legitimate goal at all?
- Does the very concept of civil society allow a fragmentation of the society into different parts? What might be the criteria for this division?

- Can one envisage a federal state composed of different federal units, each of them having its own civil society (e.g. the European Union)?

Collective rights are other potential tools for reducing multicultural tension. On the other hand, these may be considered to contradict individual rights.

- Are collective rights appropriate tools to overcome the tension between group loyalty and individual citizenship?
- How can the state, and in particular a federal state, meet the challenge of the tension between the inalienable individual rights and the collective rights of groups?
- What does a right to “autonomy” mean in the context of an ethnically divided state?
- Who is the “holder” of this right?
- What kinds of autonomy and/or shared powers should be granted within a federal state to federal units or to groups?
- Can the right of self-determination restrict individual rights within their respective communities (e.g. the collective rights of native communities in immigration countries)?
- Can federalism give autonomy to groups without territorial boundaries (personal federalism)?

Both religious and language rights are linked to the very core of ethnicity. Both can be interpreted as community or as individual rights. If the principal focus of the constitution is on liberty, in the sense of individual liberty, it is likely to deny collective rights.

- Can the language rights or religious rights of individuals be translated into group rights for the sake of peace among different conflicting communities?
- To what extent can the particular collective rules of religious or language communities restrict individual rights and still be universally acceptable for the sake of the internal peace of multicultural societies?

Language contributes to the identity of every individual. Language determines each person’s way of thinking and communicating. It influences education and opens the door to one’s own cultural roots. State authorities communicate with citizens in the official language. Court proceedings are held in official languages. Public schools provide for education in the state language. In a federal country, enriched by multicultural societies the following questions may require consideration:

- How should a federation deal with the reality of the different languages of its communities?
- Should federal units be allowed to “defend” their language territory and to what extent?
- Can individuals identify with a state that does not use or even recognise their own mother tongue?

Every state has a link of some kind to religion, if only through its history. Clearly, however, at the beginning of the 21st century, religions differ in their attitudes to states and politics. Some religions ignore the state. Some integrate with it. Some depend on the state. Some merge with politics. Some religions are inclusive and have universal claims, encouraging proselytizing. Some are based on the idea of a “chosen people” and are thus exclusive.

- How can federal states best accommodate different religions, with different attitudes towards states?
- To what extent should states allow religious communities or constituted federal units to give effect to collective religious rights to limit individual religious rights?
- What instruments should be available to federal states in order to implement the basic standards of freedom of religion in all states?

7.4. International and regional action with regard to conflicts in multicultural societies

The international community often and increasingly influences the course of dealing with inter-state ethnic conflict and its outcome. In some cases the states concerned are federal. Bosnia-Herzegovina, at that stage, part of the Federal Republic of Yugoslavia, is an example. In such cases, one effect of international influence may be to cause secession of a part of the federation, and the creation of a new state. In turn, this creates a need for a new constitutional order. Even where a state in which there is ethnic conflict that attracts international attention was not originally federal in form, federalism may be an appropriate response to effect resolution of the conflict.

Traditionally, the international community is composed of states, and each accepts the integrity of the others. Accordingly, it has long been accepted that the principal goal of the international community is to provide a framework for co-operation, and to maintain peace between states, not to resolve disputes within them.

On the other hand, the international legal system is changing. The phenomenon was captured by Boutros Boutros-Ghali in *An Agenda for Peace*: “The time of

absolute sovereignty... has passed; its theory was never matched by reality". Human rights are a concern of international law, as evidenced by the international Bill of Rights and a host of other international instruments. Experience shows that states that are parties to human rights instruments often fail to meet their obligations, at a cost to their peoples. Ethnic conflict within a state may be associated with failure of the state, or can threaten or be perceived to threaten, international peace. Minorities increasingly invoke intervention by the international community on these grounds. A new phase in international intervention began with the use of Chapter 7 of the UN Charter to establish peacekeeping in the former Yugoslavia and Rwanda. The new focus on the threat from states that harbor terrorists may provide further grounds on which attempts may be made to justify international intervention in the future.

The shortfall in the legitimacy of the international community to intervene in ethnic conflicts within states has practical consequences as well, that are relevant for present purposes. These concern both the effectiveness of international intervention and accountability for it.

The relatively underdeveloped structure of the international community and of international law gives rise to problems of accountability from the outset of intervention in inter-state ethnic conflict. There are inadequate standards to guide the decision to intervene. In practice, intervention has been uneven, influenced to a greater or lesser degree by the national interest of leading states in the international community. By definition, there is no constitution for the international community to provide the restraints on power that are supposed to apply within states.

Drawing on these pressures and difficulties, some of the key questions that arise in this workshop therefore include the following:

- What are the implications of changing concepts of state sovereignty for constitutionalism and the legitimacy of states?
- When is international intervention justified to resolve ethnic conflict within a state? Is it possible to develop guidelines for this?
- What are the countervailing considerations to be taken into account in determining international intervention for this purpose?
- In what sense has international intervention succeeded in some cases of intra-state ethnic conflict?
- How can the problems of the legitimacy and adequacy of a constitutional order forged through international intervention be overcome?
- What should be done to ensure accountability for the integrity and outcomes of international intervention?

The circumstances of international intervention create one set of issues. The manner of intervention by the international community presents others. The international community intervenes in the ethnic conflict within states in a variety of different ways. The most high profile are forms of direct intervention through enforcement or peacekeeping. Direct intervention by international forces creates the greatest difficulty from the standpoint of legitimacy and accountability.

Some of the key questions that arise in relation to this form of intervention therefore are as follows:

- What is the dividing line between enforcement and peacekeeping?
- What is involved in each?
- Is it possible to develop guidelines for the constitution of international teams/forces that intervene directly in the case of intra-state conflict?
- In what circumstances are regional organizations likely to be more effective than international forces or coalitions?
- What mechanisms might be used to ensure that intervention is effective in the long as well as the short term?

Not all intervention takes this form, however. The international community also intervenes in other less high profile ways. Examples include the international monitoring of elections, the imposition of sanctions of various kinds, international mediation of multiethnic discussions, provision of advice on possible constitutional solutions. Many of these forms of intervention raise questions of legitimacy as well, but to a lesser degree than does full-scale international engagement.

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Assignment of Responsibilities and Fiscal Federalism

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1. Introduction

Over the past thirty years, a clear trend has emerged worldwide towards the decentralization of spending and revenue-raising responsibilities to sub-national levels of government (states, regions, provinces, cantons, *Länder*) and to the third tier (the local, communal, municipal level). For Ter-Minassian (1997, 3), *“this trend is evident not only in federal, but also in many unitary countries, including some that have a long tradition of centralist government”*. Political developments in post-communist Central and Eastern Europe (the countries in Transition and the Balkans), together with recent discussions in the European Union, and new trends in Latin America, Asia and Africa, show that this tendency does indeed exist worldwide. Decentralization requires us to rethink the role and responsibilities of the various government layers in relation to the traditional policy objectives of allocation, distribution and stabilization. Fiscal federalism can no longer be accepted solely as an “economically efficient” means of providing and financing public services. Decentralization can more effectively promote democratic and participatory forms of government, seeking to improve the responsiveness and accountability of politicians and bureaucrats, and to ensure closer correspondence of the basket of publicly provided goods and services with the preferences of beneficiaries and taxpayers in the various sub-central jurisdictions. Carried out efficiently, fiscal federalism or fiscal decentralization can provide an alternative to the market as a way of promoting the coincidence between the three circles of budgetary policy: those who decide, those who benefit, and those who pay.

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The argument that decentralization of spending responsibilities and revenue sources promotes efficiency and welfare has a long history in economic literature. But for the purposes of this discussion, we can start with what may be called the TOM. model of fiscal federalism, after the first modern authors (Tiebout, 1961; Oates, 1968; and Musgrave, 1961) who built the existing theoretical parts into a consistent and coherent framework. The canonical view is that decentralization has definite advantages in the allocation branch, but can entail significant costs in terms of re-distributive policy and macroeconomic management. The theory is based on four key assumptions: local public goods, the territorial variant of benefit taxation, mobility, and no spillovers. The main analytical task of fiscal federalism has been to define the appropriate assignment of allocative responsibilities to decentralized government levels and matching revenue sources. Initially, distribution and stabilization were considered essentially “central” responsibilities (Oates, 1999, 1121).

Much of the established theoretical literature of fiscal federalism has been based on issues that arose within developed countries in a quest for efficiency. Thus, consideration of economic decentralization alternatives is littered with normative problems and propositions:

- the tier most capable of performing this or that function, often paying too little attention to the distinction between decentralization, devolution and de-concentration (Bird, 2001, 3),
- the highest capability of managing the production function,
- how to gain economies of scale and internalize benefits, and the costs of such provision,
- the right level of government at which taxes should rest,
- why there should be fiscal competition, but no tax competition,
- why and how fiscal disparities should be corrected.

The value judgements from which such prescriptions derive may be clearly articulated. But this commonly amounts to the allocative and distributive propositions associated exclusively with economics, perhaps embellished by minor additions that recognize certain distinctive local characteristics of federalism.

The objectives and relationships of federal countries are much more complex than this. They cannot be confined within a framework that treats general resource-allocation and income-distribution questions as the only, or even predominant, policy problems. Evidence for this interpretation is to be found both in the general suspicion of economists’ prescriptions among policy makers, and in the otherwise surprising lack of communion between economists’ writings on federalism and that of other specialists, such as political scientists, constitutionalists and politicians. The fundamental criticism is that for many years, students in the theory of federal public finance, with a few exceptions (Wiseman, 1989 and 1990; Wildasin, 1997), have treated economic objectives as separate from the political and constitutional aspects of federation. Policy-

oriented research has clearly demonstrated that the tendency in public policy discussion to distinguish between economic objectives on the one hand, and political and constitutional objectives on the other, was inappropriate. When the constitutional and regional aspects of federalism are considered, there are certain constraints on federal public policies. These cannot conveniently be waived either by assuming a “centralist” federal structure, or by postulating that federal constitutions may easily be adapted to fit in with the policy norms derived from economic arguments. The theory cannot neglect the fact that the constitutional (formal) reservation of power to sub-national levels of government, places the conflict of policy ends *versus* means in the center of the picture. And this alone adds a dimension to the study of fiscal policy that is perhaps more significant here than in other policy environments.

Real world fiscal arrangements rarely follow the idealized model; they are loaded with historical developments and political *ad hoc* solutions. It would be very difficult to change them in a significant way, following the canon of fiscal federalism, especially when they are specified in the countries’ constitutions. It is simply not realistic to start from *tabula rasa*. In any case, are economic fundamentals the only adequate logic of good governance? What about the significance – and the policy consequence – of a top-down *versus* a bottom-up political procedure for the assignment of functions and revenues at (de)centralized levels? It is clear that while the theory is a powerful tool for understanding the key issues, it does not lead to solutions for specific situations.

On the other hand, comparative studies of specific issues in various countries contain a wealth of information on the great variety of national experiences, which help to reformulate the conceptual or theoretical underpinnings. According to Ebel and Yilmaz (2001, 2):

Developing Countries are turning to decentralization to escape from the traps of ineffective and inefficient governance, macroeconomic instability, and inadequate economic growth... Throughout post-communist Central and Eastern Europe, decentralization of the state is the direct result of the transition from socialist system to market economy and democracy... In Latin America, the origin ... is the political pressure from the people for democratization... In Africa, decentralization has served as a path to national unity...

This diversity of causes and reasons creates a challenge to understand, appreciate and compare fiscal federalism and decentralization across different countries, and to present a general framework helpful for understanding the issues and policy-design for adequate solutions in the various national situations. With three main themes, the present conference is a tentative multidisciplinary answer to this challenge.

2. A general framework

This paper is organized in the following way: this section presents in general the major policy-relevant topics in intergovernmental fiscal relations, while in Section 3 we develop four major issues, selected as subthemes⁶ for this part of the conference, owing to their importance and actuality. First let us consider fiscal federalism and decentralization in general. What have been the most frequently debated issues during the last decade, on which both theoreticians and practitioners should concentrate their analytical efforts, and for which a common applicable positive theory is needed? As a possible gateway to this question, the following table summarizes several recent publications on intergovernmental fiscal relations. The authors of all these texts, or the institutions mentioned in the top line, all are involved in practical policy design, policy making or training programs at the forefront of decentralization. In the first vertical column of the table, nineteen major topics are enumerated, all of which are mentioned or analyzed in detail in the given sources. In counterpoint, we have introduced in the last column the issues that were initially proposed for the preparation of the sessions on fiscal federalism. One can readily see in the table that some topics, like those numbered 5 to 8, are present in each selected source. From this frequency, one could infer that they are essential to the understanding of fiscal federalism and decentralization. Others like the concept of decentralization (1), budgeting (10), borrowing and debt (11), score four or five times, thus giving a good image of actual problems. Some topics have been left out of the debate: these are numbers 4, 7, 11, 12, 15, 16 and 19 in the following table. This is not because they are less relevant or important, however a selection had to be made for reasons of time and space.

Major topics in intergovernmental fiscal relations

	Major topics	WBI	TM	Bird	UI	CoE	LH3
1	Concepts of fiscal decentralization	X			X	X	X
2	Political mechanism necessary to make fiscal decentralization work	X			X	X	
3	Constitutional and legal framework	X			X	X	
4	Macroeconomic perspective	X	X		X		
5	Expenditure assignment	X	X	X	X	X	X
6	Revenue assignment	X	X	X	X	X	X
7	Local revenues/taxes	X	X	X	X	X	X
	Territorial variant of the benefit principle			X		X	X
8	Intergovernmental grants, equalization	X	X	X	X	X	X
9	Financing infrastructure	X				X	
10	Budgeting	X	X		X		X
11	Borrowing and debt	X	X		X	X	X
12	Poverty alleviation	X					
13	Accountability and transparency	X			X		X
14	Measures of decentralization	X		X			
	Measures of fiscal disparities					X	
15	Tax administration				X		
16	Metropolitan areas			X			

⁶ see footnote 4 (page 35) on the notion of „subthemes“ in the context of the International Conference on Federalism 2002.

17	Fiscal competition			X			X
18	Functional federalism: drawing new boundaries, alternative institutional structure			X		X	X
19	Minimum service level, guaranteed access to local public goods				X		X
Sources: WBI: World Bank Institute, 2001; Ter-Minassian T (ed.), 1997; Bird R M, 1999; Conway F et al., 2000; Council of Europe, 1998; Dafflon B, Jeanrenaud C, and Kirchgässner G, (2001), <i>Assignment of responsibilities and fiscal federalism</i> , preparatory mimeo for the International Conference on Federalism 2002, St-Gallen.							

We now turn to the four subthemes. The first is about political decision structures in fiscal federalism. It concerns two major and highly relevant issues. One pertains not only to topics 5 and 6 but also to topics 10, 13 and 18 in the matrix above. The question that must be asked is: how can federal fiscal structures be augmented with political decision rules in order to get an optimal political and economic outcome of public budgetary processes? The geographical area covered by many locally provided (public) goods and services seldom coincides with the borders of the jurisdictions. Therefore, new forms of federal structures are necessary, which do not make the old ones obsolete, but supplement them. If these problems are solved, the second issue is how the actual budgetary process is to be organized. Concrete budgetary institutions can have a major effect on the fiscal outcome of the jurisdictions. But what is at stake here is really how budgetary procedures can respect democracy and promote accountability.

The second subtheme is concerned with equalization (topic 8) and fiscal disparities (topic 14). Fiscal equalization refers to attempts within a federal system of government to reduce fiscal disparities among jurisdictions. Because sub-national jurisdictions do not have the same revenue raising capacities to meet comparable needs, some sort of inter-jurisdictional financial compensation may be needed, and indeed justified, not only on equity but also on allocative grounds. In addition, since a balance between the assignment of responsibilities and the assignment of revenue sources at decentralized level is not guaranteed over time, fiscal equalization is becoming increasingly relevant, and a much-debated political issue.

Fiscal competition (topic 17) is analyzed in the third subtheme. In developed federations, competition between jurisdictions at the same level is usually valued as beneficial for the provision of public services, because it gives choice to potential residents. But it is not necessarily beneficial for tax, and the issue is hotly debated at the moment in the European Union (1997) and in many OCDE countries (1998).

The last subtheme relates to fiscal decentralization in Transition Economies and Developing Countries. It is transversal to topics 1, 2 and 3. What is the meaning of the terms: decentralization, de-concentration, delegation, and devolution? And how do we proceed from the existing political and economic organizational structures? These questions, which are at the core of fiscal

federalism, are set out in the specific context of Transition Economies and Developing Countries. This is a particular challenge, since in these countries, the search for new forms of fiscal arrangement is keen, not only for efficiency reasons, but also to break away from collective ownership and control in Transition Economies and from colonialism and ethnic strife in Developing Countries.

3. Selected subthemes

3.1. Political decision structures

3.1.1. Assignment of functions and revenue sources

The main question for any federal structure is which task should be assigned to which governmental level, and how it should be financed. Following the distinction of Musgrave (1959), the government has to perform three main tasks: changing the allocation by providing public goods and correcting the external effects of private economic behavior; redistributing income in order to equalize income distribution which is the result of market forces; and stabilizing the economic process in order to reduce business cycle fluctuations. The solution usually proposed is that redistribution and stabilization should be performed at a national level whereas, according to the “correspondence principle” stated by Oates (1972), the provision of public goods should be performed at the lowest governmental level. This allows an approximate correspondence between those who benefit from their provision, those who have to pay, and those who decide on the amount provided. While the correspondence principle is generally accepted and can also be applied to the relation between national and supra-national governmental levels (e.g. to account for the existence of international public goods), the Swiss example shows that, under certain conditions, redistribution can also be successfully performed at the state (cantonal) level. Although today it is questioned whether any government should really try to stabilize business cycle fluctuations at all.

Most traditional discussion takes only the three usual governmental levels into account: federal, state and local government. On the other hand, the geographical area covered by many locally provided (public) goods and services, does not always coincide with the borders of the jurisdictions, and this violates the correspondence principle. New forms of federal structure may be necessary, which supplement existing ones. However, even in well functioning democracies such new elements of the federal structure often have a “democratic deficit”, because the existing (direct-democratic and/or representative) political structures do not fit with them.

A second issue is which revenue sources should be assigned to which federal level. Principally, there are two different kinds of federal structure to handle this problem: the “Swiss-type” (or “US-type”) and the “German-type”. In the Swiss-type, there is a certain separation between revenue and expenditure of the different federal levels, and each level has its own revenue source. This

gives the different political units at state and local levels considerable leeway in designing their tasks and fulfilling their responsibilities. Moreover, it allows a reflection of the preferences of citizens in the different regions of a country. As a result, there is fiscal competition on the tax and revenue side of the public budget. However, this can result in significant disparities between regions, and in some instances demand a well-developed system of fiscal equalization.

By contrast, the German type of federalism takes all major revenue sources together, and different governmental levels receive (fixed) shares of total revenue, distributed at state and local levels according to certain criteria. The leeway of sub-federal units to collect taxes is strictly limited; there is expenditure competition, but hardly any tax competition between these units. This makes it difficult for them to follow the correspondence principle, because their revenues are more or less fixed. On the other hand, disparities between the regions are, *ceteris paribus*, smaller, and there is less demand for an extensive system of fiscal equalization.

In reality of course, all federal systems are located somewhere between these two extremes. But as the Swiss and German examples show, there can be considerable variation between different countries.

In a Swiss-type system with tax competition especially, there is the additional question of which taxes should be assigned to which government levels. Following the arguments presented above, the traditional solution is that progressive income taxes should be assigned to the federal level because they are the main tax instruments used for income redistribution. Thus, indirect and/or property taxes could be assigned to lower levels. The US tax system is – more or less – designed in such a way: for example, sales taxes differ between states, and property taxes between local jurisdictions. On the other hand, it has been argued that progressive taxes, with their built-in tax increase because of inflation and/or economic growth, should instead be assigned to levels where citizens have more ability to control the politicians, i.e. at lower governmental levels, whereas proportional (indirect) taxes might be assigned to the higher levels. This is the Swiss solution, where the VAT is a federal tax whereas personal and corporate taxes (as well as property taxes) are mainly at the disposal of cantons and local communities. As the two examples below show, both solutions are possible.

- Many problems arise in federal states because sub-national governments are commonly assigned revenue sources that are inadequate to finance the expenditures for which they are responsible. Traditionally, central governments have claimed as their own most of the major revenue sources, notably income, payroll, and sales taxes, leaving little room for sub-national governments to levy their own taxes on these bases and hence rendering them dependent on federal transfers.
- According to conventional criteria, the only revenues clearly suitable for local and state governments are those they can administer efficiently, and which fall primarily on their own residents. Sub-national governments

should not, for example, be allowed to impose taxes that are shifted to other jurisdictions, and it is normally assumed that they are not appropriate jurisdictions to apply progressive taxes. User charges and taxes on land and real property generally seem to qualify under these criteria; income taxes and VATs do not. Retail sales taxes and excise taxes, such as those on motor vehicles and fuel, in many circumstances may also be appropriate sources of revenue at least for regional (state) governments, which are likely to be able to administer them more efficiently. Taxes on payrolls and labor income may also in some cases be effectively applied by larger sub-national governments, but taxes on capital and business income, other taxes on business, and multi-stage sales taxes such as the VAT, are clearly unsuitable at any but the national level, both for administrative and policy reasons. Though popular, sub-national business taxes are generally highly distorting and undesirable.

However, the prospect for sub-national revenues sketched above is too limited. Experience in a number of countries shows that personal income taxes and even VAT can be employed successfully as regional revenue sources. The critical element to ensure efficiency and equity is that the sub-national government is politically responsible for imposing its own rate, even though the most efficient way to administer it is usually as a surcharge on a central tax.

3.1.2. *The budgetary process*

No matter how the assignment problem is solved, another problem remains: that of how the actual budgetary process is organized. One of the major questions is to what extent, and at which governmental level, direct popular rights should be granted in this process. Both Switzerland and the US have broad experience regarding this question, because in both countries at state (cantonal) and local levels, the forms and extents of such rights vary considerably. The available empirical evidence shows that in most situations, *ceteris paribus*, such rights tend to result in lower public expenditure and revenue, as well as in lower public debt. Moreover, greater participation of the citizens in sub-federal fiscal decisions can reduce the tendency of a race to the bottom at these levels, and therefore allow for some income redistribution at state and local levels. On the other hand, decentralized fiscal decisions may make it difficult if not impossible to meet national fiscal objectives, for example the Maastricht criteria. Thus, it has to be asked how federal fiscal structures can be augmented with political decision rules in order to get an optimal political and economic outcome from public budgetary processes.

The budgetary process itself also has to be taken into account. Budgetary rules, such as a strong position of the head of the financial department in the state or local government, transparency rules providing the citizens with reliable information about both sides of the public budget, or rules creating close connections between public expenditure and revenue, can induce fiscal discipline which might also result in lower public expenditure and/or revenue, as well as lower public debt. Thus, specific budgetary institutions can have a

major effect on the fiscal outcome of the jurisdictions. Moreover, transparency of the budgetary process not only allows the citizens to control their (state or local) government more effectively, but also gives them the opportunity to compare the results of different jurisdictions at the same level. Thus it is possible to learn more easily from each other, and in this way improve the budgetary process as well as its outcome.

3.2. *Problems of equalization*

Intergovernmental transfers form a large and sometimes predominant portion of lower-level government expenditure. The design of the transfer system therefore plays a key role in federal financial systems. The assignment of tax and expenditure between the center and sub-national levels is often not coordinated, and lower-level governments have revenues that do not match their needs. This can be explained by the fact that the most appropriate level of government for taxation (the federal government) and the optimum level for applying the policies (sub-national governments) are not the same. This gives rise to a vertical financial imbalance: the federal government has fiscal income available that exceeds its needs as defined by its expenditure assignment, while the local governments find themselves in the reverse situation. Intergovernmental transfers can compensate for vertical fiscal imbalance. Transfers are a means of allowing the center to carry out federal policy using lower-level governments. Often, the federal government does not have an administrative structure that permits it to implement its policy on its own, or the local governments are able to do so more efficiently.

3.2.1. *Objectives of the transfer system*

Intergovernmental transfers target four principal objectives:

- *Correcting vertical fiscal imbalance*: transfers are used to fill the gap between revenue-raising capacity and needs,
- *Implementing federal public policy through local governments*: transfers make it possible to achieve the same result as, for instance, a minimum standard imposed by regulations, while leaving local governments more freedom in the choice of instruments,
- *Compensating for jurisdictional spillovers*: local government units providing services to people living in other jurisdictions (and thus not carrying the fiscal burden) must receive adequate compensation. The rationale for transfer is both equity and allocative efficiency,
- *Reducing horizontal fiscal imbalance and harmonizing tax burdens*: transfers mean bringing in additional resources to government units with a lower fiscal capacity or too heavy a revenue effort.

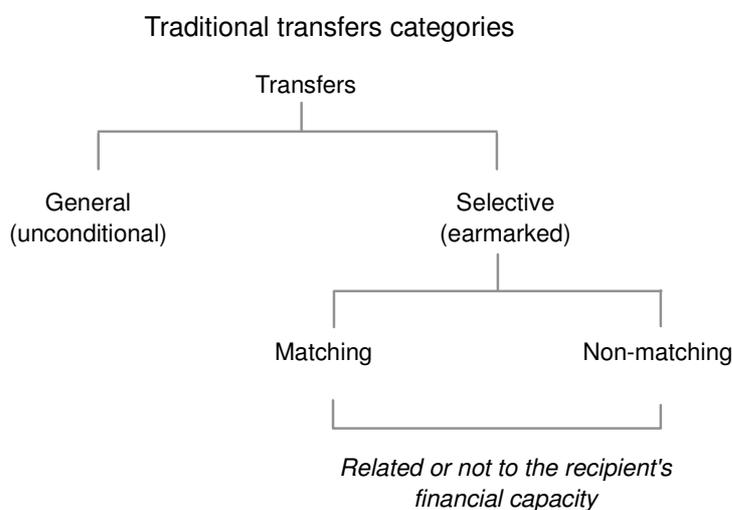
In addition to the above-mentioned objectives (main objectives) the transfer system must be organized so as to avoid, to the greatest possible extent,

undesirable side effects, such as loss of autonomy for government units, incitement to inefficiency, reduced accountability, and high monitoring costs.

3.2.2. *Types of grant*

The design of the specific instruments used, and of the overall transfer system, should match the problems to be solved. There are a large variety of instruments, each with its own effect on the behavior of the recipient. The taxonomy of transfers is based on a limited number of criteria. First, there is the question of whether the amount received can be used freely (general or unconditional grant) or must be spent for a specific purpose (selective grant). Moreover, the transfer can represent a fixed proportion of the expenditure (matching grant) or bear no relation to it (non-matching grant). The aid received can be reserved for a limited area (narrow-based selective grant), or can be used to finance expenditure in a large area (comprehensive block grant). In addition to types of aid where the amount is based on a formula, there is also aid based on projects where the grantor decides to provide resources, or not, depending on its interest in the project. The theory of fiscal federalism provides a certain number of recommendations that make it possible to select the type of instrument best adapted to each objective.

3.2.3. *Choosing the appropriate grant design*



Several criteria must be considered when selecting the appropriate type of grant: allocative efficiency, cost efficiency, accountability, autonomy of sub-national government units, and equity.

- *Allocative efficiency*: transfers reduce the perceived cost of services in sub-national jurisdictions, thus distorting local spending priorities. Consequently, transfers lead the recipient to offer services that do not correspond to local preferences, or that lead to a loss of well-being. The value of the service for the population is then less than what should have been spent in order to produce it. A selective transfer linked to expenditure

(a selective matching grant) is the one that produces the greatest inducement effect, and thus also creates the most distortion in local priorities.

- *Cost efficiency*: firstly, the reduced tax price of services favors lower efficiency and higher costs. In fact, incitement to put pressure on costs is reduced when expenditure is largely covered by federal government funds. The federal government would then benefit most from cost reduction. From this point of view, grants based on products (output-oriented transfers) offer an advantage compared with grants based on inputs (input-oriented transfers).
- *Accountability*: for lower-level governments to feel accountable towards their electors, it is important that the greater part of resources necessary in order to supply a service are levied in the region where the service is delivered. In other words, government units responsible for service provision should also be responsible for levying taxes. However, transfers distort this principle.
- *Autonomy of lower-level governments*: the more restricted the area covered by the transfer, the higher the rate of aid becomes – it becomes politically difficult to do without it – and the more the autonomy of lower-level governments is reduced. From this point of view, general (or unconditional) grants are the most appropriate. Transfers covering a broad field (comprehensive block grants) also contribute towards preserving the decision-making power of lower-level governments.
- *Equity*: matching grants benefit rich government units that can afford to finance these requirements. This is also true when rates are not in line with the jurisdiction's resources. A poor government cannot afford to spend money, even if a higher proportion of the costs are covered by the center. Unconditional grants or revenue-sharing arrangements thus constitute the appropriate means of achieving horizontal equity.

3.2.4. *Transfers in Developing and Transition Economies*

In Developing Countries and Transition Economies, setting up a transfer system raises particular problems. Sub-national governments, which often lack the capacity to mobilize revenues, depend on transfers for a large part of their financial needs. The negative consequences of transfers (reducing accountability and efficiency) are then even more apparent. In the absence of a formula, the attribution of the amounts often results in a political bargaining process. Without a well-designed transfer system that follows economic objectives, successful decentralization cannot be achieved.

3.2.5. *In search of an improved grant design*

Bearing in mind past experiences, it is possible to propose a variety of improvements in grant design in order to limit undesirable side effects.

- *Rewarding results obtained*: grants should be linked to output (a lump sum amount for each service unit) instead of representing a fixed percentage of expenditure.
- *Rewarding cost-cutting efforts*: the profit from a cost reduction should return to the government where it originated. This condition is fulfilled with transfers based on outputs. If input-oriented transfers are used, the transfer formula should take into account a specified percentage of standard costs (and not a percentage of expenditure). In both cases, the above-mentioned condition is fulfilled.
- *Limiting loss of local autonomy*: comprehensive block grants offer the recipient the possibility of bearing local preferences in mind when allocating funds within the area covered by the grant. A bargaining process between the grantor and the recipient regarding policy objectives, program planning and the selection of performance indicators can preserve local autonomy.
- *No detailed regulations*: it is necessary to avoid a link between obtaining resources and following specific rules. Grants must remain an incentive-based instrument, and detailed implementation rules change their nature. Regulations mean that grants become a form of compensation for accepting uniformity, and diminish the opportunities for expressing local preferences or innovation.
- *Contracting*: a federal task may be delegated to a lower-level government by means of a contract. Preservation of local autonomy depends on the way in which this contract is negotiated (whether or not the objectives are discussed, and whether or not program planning is included). Efficiency is greater if the central government can choose the entity that will provide the service through a competitive process (tender to potential public and private suppliers).

3.2.6. *Regional disparities*

In older federations, differences between the constituent members, in terms of size, geography, population and economic potential may be so great that, without equalization measures, fiscal federalism would result in regional disparities which would be unacceptable. Local and regional governments differ greatly in their ability to raise local/regional (tax) revenue to meet the expenditure demands placed upon them. Yet at the same time, virtually all federal countries recognize diversity to some extent in the way they establish and run their (intergovernmental) fiscal systems. Pressure on the expenditure side of public budgets can not only be different from one electorate to another, but may also necessitate differentiation to attain both economic efficiency (e.g. to attain some minimum standard in service delivery) and political stability (e.g. among regions with different languages, or traditions). Of course, these disparities (or differences) have their own costs in the traditional triumvirate of expenditure assignment, distribution of tax sovereignty, and transfer payments.

The resulting problem is really one of balance: how much differentiation is acceptable; are local/regional disparities (and the consequent costs) the result of local choice or the consequence of exogenous circumstances; what, if any, should be the design and level of equalization?

For new democracies and economies in transition, these questions are difficult to answer, not only from a technical point of view, but also politically. What could or should be solidarity when one has not much above a mere decent level of resources? *The European Charter of Local Self-Government*, for example (Council of Europe, 1998), gives only general guidance. It states that (i) local governments should have full discretion over execution of their responsibilities, (ii) resources available to local government should match their responsibilities and be sufficient to enable them to keep pace with changes in the costs of their functions, and (iii) financially weaker local governments should be protected by equalization procedures that do not diminish local government discretion. Fiscal equalization here refers to attempts within a federal or significantly decentralized system of government, to reduce fiscal disparities among sub-national jurisdictions by using explicit transfer of monetary resources.

3.2.7. *Concept of equalization: is it a good idea?*

The fundamental question that precedes equalization is: should a re-assignment of functions and responsibilities and/or of revenue sources be considered before any attempt is made to equalize? This question presupposes that, even with a balanced initial position in the assignment of functions and resources, the eventual evolution of the two sides of the decentralized public budget will not be concomitant. There are three possible answers: leave it, re-assign or compensate. Admittedly, equalization follows negative answers to the first and second. But if re-assignment is partially achievable, would equalization in one form or another still be necessary? In this context, there is an array of related questions. Is there any correlation between the importance of expenditure decentralization and the need for equalization? Is expenditure/cost/need equalization a frequent or a sound policy? Is there any evidence that revenue equalization is easier or more effective than need equalization?

Turning to the contributors to equalization, why should the center or rich regions be willing to support poorer ones? Efficiency and equity arguments are generally put on the table when fiscal equalization *stricto sensu* (vertical or horizontal) is considered. But jurisdictions that are potential contributors may prefer targeted regional policy – especially if paid exclusively by the center (e.g. in Switzerland: assistance to mountain areas with the aim of strengthening structurally weak regions). Regions with large urban areas, which would be potential contributors, often argue that, despite higher financial capacity, their public sector also has greater needs due to their role as labor market and production center (workplaces need more or specific public infrastructure; jobless people tend to concentrate in cities). It is also argued that implicit equalization (e.g. the effects resulting from a progressive national income tax, or unemployment benefits) should be measured before any step towards explicit

equalization is organized. Or inversely for poorer jurisdictions, adverse effects in the form of the regional impact of direct central expenditures or investments, which allegedly benefit already richer jurisdictions, should be measured and first compensated.

These questions inevitably raise other difficult questions, such as the equalization target, and the classic “who decides what?” Two objectives are generally considered. (i) Relative and partial equalization, which sets out nationwide minimum standards for the provision of public services and a nationwide admissible difference in fiscal burden (e.g. $\pm 10\%$ of the national average). (ii) Minimal equalization, when there are no constitutional provisions and no claims from the regions (local governments) that equalization measures should compensate entirely for the difference between the regions (local jurisdictions) in order to obtain identical economic or fiscal conditions. The pragmatic objective would be to render regional (local) disparities politically acceptable so that the remaining differences do not endanger the cohesion of the nation. The additional crucial question is whether the decision for (i) or (ii) belongs to the center alone, or is a joint decision of the both the center and the regions, rich and poor. The same question can be duplicated at the regional-local level and need not be answered the same way.

3.2.8. Financial capacity of sublevel government

Measuring the fiscal disparities between regions or local governments, or setting out a benchmark indicator of their fiscal capacities is another crucial problem. Measurement is not easily separable from the objective, and the indicator components often directly influence the calculation of the equalization entitlements. Other features of the equalization formula could be a ceiling or a floor, the marginal rate of compensation and the tax-back (the automatic decline in equalization entitlement that results when a region’s measured revenue-raising capacity increases).

3.3. Fiscal competition

The third subtheme examines fiscal competition between governments. It has often been attacked as wasteful and distorting. It has been said to result in such undesirable outcomes as “tax jungles” which impose high compliance costs on taxpayers, or “fiscal wars” or “races to the bottom” as competing jurisdictions lower their tax rates (and spending) in an effort to retain their tax bases. On the other hand, fiscal competition has also been said to be beneficial, providing both a useful check on the propensity of governments to expand, and a stimulus to use scarce fiscal resources more efficiently.

While there is still much to be learned about intergovernmental competition, what we know so far does not lend strong support to either position in this debate. Neither the theoretical nor the empirical literature concludes that fiscal competition is inevitably harmful or beneficial (Wilson, 1999). The outcome, it seems, depends upon a variety of factors that need to be carefully specified in

each setting in which the question is considered. To the extent, for example, that taxes finance cost-reducing public infrastructure, they do not distort private decisions. Most taxes are not “benefit taxes” in this sense, however, and hence may produce “spillovers” that reduce government accountability and may result in distortions and hence reductions in economic well-being. When, for example, governments impose taxes that are borne to some extent by non-residents, the economic cost of taxation is lower than it should be, and the result is likely to be excessive government spending. In effect, non-residents end up paying for services to residents. On the other hand, if taxes result in some tax base shifting to other jurisdictions, the perceived economic cost of taxation will be higher and there may be too little spending.

Evidence in the US (Wasylenko, 1996), Canada (Mintz and Smart, 2001), Switzerland (Feld and Kirschgässner, 2000), and Germany (Buttner, 1999) shows that fiscal competition between sub-national jurisdictions exists and may be important. Fiscal differentials appear to be more important within nations than between nations, and to affect location choices most within smaller areas. In general, the greater the number of governmental units, the shorter the “economic distance” between them, and the greater their autonomy with respect to business-related taxes, the more intense fiscal competition is likely to be (Grewal and Mathews, 1977).

Even if fiscal competition among regions to some extent exerts a desirable constraint on public sector expansion, it may at the same time exacerbate regional inequalities, and in some circumstances affect the sustainability of the public sector in general, as has happened on occasion in Brazil and Argentina (Webb, Perry and Dillinger, 2001). Moreover, there may be competition not only between jurisdictions at the same level (horizontal competition) but also between governments at different levels (vertical competition), when different levels of government tax the same base, or if taxes at one level are deductible or creditable at another. The nature and effect of both horizontal and vertical fiscal competition may also be affected by the structure of intergovernmental fiscal transfers. In Canada, for example, the equalization system tends to reduce horizontal spillovers and fiscal competition, but at the same time has probably resulted in provincial governments being larger than would otherwise have been the case.

Theory and experience both suggest that the key to productive fiscal competition, whether vertical or horizontal, is to make the relevant decision makers at all levels fully accountable for their decisions. In the end, the ultimate mechanism driving “good” competition between governments is on one hand the ability of citizens to compare governments in terms of the services they provide and the taxes they levy, and on the other their ability to affect and alter the decisions of those governments (Bird, 2000). Both information and democracy are therefore necessary at all levels of government, though they are not necessarily sufficient to ensure that governments will operate both efficiently and effectively in the interests of their citizens.

3.4. *Fiscal decentralization in Transition Economies and Developing Countries*

3.4.1. General background

There is little difference between the expected outcome of decentralization in Transition Economies, Developing Countries, and the industrialized world. Transferring expenditure and responsibility for taxation to sub-national government units theoretically improves efficiency in service delivery, allows better mobilization of resources, and makes governments more accountable for and responsive to the needs of the population. One key question is how to adapt the decentralization process to existing organizational and economic structures. In Transition Economies, the problem is to set up a new system of intergovernmental finance. In Developing Countries, the aim is to improve performance in public service delivery and to promote macroeconomic stability.

However, the question of whether the benefits of fiscal decentralization exceed its costs is less obvious in Transition Economies and Developing Countries, because the basic conditions for successful empowerment of local governments are rarely met. Local governments in Developing Countries often lack the institutional and technical capacity to manage resources efficiently; they have limited capacity to raise revenues, and frequently no capacity to borrow. They are also less accountable to citizens than sub-central government units in the industrialized world. In Transition Economies, setting up well-designed intergovernmental fiscal relations is a key factor for a successful economic transition.

The choice of the most appropriate arrangements for sharing fiscal responsibilities between the different levels of government (de-concentration, delegation or devolution) is also less clear-cut. This choice also depends on the weight attached to the objectives of the central government (correcting macroeconomic imbalance, improving welfare for the national population) and the local governments (cost-effective service production, more efficient allocation, improved responsiveness).

The process of fiscal decentralization in formerly planned economies started in 1990 in Poland and in Hungary, and a year later in Romania, Bulgaria and the Russian Federation. Now, about 40 countries are undergoing a transition from central planning to a decentralized government system and a market economy. Eastern European countries and the republics of the former Soviet Union and former Yugoslavia form the majority of these.

Before the reforms began, most of the resources of the sub-national governments came from transfers from the central government. Usually, these transfers were the result of bargaining, and so were not based on clearly defined allocation rules. The downward shift of responsibilities, without sufficient resources being provided to local governments through revenue assignment or increased transfers, has resulted, in some countries, in vertical imbalance and excessive borrowing at sub-national level.

A primary source of concern arising from expenditure decentralization in Developing Countries is that local governments may lack the institutional capacity to assume their new functions. However, this should not be an absolute barrier to decentralization, and there are several ways to improve administrative and technical capacity at the lower level. These include reforming recruitment policy (competitive hiring), pooling the services of professionals, sharing equipment, or outsourcing services to private providers. Technical knowledge can also be borrowed from higher-level governments. Moreover, decentralization can be adapted or organized according to the capacity of each sub-national government to provide public services (asymmetric decentralization).

Central governments often have a paternalistic approach regarding their fiscal relations with sub-national government units, which is not compatible with accountability and the efficient use of resources. At the end of the year, local governments receive deficit grants to balance their budget (soft budget) or can expect a bailout if they accumulate too much debt. However, enforcing a hard budget constraint is a first precondition for accountability and the efficient use of resources. To achieve this objective, it is also necessary to enable and induce sub-national governments to cover a significant part of their expenditures through taxes or user charges. A further question is whether, and to what extent, sub-national governments should be allowed to borrow. If the budget must be balanced every year, how should intergenerational equity be achieved, since many investments in infrastructure are made by local governments?

3.4.2. Main issues in the decentralization process in Transition Economies and Developing Countries

Following the failure of central governments to fulfill their tasks in a satisfactory manner and also because of pressure resulting from globalization, a large number of Developing Countries – about 70 according to Shah (1998) – have opted for greater decentralization. Governments decide to shift some tasks down when they think that sub-national governments or some other type of organization can achieve their goals more effectively. When the decentralization process is initiated from the top, an approach that has been adopted in most Developing Countries, the rationale of shifting down responsibilities is to achieve the goals of the central government more efficiently (Bird and Vaillancourt, 1998). The weakest forms of decentralization – de-concentration or eventually delegation – are generally adopted. What are the prerequisites for successful decentralization? One obstacle to the transfer of expenditure and tax responsibilities to sub-central governments seems to be the lack of administrative capacity at the local level. The first question is thus how to build decentralized governments' capacity to deliver public services and mobilize the local tax bases. Which functions should be shifted down? Is asymmetric assignment based on population size and/or fiscal capacity a strategy that can be recommended? Can de-concentration (or delegation) be seen as a first stage

in the process of building a devolved system? How should fiscal discipline be enforced? Finally, is it possible to identify a pattern of success or failure?

Regarding revenue assignment in Transition Economies and Developing Countries, the first task is to assign sufficient resources to governments in order to make them accountable. The reduction of the sub-national governments' dependence on revenue from enterprises and other assets (housing, retail units) is another important problem. The decentralization of public services and markets should take place in a coherent manner, whereby privatization is the ultimate form of decentralization. The involvement of local governments in purely private activities may hamper the market decentralization process. Another question to consider is whether the intergovernmental transfer system should be redesigned (from a bargaining mechanism to a formula-based system). The aim of vertical transfer is not only to correct vertical and horizontal imbalance, but also to make sub-national governments accountable and promote the efficient use of resources. In Transition Economies, sub-national governments often have unlimited access to borrowing and are used to soft budgets. Hard budget constraints must be implemented (no deficit grants, no expected bailout), and borrowing at the local level must be controlled (e.g. passive control through guidelines, direct control of new state borrowing by central government or control of capital spending) in order to avoid macroeconomic mismanagement. Finally, it is necessary to consider how local governments will be permitted access to capital markets (by direct borrowing, borrowing through the central government, or borrowing through a public financial institution).

When decentralization is a bottom-up process (Bird and Vaillancourt, 1998), the economic rationale of shifting down responsibilities is to allow citizens to express their preferences and receive public services according to their needs. Decentralization, here in the sense of devolution, also improves accountability, responsiveness, and microeconomic efficiency. However, while improving allocative efficiency, decentralization may be a threat to macroeconomic stability. We must consider how sub-national borrowing should be controlled and what the appropriate mechanisms might be (e.g. equalization programs) to compensate for horizontal fiscal imbalance.

With the reduction in barriers to exchanges and the movement to integrate markets on a major regional or world scale, the mobility of goods and above all of capital, both human and physical, has increased. The consequences of market integration on the decentralization process is a matter on which economists have been unable to agree. There are sound arguments for concluding that globalization and regional economic integration are factors that facilitate decentralization by reducing the economic cost of smallness (Alesina and Spolare, 1997). The trend towards decentralization, observed in Developing Countries and Transition Economies, can be interpreted as a by-product of increased market integration at a global and regional level. In a borderless world, local governments may be in a better position than the central one to compete for direct international investments through tax incentives or the provision of better services to business (Shah, 1997). Political and fiscal

decentralization allows countries to make more credible commitments to international investors.

There is also evidence showing that economic integration exerts new pressures on fiscal centralization. In a borderless economy, as a result of regional specialization, different regions within a country face unequal risks of being adversely affected by an economic shock of some kind. Regions more at risk would move in favor of a strong central government. In fact, building larger fiscal units may be seen as a way of sharing the risk on a broader base (Garrett and Rodden, 2000). It is also possible that fiscal policy will become more important even if the business cycle is symmetric, which will mean more responsibilities for the center.

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