

Hanns Bühler / Susanne Luther / Michael Siegner (eds.)

FEDERALISM AND CONFLICT MANAGEMENT



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PREFACE

||| Ursula Männle

In more and more countries with challenged statehood, federalism is being discussed as a model for reform. Particularly, stakeholders in countries with a high degree of ethnic, religious, social and / or cultural heterogeneity increasingly consider federal reforms as a potential tool to maintain national unity while also accommodate minority aspirations. In this context, the ability of federalism to integrate diverging interests, autonomy movements and territorial conflicts is emphasised.

It has to be noted however that peaceful coexistence achieved through federalism is by no means guaranteed. For federal reforms to successfully contribute to conflict resolution a wide range of critical factors need to be considered. For example, the interaction between different institutions and different levels of government is of paramount importance for the regulation of conflicts within a country. Federalism will not be able to end all conflicts but ideally will provide an institutional tool to deal with conflict effectively and most importantly non-violently. A second critical factor for successful federal reforms is the effective distribution of competences and responsibilities. "Who decides on what and on what basis?" is a pivotal question for any state with an institutional design that transfers powers to lower levels of government. Taking into consideration that many conflicts in divided societies can be traced back to the struggle for more autonomy and legislative competences for minorities, a suitable distribution of responsibilities has the potential to significantly contribute to sustainable conflict resolution.

While taking the importance of an effective distribution of competences into account, it is also of crucial importance for any federalising or decentralising state to ensure that each level of government has appropriate financial capacities to carry out their assigned tasks. Therefore, fiscal arrangements and financial relations between the different levels of government are essential for the very existence of any multi-level state. Fiscal federalism always aims at balancing financial and thus political autonomy on the one hand as well as ensuring equality and solidarity across the entire country on the other.

These three overarching themes have been discussed in great detail during the International Munich Federalism Days 2017 and this publication mirrors the identified challenges and potential solutions. While acknowledging the significant contribution of all participants including the international experts guiding the conference, I would also like to stress that federalism should not be seen as an "one-size-fits-all" approach. The proposed ideas and solutions presented in this publication are the product of a fruitful international exchange but may not be applicable to all contexts. Each country and each society faces different challenges and requires different mechanisms. At the same time, federalism has to be seen as a *process* in which countries have to constantly re-evaluate their structures and adapt to a changing environment if necessary.

Against this backdrop, the issues raised in this volume are relevant for countries in initial stages of federalisation or decentralisation as well as for countries with an already established system of multilevel governance. For this reason, I am confident that this publication can stimulate discussions on the various aspects of federal reforms.

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INTRODUCTION

||| Michael Siegner

In the past decade, the study of federalism has come to enjoy significant theoretical and empirical prominence. It has been argued that federalism is somewhat of a "growth industry" within political science.¹ International organisations such as the World Bank and the United Nations Development Programme have increasingly prescribed federalism and decentralisation as the most promising tools to foster accountability, democratisation and economic growth. Concurrently, federalism has emerged as an important tool for conflict resolution. Federalism has come to be seen as an instrument to accommodate territorially based ethnic, cultural and linguistic differences in divided societies, while maintaining the territorial integrity of existing states. These developments have facilitated the emergence of comparative studies on how federations and federal-like forms of governance work in practice. To what extent and how federalism and federally organised states contribute to conflict management and resolution has become one of the central questions of such studies.

Against this background, the International Munich Federalism Days 2017, organised by Hanns Seidel Foundation and EURAC Research, decided to focus on different aspects of federalism and conflict management. The international symposium examined the following questions:

- How does federalism as a pragmatic and adaptable tool of governance contribute to the management and resolution of conflicts?

- What are the promises of federalism as a tool for conflict management? What are its pitfalls?
- What influence do constitutional designs, power sharing arrangements and litigation procedures have in federal systems and emerging federations?

In order to discuss these overarching questions, the International Munich Federalism Days 2017 brought together participants from 22 countries with various backgrounds. Academics, Members of Parliaments, government representatives, civil servants, representatives from civil society and private sector organisations as well as ethnic minorities from countries as diverse as Morocco, Libya, Bosnia and Herzegovina, India, Myanmar and the Philippines participated in the conference. Such a geographical range of countries ensured a rich diversity of perspectives and experiences of the topic under study. Each of the 22 countries represented at the conference currently encounter the same critical task: the effective management of conflicts resulting from the accommodation of various kinds and levels of diversities. In most of these countries, federal or quasi-federal arrangements are discussed or have been introduced as peace-making and state-building devices, aiming either to keep the state intact and / or to settle conflicts by accommodating minority groups in an inclusive system of government.

The goal of the International Munich Federalism Days 2017 was therefore threefold: Firstly, the conference aimed to contribute to the examination and analysis of how conflicts have been managed and resolved in federal and federal-alike systems. Secondly, it provided comparative analyses on how mechanisms and procedures in cooperation and coordination of governmental levels and between governmental levels and the different actors are functioning. Finally, the Federalism Days provided a networking and discussion forum in order to advance dialogue between scholars and practitioners on the effectiveness of federalism as a tool of conflict resolution.

Scholars of political science, law and economics provided input at the conference analysing current trends and dynamics in constitutional design, power-sharing arrangements and litigation mechanisms. In this context, particular attention was drawn to intergovernmental relations, the distribution of competences as well as fiscal arrangements and financial relations. These topics were dealt with in in-depth workshops involving both experts and participants.

The contributions in this publication represent a summary of the workshop results and provide a brief overview of the topics discussed during each of the workshops. The publication is intended to be a concise and result-oriented document useful not only for the participants of the conference as a reference but for practitioners in the field of federalism and conflict management in general. The publication begins with a generic overview of federalism, constitutionalism and conflict management and discusses some of the main challenges in the ongoing debates on federalism in the twenty first century. This is followed by the summaries of the contents of the three workshops mentioned above. In a concluding chapter the results are discussed in a broader context, focusing on the "toolbox character" of federalism in regards to conflict management.

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NOTE

¹ see Erk, Jan: Comparative Federalism as a Growth Industry, in: Publius: The Journal of Federalism 2/2007, pp. 262–278.

FEDERALISM, CONSTITUTIONALISM AND CONFLICT MANAGEMENT

||| Francesco Palermo

INTRODUCTION

The idea of federalism as a tool for structural resolution of ethnic / religious / linguistic conflicts is old and still very popular. Several constitutions of the last generation are based on this assumption, implicitly or explicitly. This is also the basis for ongoing processes of constitution building in Asia, Africa and Europe.

Is the assumption that federalism can solve and prevent community conflicts correct? To what extent is federalism a tool for conflict management? What is the role of constitutionalism? Accumulated knowledge is there. However, among the many existing cases, some are successful, others have failed: what lessons can be learned from them? How should the topic be correctly approached?

THE VICIOUS CIRCLE OF OWNERSHIP

In the still prevailing Westphalian approach, diversity-driven federalism (i. e. based on assumed ethnically, linguistically, religiously homogenous sub-state entities) is a sort of second-best statehood. Such a view, however, is often considered too much for the State and too little for the concerned groups. There is often disagreement about the final option.

Overall, such an approach proved to work well. Its strength lays a) its being a viable alternative to external self-determination (thus preventing secession), and b) in its ability to do so by addressing minority issues without derogating from the fundamental element of western constitutionalism: majority rule. It turns national minority groups into (potential) territorial majorities and this way it does

not need to derogate to the basic (and simplistic) principle of majority rule. This compromise is especially appealing and useful in post-conflict situations as it often represents the Columbus' egg: it allows to bring peace by sharing power and ownership and to postpone some fundamental issues that cannot be resolved when the situation is still tense (especially who has the final say on certain issues), waiting for more appropriate conditions for solving them.

However, when both the state (and the national majority) and the affected territory (and the national minority) see federalism as ownership over a territory, this normally leads to conflicts. If not initially, in the long run, as the experience of even the most successful cases of territorial accommodation proves. One may thus argue – as several governments like to do – that federalism is part of the problem rather than part of the solution.

THE CHALLENGE OF CONSTITUTIONALISM

This is however where the essential element of constitutionalism comes in. Constitutionalism means using legal tools to limit power. Federalism is one of the most effective instruments to that effect. The mistake is not with federalism as such, but rather with its use for purposes that are not its core business. There is definitely a link between federalism and minority protection, but this needs to be channelled correctly by using the right instruments. Such instruments are provided by constitutionalism.

As to minority rights, the challenge is about overcoming decisions based on majority rule. Federalism is also part of those, as an instrument to deconcentrate power, but definitely not the only one, nor the chief one. Other are equally if not more effective in going beyond the numerical logic: power sharing in governments; quotas; personal autonomy; special procedures with qualified majorities, and the like.

Federalism as self-government for a specific minority group can be very useful especially in the aftermath of a conflict or as a means to stop it. There must however also be a vision for the post-conflict

situation. Such vision is essentially about the use of federalism for its own primary purpose: to be an instrument of good governance, targeting a territory as a whole. The more efficient overall governance is, the less likely it is that minority rights are neglected and that minority issues develop into conflicts. The efficiency of the State structure is a powerful tool for providing the appropriate conditions for minority rights to be respected and for accommodating ethnic issues.

What are the tools for good governance provided by federalism as a constitutional device? Primarily those to be discussed in "International Munich Federalism Days 2017": financial arrangements, distribution of powers, inter-governmental relations, possibly judicial adjudication. Others and less studied have a particular relevance for ethnically diverse societies: a) cross-border cooperation allows to cooperate across borders and this especially benefits groups that are divided by such borders; b) forms of citizens' participation in decision-making increase the feeling of inclusiveness and allow decision-makers to take into due account minorities' claims.

CONCLUSION: FEDERALISM AS AN ACCELERATOR

Federalism is all the more an effective constitutional tool to prevent and resolve conflicts the more it is understood and used as an instrument to promote good governance and inclusion instead of ownership and exclusion. Federalism reminds of an accelerator. If its focus is on governance, that's what it promotes, and the same goes if focus is on separation. There is no recipe as to the right balance of such instruments, but awareness of the consequences of each of them is often lacking and this represents a danger.

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WORKSHOP A:

Intergovernmental Relations: Meaning and Relevance for Conflict Management

||| Andreas Heinemann-Grüder / Soeren Keil /
Karl Kössler / Jens Woelk

INTRODUCTION

The overall aim of the two workshops was to "identify, discuss and evaluate mechanisms of conflict management in different states and debate options for how these could be improved, specifically focusing on relations between different government levels."¹ In doing so, the first part of the workshop focused on the definition of intergovernmental relations, a discussion on why they are important and a wider input session on common problems and issues with intergovernmental relations in the countries represented in the workshop. The second part focused on possibilities to increase the functionality of intergovernmental relations and overcome some of the identified problems. A short input presentation was followed by a discussion amongst the participants in order to identify what works in some countries and how some of the identified problems could be overcome.

DEFINING INTERGOVERNMENTAL RELATIONS

Intergovernmental relations were defined as formal and informal mechanisms to ensure coordination and cooperation between different levels of governments in decentralised and federal political systems. Coordination between different levels is required, because very often competences overlap and different policy issues require cooperation. Examples of this cooperation include the need for joint

decisions in the area of health care, when this is a regional competence but building and maintaining hospitals might be a local competence. The most common and often most complex form of intergovernmental relations can be found in the area of fiscal federalism.

Based on this definition, it was demonstrated why power-sharing between different levels and different elites (from different backgrounds) is useful in order to ensure the functionality of intergovernmental relations. Five reasons were given: First, intergovernmental relations that are based on inclusion and power-sharing ensure the concentration of decision-making, and by doing so they contribute to functional decentralisation, strengthen local government and ensure that each level in a decentralised or federal system has appropriate competences and resources. Second, power-sharing in intergovernmental relations ensures transparency, cooperation and effectiveness in governance decisions. Third, functional intergovernmental relations ensure policy coherence and consultation and thereby focus on cooperation and ensure that a permanent dialogue between different levels of government exists. Fourth, functional intergovernmental relations ensure that policies are implemented based on consensus and that different perspectives are taken into account when policy is being discussed and implemented. This further increases inclusion and therefore the acceptance and respect for the rule of law. Finally, it was pointed out that intergovernmental relations are important, because they provide a framework for the federal dogma of "unity in diversity" by ensuring that policy divergence is allowed, while coordination enables the functionality of a system.

KEY ISSUES IN INTERGOVERNMENTAL RELATIONS

Based on the above input, a wide discussion erupted amongst the participants in both workshops about the current state of intergovernmental relations in their countries, and in particular about current problems that exist and need to be overcome. These problems included the difficulty of constitutional change to enable

functional intergovernmental relations, symbolic issues such as certain names and phrases, the role of political parties as actors of informal conflict resolution, the role of the military and other non-democratic actors in intergovernmental relations, questions about the legitimacy of local governments, forms of "fake" decentralisation where local and regional governments formally exist but have no competences, the distribution of powers – which often favours the centre, corruption, lack of knowledge about intergovernmental relations and the functioning of the system, weak institutions, lack of responsible politicians, diversity and difference between regions, the fair sharing of financial resources, insufficient administrative capacities and a lack of trust in more formalised processes – which is the result of ongoing violence and conflict or historical legacies of centralisation and authoritarian rule.

The facilitators organised these different topics into three broad categories, which were

1. The Power of the Centre and Legacies of Centralisation

- a. Continued internal and external crisis contributes to a need for a strong centre
- b. Historical legacies favour strong central governments
- c. One party dominance often results in strong centralism
- d. The danger of separatism has increased calls for a strong centre
- e. The centre often controls access to resources and power
- f. The lack of constitutionalism and the rule of law increases chances for the abuse of power
- g. Citizens often expect more direct and effective action from the centre

2. Different Legal Order and their Coordination

- a. The relationship between different legal orders is often not clear
- b. Weak institutions at regional and local levels favour stronger centres

- c. Regional and local levels lack financial resources, even if they have certain competences
- d. Regionalism can also be introduced as a façade to hide strong centralising pressures
- e. A lack of respect for the rule of law and functional constitutionalism contributes to conflicts between legal orders

3. The Need for Capacity Building both at the central, regional and local level

- a. Different countries have different work cultures
- b. Citizens often focus on the central level, not knowing that the local and regional level can provide certain services
- c. There is a lack of skills in certain areas
- d. Weak civil societies and private sectors lack the ability to influence politics and act as further pressure groups
- e. Weak and poorly-skilled public administrations contribute to a lack in capacity
- f. Overblown public services secure jobs for certain groups without increasing output

OVERCOMING THE ISSUES IN INTERGOVERNMENTAL RELATIONS

Based on the previous discussion about the main problems in intergovernmental relations in the different countries, the facilitators prepared an input, in which they analysed each of the three main areas and identified the underlying dynamics. For area (1) Centralism, it was demonstrated that a key role is played by political parties and party competition, including regional parties; that the rule of law is essential in order to counterbalance attempts of centralisation; and that coalitions and coordination between units can help to overcome centralisation tendencies. The following discussion revealed that in the countries represented parties are often only one actor amongst many, that sometimes regional parties are forbidden to counterbalance secessionist tendencies and that parties themselves are often not democratic. It was further pointed out that

the representation of minorities is key to overcome centralisation tendencies and party positions on regionalisation are key, especially when regional parties exist and can work together. Finally, the role of other actors, such as business associations was discussed, as their attitude to decentralisation and more functional intergovernmental relations can often be a key to counterbalance centralisation tendencies as well.

To overcome problems between different legal orders and increase the cooperation between different levels of government, the input presentation highlighted formal mechanisms of solving and overcoming conflicts such as: limited powers for each level, strong second chambers, Constitutional Courts, fiscal equalisation, reconciliation mechanisms between the two chambers of parliament, the creation of new units and fixed standards in service delivery. Informal mechanisms to overcome conflicts include executive federalism with a focus on elite bargaining, cross-boundary bodies for certain policy issues, joint sitting of both parliamentary chambers, Commissions and Expert input, Working Groups, Bilateral and Multilateral Treaties, the joint preparation of meetings between representatives of different levels of government, and the use of mediators in case of conflict. The following discussion identified further mechanisms such as ad-hoc tribunals (used in India), formal institutions to solve conflicts (such as the Council of Common Interests in Pakistan), Administrative Courts, Charters of Service Delivery as exist in Morocco, National and Regional Commissions (as used in the Philippines), the use of Tribal leaders (in Libya) and the move from informal mechanisms of conflict resolution to more formal arrangements as has been the case in Morocco and Libya.

Finally, to overcome the lack of capacity, the input focused on the need for macro-economic stability, legal and regulatory frameworks, tackling local capacity issues, support networks and monitoring systems, stable financing, a restructuring and streamlining of local and regional administrative offices and results-oriented policy planning and budgeting. The discussion that followed revealed addi-

tional possibilities, for example the importance of an Ombudsman especially for financial oversight, a need to invest in the education and training of administrative staff, a fair and transparent promotion and appraisal system and the reform of the current civil service academies to ensure they focus on capacity building and good governance provision.

CONCLUSION

The final discussion focused on what the next steps in individual countries are and how the issues raised could be taken forward in the different countries. It was pointed out, for example, that federalism and functional decentralisation can be a way out of the current situation in Libya, and that in Myanmar the process of federalisation is strongly linked to the peace process and other ongoing reform efforts such as security sector reform, social reform and the need for a new system of sharing resources equally and fairly. It was further pointed out that a focus on functional and strong courts is needed to ensure that decentralisation / federalism can work in practice and to counterbalance tendencies for centralisation and authoritarian governance. It was also pointed out that one of the main reasons why Tunisia's transition to democracy worked was the existence of a "shared problem perspective" which united parties and actors from many different backgrounds. In the Philippines, the role of the business sector is crucial, as their support for the planned federalisation of the country is vital in order to implement the reform. It was suggested that India might offer some general lessons for transition countries and young democracies, in that India's federal system works, because (A) there is a focus on empowerment of different actors, (B) fair resource sharing is at the centre of political discussion, (C) there is a strong focus on the local level as the government level closest to the people and often responsible for vital services, and finally (D) in India monitoring systems have been set up to ensure that the different systems and mechanisms are working and that any problems are caught early.

There was general agreement on the advantages of decentralisation and federalism and the need to enhance democracy, subsidiarity and guarantees for "weaker voices" in the system. There was also common agreement that the rule of law is central in order to make democratic governance and decentralisation work in practice.

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NOTE

- ¹ Due to popular demand by the participants two separate workshops with regards to intergovernmental relations were organised at the International Munich Federalism Days 2017. This paper summarises the outcomes of both workshops.

WORKSHOP B: Distribution of Competences and Accommodation of Minorities

||| Elisabeth Alber / Jaap de Visser

INTRODUCTION: AIM AND CONTENTS OF THE WORKSHOP

The overall aim of the International Munich Federalism Days 2017 was to "identify, discuss and evaluate mechanisms of conflict management in different States and debate options for how these could be improved, specifically focusing on relations between different government levels."

The first part of the workshop "Distribution of Competences and Accommodation of Minorities" on 16 May focused on the clarification of key issues. The discussion centered on the relevance of the distribution of competences with a focus on legislative competences. As a wider input, Q&A as well as discussion session, it referred to both general issues and different case studies (among others, US, Canada, Germany, South Africa, Switzerland, Italy). The advantages and disadvantages of different models of allocating competences between the different tiers of government (federal, regional and local) were analysed. The second part of the workshop focused on the participants' presentations and on possibilities to better organize the distribution of competences in order to accommodate socio-linguistic diversity in the country of origin of the participants. A lively discussion amongst the participants contributed to both sharing knowledge and to identifying how challenges can be overcome in the participants' countries.

During the entire workshop, following questions were tackled: (1) How are powers divided in federal and regional States? What competences normally reside at the national, subnational and local level? What do the Constitution and other fundamental legal documents (special / basic laws) provide with respect to the division of competences? (2) What are the reasons for and underlying principles of the allocation of powers? Are there significant differences across constituent units in federal and regional States? When those differences cause problems, how are they overcome and who facilitates a resolution? (3) How can a revised distribution of legislative competences help to resolve conflicts? How can a revised distribution of legislative competences help to accommodate minority claims? What role does education play? How are competences in the policy field of education shared? What implications does this have for the accommodation of minority claims?

SETTING THE SCENE: DISTRIBUTION OF COMPETENCES IN THEORY AND PRAXIS

Dynamic nature

"Who does what? Who decides on what? And on what basis?" are pivotal questions for any State with an institutional design that transfers powers to lower levels of government. The answers vary across time and space and are heavily context-bound, particularly with respect to the reasons for the distribution of competences (for example, the accommodation of ethnic diversity) and the methods used. The distribution of powers between governmental levels is one of the most complicated challenges and therefore a task that is never finally solved, neither theoretically nor practically. It refers to the dynamics of the relationship between governmental levels (self-rule and shared rule, the formula famously coined by Daniel Elazar) and thus affects the system of checks and balances in a State. The process by which federal and regional States come into being

influences the distribution of competences. Where the process involved an aggregation (coming together federalism) of previously independent units (for example, US, Switzerland), the powers of the federal level are less or, in comparative terms, weaker than in countries where the process was triggered by decentralization (for example, Belgium and South Africa) (holding together federalism).

Dual vs. integrated federalism

In classic studies of federalism (for example, Kenneth Wheare), the ideal distribution of powers was considered to be one in which each order of government was able to act independently (watertight compartments of responsibility; dual federalism). However, in practice, federal States have found it impossible to avoid overlaps in the responsibilities of governments at different levels and a certain degree of interdependence is thus inherent to all federal States, in some less (US, Canada, Switzerland), in others more (for Germany the concept of interlocking / integrated federalism applies, with the *Länder* responsible for the execution of federal legislation).

Whatever the model looks like, as a rule, constituent units of a State may use powers but are – formally speaking – not obliged to do so. Interestingly, the Swiss Constitution calls upon the responsibility of the cantons to make use of their competences, most of the Constitutions do not. Moreover, any transfer of powers to lower levels of government can only be useful if the lower levels of government are endowed with financial resources to exercise their functions (financial autonomy, fiscal powers, and resources deriving from equalization systems).

Levels of governments and competences

Unlike in unitary and administratively deconcentrated States, in federal and regional States the key question to be addressed is to what extent constituent units have legislative powers. Notably, the local level does not have law-making powers. Thus, in classical

theory of federalism the local level is not taken into account when talking about the distribution of competences because a system where only executive power is divided is too little to define a system as federal. However, the local level, which in classical federal States derives its authority from the regional / subnational level, cannot be disregarded because of its pivotal role in providing services; as such, it needs adequate funding and must thus be considered in the arrangements with regard to fiscal federalism und intergovernmental financial relations. Furthermore, many of the new federations (Nepal, Brazil, South Africa) do include local government as a third order of government.

Means of distribution of competences (enumeration method)

Constitutions and / or basic laws (with special majorities and thus more difficult to amend than ordinary legislation) of federal and regional States normally contain competence lists. Enshrining such lists in the federal Constitution or in special legislation aims at making clarity and guaranteeing the constituent units of a State autonomy with regard to their functions (constitutional guarantee of autonomy). The so-called "competence-competence" (which level of government decides on who can decide on how competences are distributed) usually is vested with the federal level.

Competence lists look very differently across federal and regional States worldwide. They may be very detailed or not. As a general rule, old federal States have a rather short list (for example the US) while those that developed more recently (i. e. after Second World War II) contain more detailed lists. There are also States that, in theory, provide for a detailed list of competences, but, in practice, the transfer of powers to lower levels of governments is casuistic and subject to 'political winds' from the federal level (for example, India's Constitution includes a list of powers that consist of more than 200 items, but the federal level exerts a strong influence on the autonomy of its constituent units, the states). Similarly, South Africa's constituent units, the provinces, have strong com-

petencies on paper but this strength is undermined by fiscal arrangements which make provinces dependent on the national government.

Types of Competences

There may be powers that only the federal or lower levels of government may exercise (exclusive competences) and / or powers that are shared / concurrent between at least two levels of government. Moreover, any Constitution provides for criteria as to when federal law prevails over subnational law (principle of prevalence of federal law or supremacy clause).

The advantage of concurrency is that it can render a political system flexible by having the federal system being responsible for general provisions and allowing the constituent units to legislate on details by taking into account specific needs. Shared powers can also mean that both levels of government legislate within the same policy fields but without a neat distinction between principles and details. The Constitutional Court / Supreme Court / Constitutional Tribunal rules on controversies whenever the legislation of the two levels is in conflict. Constitutions also contain provisions to determine which level of government exercises residual competences (i. e. those not specifically allocated). Residual clauses ensure that every area of legislation comes under at least one tier of government. A number of Constitutions also contain so-called emergency powers (or national interest clause).

The allocation of exclusive federal powers is relatively limited in the US and Australia, with most federal powers being identified as shared or concurrent powers. In Germany, India, Ethiopia, South Africa the exclusive powers assigned to the federal level of government is higher. In Spain, the Constitution lists exclusive powers of the federal level and competences of its constituent units, the Autonomous Communities, are determined in their statutes (basic laws of the Autonomous Communities). Overlaps in responsibilities of governmental levels in most federal States have led to

extensive lists of concurrent powers, where both levels legislate. An exception is Canada with few concurrent powers (for example, agriculture, immigration and old age pensions with provincial law prevailing over federal law). The residual powers, thus the competences that are not enshrined and explicitly attributed to one level of government in the Constitution, in many federal States remain with the constituent units (especially in federal States whose origins date back to the 18th and 19th century such as the US, Switzerland and Germany; an exception is Canada). In some federal States, the residual powers remain with the federal level (for example in Canada, South Africa, India). A few Constitutions of federal States explicitly provide for emergency clauses (for example India, Pakistan and South Africa).

Even with the most comprehensive or intricate constitutional provisions on the distribution of competences, the division of responsibilities among layers of government remains a complicated matter in practice. This is because everyday governance is always more complicated than the neatly defined, artificial, competences in a Constitution. In practice, any assessment of the advantages and disadvantages of various patterns of the distribution of power depends on how the details are interpreted and how conflicts are avoided and / or resolved.

In most federal States international relations, defense, economic and monetary union, customs, international trade, tax powers, infrastructure are of federal responsibility, while health care, education, social policies, labor are usually assigned to the responsibility of the constituent units. Policy fields that often are shared or in which the responsibility has changed over time are agriculture, natural resources, environment, police, courts, cross-border cooperation. In European multi-level States the area of coordination of finances and public debt is more troublesome than ever in the aftermath of the financial crisis 2008-2009; this competence, as a general rule, is of federal responsibility, and often it is used to hollow out the autonomy of constituent units.

Underlying principles

In line with Abraham Lincoln's idea of "government for the people, of the people and by the people", the distribution of powers serves the purpose of (1) taking decisions as closest as possible to the citizens (democracy argument); taking decisions close to and with the peoples that are directly affected (subsidiarity principle); (2) transferring powers to the lower order of government allows to accommodate diversities (and minorities), responding to the different needs of the State's constituent units adequately (unity in diversity argument); (3) from an economic point of view, the transfer of functions to the constituent units favors economies of scales (units know best); the costs of certain services decrease if delivered at lower levels; this has positive effects for the whole State (efficiency argument).

In all federal and federal-alike States, the cooperation between the different levels of government is based on, as a general rule, constitutionally enshrined principles. For example, in South Africa the principle of co-operative government is in use; in Germany the principle of federal comity, in Italy the principle of loyal cooperation.

Policy Field Education

No univocal pattern can be found when it comes to dealing with the distribution of competencies in the field of education in federal and regional States. On the one side, there are States in which centripetal wind is blowing: competencies in education as well as the implementation of education policies are re-allocated to the central level in order to guarantee efficiency and unity within the State-wide education system. On the other side, there are States in which the need is exactly the opposite: governance schemes in education are legislatively, administratively and financially ever more decentralized due to structural reforms and in response of claims by constituent units within a State.

Generally, when dealing with education one has to differentiate between compulsory education, higher education and research. While compulsory education and higher education in many federal

States are exclusive competence of the constituent unit (or, especially in the case of higher education shared competence), research is usually of exclusive federal competence.

In the US, public education is not included in the list of enumerated powers of the Congress; its constituent units, the states, have the leading role in primary and secondary education, also with regard to funding; the federal level is a junior but active partner (who, by means of the grants-in-aid system, influences education policies in the states).

The Swiss constituent units, the cantons, are sovereign and responsible for school education; they decide on the design of the system, they set school curricula, they are responsible for funding and teacher education. The federal legislator is only responsible for a few main principles as the regulation of school entry age, compulsory school attendance, recognition of qualifications (only if cantons are not able to realize harmonization themselves by means of coordination); such coordination is elaborated by the cantonal conference of ministers of education, an organ that has no binding legislative powers (horizontal cooperative federalism).

Italy serves as an example for a regional State organized in 15 constituent units having an ordinary statute and five regions having a special statute. Regional autonomy was implemented in an asymmetric manner in order to meet territorial needs and the claims of linguistic minorities. When it comes to education, regions having a special statute have more powers aiming at accommodating linguistic minorities, teaching in mother tongue and pluri-lingual schooling. For example, in the Autonomous Province of Bolzano / Bozen, which together with the Autonomous Province of Trento forms the Autonomous Region Trentino-South Tyrol, education in German and Italian language is established, based on the parity of the German and Italian language in South Tyrol; moreover, in some valleys a pluri-lingual system is in use (German and Italian are used as teaching language next to Ladin, the language of the third officially recognized linguistic group in South Tyrol).

Identifying and discussing challenges

The different States represented by the participants are in different stages of discussion on federalism or decentralization. Some States practice federalism (for example Pakistan) or consider it as a sustainable means for conflict settlement (for example Myanmar). Some States practice decentralization (for example Moldavia), others point out the importance of the local level (for example Israel). Morocco practices deconcentration and is considering decentralization. Jordan is discussing democratic reforms. Whatever the ongoing debates are, they all have to be contextualized and interpreted against the legacy of either British (for example Israel) or French administration (for example Morocco). Such legacies next to general socio-economic conditions heavily influence mind-sets and political cultures (in favour of or against decentralization).

Overall trends in the discussed States are (the numbering does not imply any prioritization): (1) the central government is very reluctant to let go power; (2) minorities are marginalized; (3) there is an urgent need for political dialogue and reforms; (4) there is the need to link debates on federalism and decentralization to debates about what it means to live in a democracy and by which means a democratic system can guarantee the participation and non-marginalization of all groups inhabiting the respective State (democratization, civic education); (5) clarity with regard to the 'federal toolkit on an appropriate distribution of competences' has to be made (by taking into account the needs of special territories and granting them special status); (6) any division of powers between governmental levels has to be accompanied by capacity building measures and an appropriate allocation of funds (transferring competences to the lower levels of government without funds and in absence of capable politicians as well as administrators is useless); (7) clarity has to be made with regard to the concepts of internal and external self-determination; internal self-determination in the form of granting a special status to certain territories of a State helps to come to terms with conflicts (for

example, Gagauzia in Moldova; could also be an option for Western Sahara next to the empowerment of regions in Morocco); (8) foreign influence in all cases complicates the discussion on conflict settlement, decentralization and federalism (Russia and China were explicitly mentioned).

In general, the constitutional protection of lower levels and their competences is critical and in most cases very weak. For example, Israel refers to tensions between the central government and the local level; in Israel, the local level exercises powers related to the management of diversity (education, culture, language matters). Pakistan gives evidence on the tensions between the intermediate level, the provinces, and the local level; Myanmar points out the need to issue state and region constitutions as well as the need to implement capacity-building measures at local level.

With regard to the current reality of the distribution of competences, following challenges were discussed in detail (again, the numbering does not imply any prioritization): (1) the influence of the federal level controlling the finances; (2) the existence and impact of administrative structures referring to British or French legacy; (3) the presence of the army; (4) the absence of democratic structures at lower level; (5) the missing implementation of constitutional provisions; (6) the absence of proper coordination mechanisms between the central / provincial / regional and local government levels; (7) the need to uphold and increase political representation of underrepresented groups of persons (for example women and ethnic / religious minorities by means of reserved seats or quotas); (8) the need to better regulate policy fields as culture and education at the lower levels of government in order to accommodate diversities; (9) the need to create encounters within separated educational systems within a State / constituent unit of a State, aiming at creating civic bonds across groups; (10) the need to focus on liberal-democratic curricula and civic education.

The importance of democracy as a foundation for federalism or decentralization was pointed out by all participants.

CONCLUDING REMARKS: NO "ONE-SIZE-FITS-ALL" SOLUTION

There is no fixed formula to be applied when it comes to the distribution of competences. No current system is perfect. All models have to be constantly questioned and regularly revised against the backdrop of changing socio-economic conditions. Every system deals with de facto asymmetries. In order to accommodate diversities (and minorities), de jure asymmetries may be enshrined in the competence lists in the Constitution or other basic laws. Enshrining competence lists in a Constitution or basic law requiring special majorities usually comes with greater autonomy for the constituent units of a State (constitutional guarantee of sovereignty of constituent units). However, in order to analyse if a federal or federal-alike State performs well, it is of crucial importance not just to look at legal sources, but also to understand how the distribution of competences and the accommodation of minorities works in practice. If the transfer of competences is not accompanied by adequate financial resources, then no constituent unit can properly govern. Some States labelled federal States do grant their constituent units very few powers; some States that are not labelled federal States do work according to federal principles. Finding the right balance between the powers attributed to the federal level and those attributed to the subnational level is a never-ending task for all stakeholders involved. It is the cornerstone of every federal or federal-alike system.

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WORKSHOP C:

Fiscal Federalism and Financial Relations

||| Gisela Färber / Alice Valdesalici

INTRODUCTION

The main aim of the workshop on fiscal federalism and financial relations was to discuss and compare the economic, political and legal frameworks of intergovernmental financial relations in the different states at stake, identifying major elements of criticism and suggesting solutions to cope with major problems. With this purpose in mind, the workshop was structured into three parts. In the first part, the experts provided input by focusing on the definition of fiscal federalism and its foundations in order to provide a common level of understanding for the subsequent discussion. In the second part, each participant presented on his / her country of origin following a common set of questions provided by the experts:

1. What type of arrangements has the country adopted to distribute competences and responsibilities in financial and fiscal matters?
2. Which are the major issues at stake in the current debates on the financial system in your country?
3. What type of institutions does your country have to prevent or settle conflicts in financial matters (composition, role, powers ...)? How do they work or how could they work better?

Each presentation was followed by a questions and answers session, in order to identify the major challenges and problems. Finally, in the third part, the discussion aimed at the elaboration of

basic guidelines related to the design of intergovernmental financial relations, to be taken into consideration when it comes to any decentralization process.

DEFINING FISCAL FEDERALISM

The subject of fiscal federalism is a central issue in political agendas and in the academic air due to its importance for the very existence of any federal system. No matter the form decentralization of powers takes, its fiscal dimension is always important and sometimes dominant in determining the outcomes of the entire process.

As in the case of federalism in general, there is no one-size-fits-all model and there is no global agreement on a common definition of fiscal federalism. Furthermore, there are notable differences with regards to the terminology used in the context of fiscal federalism. There are no generally accepted definitions of terms such as "financial relations" or "fiscal arrangements", "fiscal federalism", "fiscal decentralization", "financial regimes" or "financial constitutions" and these terms are sometimes difficult to distinguish. To make things even more complicated, the same terms are usually being applied to political systems that have very few traits in common. They mean different things to different people, depending on their standpoint and background as well as context of reference.

To cope with such great variety, it is thus useful to provide a working definition of "fiscal federalism" as a common frame of reference for discussion. This is of further importance as an essential step to predefine the object to be compared. In this regard, it is worth stressing that the literal meaning of the words "fiscal federalism" could be misleading for an appropriate understanding.

First of all, boundaries of fiscal federalism are hard to draw as we can refer to fiscal federalism even with regard to decentralized systems of government (i. e. quasi-federal states) that are not genuinely federal. Originally, the concept fiscal federalism was associated with the US prototype referring to it as the "assignment

of functions to different levels of government and the appropriate fiscal instruments for carrying out these functions".¹

Moreover, due to the aggregative nature of the American federation, the debate focused primarily on the need to grant certain financial independence to the federal level.² This perspective was only later reversed, when so-called holding-together federations (e. g. Belgium and Spain) or those systems that resulted from a combination of aggregative and devolutionary processes (e. g. India and Canada) were considered. These cases have overall favoured the emancipation of the concept from the US paradigm and in general from the federal state and the wide-spread of the phenomenon worldwide. The result is an inclusive understanding that embraces systems exhibiting features of both federal and unitary states (e. g. the so-called hybrids³) in the analysis.

Hence, fiscal federalism can be referred to cases with very few traits in common, embracing not only in typical (mature) federations like United States, Canada, Switzerland or Australia, but broadly speaking all federal-type systems or generally speaking to all forms of decentralization of powers, as for instance in emerging federations like Spain, South Africa or Ethiopia.

Secondly, notwithstanding the adjective "fiscal" the phenomenon is not strictly (or at least it is not only) related to the tax system. As a matter of fact, fiscal federalism refers more generally to the allocation of powers in financial and fiscal matters and the financial relations among the different tiers of governments of a federal-like system. Although the distribution of taxing powers is one important issue to be addressed, it is not the only one. Furthermore, in the functioning of the different systems there is visible a trend towards centralization of taxing powers at the federal level (with few important exceptions and with great variation from one case to another).

Having said that, the overarching idea is that fiscal federalism refers in very general terms to "the public finances of the various orders of government in a federal-type system", including the

analysis of "the respective roles and interaction of governments [...] with a particular focus on the raising, borrowing and spending of revenue".⁴ The examination thus includes the allocation of taxing, borrowing, and spending powers, embracing both regulatory and revenue responsibilities.

In addition, emphasis is given to "the respective roles and interactions of governments" redirecting the attention beyond the mere allocation of powers and responsibilities in order to take into consideration the functioning of the system by means of intergovernmental relations. This enrichment is connected to the theory of federalism as a process and appears to be particularly appropriate for addressing the phenomenon and its causes.⁵ At the same time, it is shown to be indispensable for understanding how different systems actually work.

Such a conceptual framework results in an inclusive spectrum of analysis that makes it feasible to embrace highly diverse and heterogeneous systems (like the cases presented in the workshop). The natural starting point of the analysis therefore is the existence of two or more orders of government and a vertical distribution of powers and responsibilities.

COMMON FOUNDATIONS IN FISCAL FEDERALISM

Although with great variation, all cases rest on the same common foundations. These key aspects include in particular:

1. The spending powers to carry out public functions each entity is vested with, with a focus on the following questions: who is responsible for which expenditures? How are they assigned among all tiers?
2. The revenue responsibilities, including both the (legislative) power to tax and the power over revenue. The legislative power to tax involves decisions not only on who is in charge to tax and what can be taxed, but also how to share such powers among the different tiers of government. One could refer to this category in terms of tax-base sharing schemes. Once decided on who

is responsible for tax-raising and how taxing powers are shared among the different levels, another key-issue concerns the vertical and horizontal distribution of the revenue, i. e. the revenue-sharing scheme. This is typically done by addressing the following questions: How does intergovernmental distribution of revenue work? How is revenue shared vertically among the different levels as well as horizontally that is among the entities belonging to the same level? Looking at the existing case studies, two major patterns can be detected: tax-revenue sharing arrangements and / or equalization schemes (or transfers in a broader sense). These are flows of money distributed on the basis of different criteria or a combination thereof, like the derivation principle, but also others such as population, fiscal capacity (the lower the fiscal capacity, the higher the amount of equalization transfers), or spending needs.

3. The borrowing powers – that is the distribution of this power and the limitations each entity undergoes. Who can borrow? How much freedom do subnational governments have in this respect?
4. The institutional dimension: who decides on all this? How does the decision making process look like? This is of relevance as financial relations are necessarily an area of cooperation and conflict, including not only conflicts with regards to the distribution of powers but specifically related to redistribution of funds which ultimately affects the stability of a political system. This applies to all decentralized systems, even the most homogeneous ones (i. e. Germany).

Each intergovernmental system of finance results from the combination of all these key aspects. In theory, the option in favour of a certain combination or another depends (or should depend on) on the aims pursued, but in practice it appears to be the product of political bargaining and compromise. However, it appears that each system is always the outcome of a balance between financial

autonomy and thus responsibility and differentiation (i. e. taxing powers), on the one hand, and equality and solidarity (i. e. the scope of equalization or transfers with a redistributive aim), on the other hand. The precise term of such a trade-off and the related question whether a breakpoint exists depend on too many variables to permit any easy generalization. A case-study approach has thus always to be central in any investigation.

BASIC GUIDELINES FOR THE DESIGN OF "FISCAL FEDERALISM"

During the presentations, the great variation among the different case-studies under discussion quickly became apparent. The participants' countries of origin are in very different stages of reform and differ significantly with regards to the degree of decentralisation. In some countries decentralization is being discussed, in others reforms have been adopted but remain to be implemented. In many of them decentralization is much more similar to a deconcentration of administrative powers and functions to the local level. Few cases can actually be traced back to quasi-federal systems.

Against the background of this great variety, the third part of the workshop has been devoted to the identification of some general and basic guidelines to be followed in the allocation of financial and fiscal powers and in the structuring of institutions to prevent and to cope with conflicts.

This has been done by addressing and discussing the key aspects illustrated above, focusing in particular on the following three elements: the allocation of taxing powers and of tax-revenue (1); fiscal equalization (2); and, finally, the institutions created to prevent and solve conflicts (3).

1. Taxation, tax autonomy, tax sharing

This paragraph is dedicated to the "tax assignment problem" and includes decisions with regard to both the allocation of taxing powers and of tax-revenue. Although there is no one-size-fit-all solution, combining the theories on fiscal federalism and the existing case-

studies the ideal distribution of competences in tax matters should be structured on a three-level-base, taking into consideration the following recommendations:

| | |
|----------------------------|---|
| Local level: | <ul style="list-style-type: none"> • own tax sources, but overall limited autonomy • right on inventing (local) taxes • user charges • access to income and (local) business taxes |
| State / province: | <ul style="list-style-type: none"> • access to personal and corporate income tax and to general consumption tax (within limits!) |
| Central government: | <ul style="list-style-type: none"> • taxes with redistributive effects should be the responsibility of this level of government • competence of harmonization of decentralized tax bases and types of tax rates, and thus avoidance of overburden of vertical tax rates • responsibilities of internalization of tax externalities |

2. Fiscal equalization (formula based, sufficient volume and transparency, distributive aspects)

This paragraph provides general recommendations on the design of fiscal equalization mechanisms, providing insights into the fundamental elements to be addressed related to the implementation of equalization schemes. The main pillars of fiscal equalization can be summarized as follows:

- Vertical supplement of state / provincial and local tax revenues;
- Horizontal equalization of fiscal capacities and financial needs;
- Country-wide harmonization of infrastructure.

The main challenge is that fiscal equalization has to find an appropriate balance between autonomy claims and solidarity concerns and thus is inextricably linked with the context of reference.

This idea has to be reflected in its structure, that is all entities shall have sufficient and adequate resources, but within limits. Otherwise, the incentives to make use of the assigned taxing powers would be completely lost. The following general recommendations thus apply:

- Base redistribution of resource on a rationale formula (i. e. indicators / criteria equal to all);
- Ensure an adequate balance of unconditioned and specific purpose grants, in order not to nullify spending autonomy;
- Provide appropriate incentives in favour of efficiency and economic growth (e. g. putting quantitative limits to equalization or granting a partial equalization, for instance including in the equalization system only certain revenue and not all revenue at disposal);
- Reduce the implementation gaps (i. e. the system in its functioning has to be the result of the rules and not of concurrent political bargains).

3. Institutions and conflict prevention (and resolution)

Against the background of a broad understanding of fiscal federalism in a sense that includes the dynamic dimension referable to intergovernmental relations, the institutional component is crucial. The structure and functioning of institutions are determinant for the system as a whole and play a great role when it comes to prevention and resolution of conflicts. Beyond the general considerations that have been discussed in the workshop specifically dedicated to intergovernmental relations (see Workshop A), when it comes to fiscal and financial matters the following additional recommendations apply:

- Strengthening of the relationship between citizens and the respective layers of government, in order to foster political accountability and activate democratic control;
- Improving subnational capacities of tax administration;
- Providing adequate incentives for the prevention of state and local corruption and determining credible sanctions in case of violations;

- Ensuring the formal inclusion of academic advisors and / or experts (finance commission, periodic evaluation, recommendation of tax sharing formulas);
- Establishing a body where all layers of government are represented, in favour of a multi-level consistency of the system.

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NOTES

- ¹ See Oates, Wallace E.: An Essay on Fiscal Federalism, in: *Journal of Economic Literature* 3/1999, pp. 1120–1149.
- ² See Hamilton, Alexander: Federalists no 30-36, in: *The Federalist Papers*, by Alexander Hamilton, James Madison, and John Jay, New York 1788.
- ³ See Watts, Ronald L.: *Comparing federal Systems in the 1990s*, Kingston 1996.
- ⁴ Anderson, George: *Fiscal Federalism*, Oxford, 2. Aufl., 2010.
- ⁵ See Friedrich, Carl Joachim: Federal constitutional theory and emergent proposals, in: *Federalism. Mature and emergent*, ed. by Arthur W. MacMahon, New York 1962, p. 528 ff.

FEDERALISM AND CONFLICT MANAGEMENT: CONCLUDING REFLECTIONS

||| Jens Woelk

The title of this year's edition of the International Federalism Days Munich, "Federalism and Conflict Management", is a combination of two elements suggesting that federalism can be a tool for successful management of conflicts.

With the objective of "learning from each other", the working groups discussed which kind of conflicts may be successfully addressed with elements from the "tool box" of federalism, regionalisation and / or decentralisation. Of course, within such a diverse group of participants from 22 different countries, there are very different experiences. Many different examples for challenges, cleavages or conflicts have been given during the sessions, with each participant contributing with his or her own case. In most examples, transformation of territorial government – from a unitary to a decentralised, regional or federal system – is part of a wider change and shall offer new opportunities. However, it also poses additional challenges, which the traditional and well-studied cases of federalism do not have to face.

LEARNING FROM OTHERS: SOME REMARKS ON MODELS

Therefore, the conclusive remarks have to start with an obvious question: what kind of federalism is meant in the title? There is indeed a need to reflect on this question, as we are all very much

influenced, by our own background (i. e. the country where we come from or live in), but also by the few traditional "role models" of federalism. These models have been mentioned quite often during this conference and they are, in particular, the United States, Switzerland and Germany.

However, these models also illustrate that the underlying concepts on which they are based are already quite old. More than 200 years have passed, since the US has been transformed from a Confederacy into a federal system; the Swiss federal system has undergone two important changes in 1848 and in 1999/2000; the German federal system could be established under Allied pressure in Western Germany, in 1949, not least because of a long history of decentralisation and Confederacy in pre-democratic times.

But all three have an element in common which distinguishes them from most of the systems we have been talking about during the last days: they belong to the category of aggregative systems, because they have been established long ago, in reality or legal fiction, by a group of formerly independent States forming a new, federal State, not least by transferring powers to the new center, the federal government.

In most cases of our discussions, however, the dynamics are actually of opposite nature: usually, in systems of recent transformation we find a devolutionary logic with a gradual transfer of powers from the center to the sub-national entities, or – in the case of decentralisation – attempts to strengthen local government by creating more efficient local bodies able to autonomously administer certain functions and to provide services. This different logic, sharing power which used to be concentrated in the center, very often raises the question of trust: is such a devolution of power sustainable? Can the new entities be trusted in exercising their new powers? How much interference and control does the center need for supervision and coordination in order to avoid systemic problems? And do these powers not contradict the very process of federalisation, regionalisation or decentralisation?

The US, Switzerland and Germany are successful systems and merit to be studied as they can certainly be of inspiration for other situations. This is true in particular for certain institutional and / or procedural elements, such as the structure of the Second Chamber, the horizontal cooperation and self-coordination in inter-ministerial conferences and else. However, adaptation of these structural elements is needed. On one hand, due to the different logic and dynamics in a devolutionary system in transformation by contrast with a well established and stable one. And on the other, because of the specific historical, geographical, societal etc. context, in which each system has to operate. This is why simple "copy and paste"-operations or "constitutional transplants" usually do not work and there is no "best practice" in the literal sense, but only a range of examples for "good practice".

FEDERALISM AND DEMOCRACY: CHECKING MAJORITY RULE

It has been underlined more often that federalism provides limits to power. It is the ultimate aim of modern constitutionalism to contain and regulate power, even that of a majority. Being part of the system of checks and balances federalism reinforces the limits to majoritarian rule through the system of territorial government by introducing limits and counterweights to central power.

This is best illustrated by the well-known example of the US Senate: the Upper House of Congress represents all States through an equal number of elected Senators. Tiny Vermont or Wyoming are represented by two Senators in the same way as California, Texas or the State of New York. Although the Senate is strongly characterized by party politics, this scheme shall illustrate the equal dignity of each State according to the federal principle by contrast with the democratic representation linked to demography and to the equality of votes also in quantitative terms.

In democratic terms, however, it offers more occasions for participation on different levels, according to the principle of "self-determination" of citizens: those who are concerned by a decision

shall have a say and participate in the making of that decision. This is why an autonomous and accountable local government is so important for the success of any federalisation and decentralisation reform. For creating democratic structures a democratic culture is necessary which is favoured by a bottom-up experience of participation. It also creates occasions for making politics and politicians on different levels accountable. The role of political parties and the different dynamics of national parties or autonomous regional structures and regional parties has been discussed in this context.

One concern has been the representation and participation of minorities or marginalized groups or territories, which may be facilitated through a federal or regional system as well as through strong local government structures.

FEDERALISM AND THE RULE OF LAW: THE IMPORTANCE OF RULES

Historically, federalism has produced written Constitutions; this is the experience even in Anglo-Saxon and Common Law contexts like the US, Australia and Canada. The division of powers between center and periphery requires an agreement on how to distribute competences and functions as well as legal certainty that the same agreement will be implemented, upheld and respected. A written document enshrining those rules provides important guarantees which are usually further reinforced through the possibility to approach an arbiter for final decision in case of controversy. Conflict may be resolved politically involving the center as well as the sub-national entities in the final decision. More frequent is the involvement of Courts as independent arbiters, usually a Constitutional Court or a Supreme Court. Again, institutions, pre-established procedures and conflict-resolution mechanisms provide certainty and thus create trust between the parties, despite the reasons for the actual controversy.

This is why intergovernmental relations are of fundamental importance as a flexible, additional dimension of interaction between different levels of government or, as horizontal forms of coopera-

tion and (self-)coordination, between the sub-national entities. A system of intergovernmental relations makes it possible to transform conflict into negotiation in institutions and through procedures. It is a metaphor for institutionalised and proceduralised dialogue.

**FEDERALISM AND SUSTAINABILITY:
INCLUDING THE STRONGER AND THE WEAKER**

For establishing a permanent dialogue in a federal or decentralised system it is essential that the weaker voices can be heard. Trust-building after a conflict can be achieved through recognition, power-sharing and inclusion of formerly marginalized groups and minorities. In a pluralistic democracy, it is of course the majority which decides; however, it is important for the quality of the same decisions as well as for laying the ground for their successful implementation through general acceptance that also the voices of those who are not the majority are heard and considered. The majority principle is acceptable, because today's minority can become tomorrow's majority. Where this change is not possible for structural reasons, special arrangements may guarantee the inclusion and participation of structural minorities. A federal system can create different, cross-cutting cleavages through the territorial dimension. This can be a means for not always emphasising the same line(s) of conflict, but for creating different and changing policy-oriented coalitions as well as an incentive for cooperation through representation of the whole population inhabiting a territory instead of separated groups.

The change of position and perspective is necessary for empathy with the other and for understanding of his or her situation and motivation. This is the first step for resolving any conflict.

It has been underlined that not all regions are the same. Some are richer, some poorer, some disadvantaged due to various reasons. The question of (re-)distribution of resources has been quite prominent in the workshop discussions. Economic differences and inequality are often a major source of conflict. Within a comprehensive system,

these differences may be compensated to some extent in the name of equity and for guaranteeing equal rights to citizens throughout a federal system. Thus, solidarity – and the consequent definition of the degree and means of such compensation – is an important topic in any federal or decentralised system. Financial relations are characterised by a tension between, on one hand, the autonomy regarding the sources of revenue and the powers of expenditure, and, on the other, necessary corrections through transfers from the center or among the entities in order to guarantee equal chances for all by creating more opportunities for the weaker parts.

Federalism is certainly not the solution for every conflict. It provides a toolbox with typical elements, but there is no "one size fits all"-model. Each system has to find its own balances as well as the right means to adapt these over time to changing circumstances and contexts. "Learning from others" through a comparative discussion of experiences shall facilitate the discovery of promising approaches and good practices providing ideas for improving the own situation.

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