

GLOBAL DIALOGUE Theme 8**INTERGOVERNMENTAL RELATIONS IN FEDERAL COUNTRIES****TEMPLATE (November 1st, 2008)****By Johanne POIRIER and Cheryl SAUNDERS**jpourier@ulb.ac.be; c.saunders@unimelb.edu.au**INTRODUCTION**

“Intergovernmental relations” (IGR) are a ubiquitous – if sometimes underestimated – dimension of any federation.¹ This is the case, whether the federal regime is the result of a process of unification or of devolution, whether it is “dualist” or “integrated”, whether it has a “federal chamber” or not, whether it is coupled with a parliamentary or a presidential system or a directorate along Swiss lines, and regardless of the legal tradition in which it is grounded. Various modes of intergovernmental relations mediate, modify and clarify “who does what”, sometimes in ways which may actually contradict the constitutional distribution of competences. Whatever design is used for the federal division of competences, substantial interaction between orders of government seems unavoidable and techniques for managing this interdependence are varied and widespread.

The need for managing intergovernmental relations is driven by a range of factors, including constitutional ambiguity, fiscal relations, public policy interdependence, investment and trade, infrastructure management, environmental protection, policing and security, and the sharing of resources. Partisan and group-based competition for political control and differing views on how to achieve national and regional objectives affect the modalities of interaction between federal partners. While some constitutions include relatively detailed provisions concerning the interactions between orders of government, informal and partisan factors (including the conduct of intergovernmental relations through internal party machinery) frequently play a critical role.

Through IGR, federal partners pursue a wide variety of objectives from information sharing to policy coordination, from the elaboration of joint projects to coordinated law (or treaty) making, from the setting up of joint bodies to the establishment of mechanisms for dispute resolution. If IGR are a central feature of any federal system, they take different forms and shapes depending on a series of country-specific historical, constitutional, structural, social, linguistic, religious and political factors. “Cooperation” or “intergovernmental relations” range from phone calls between civil servants to solemn arrangements. Some techniques are highly structured and institutionalised. Some have a constitutional or legislative basis. Some are subject to judicial review. Others are rather informal, and yet essential for the smooth workings of the federation. Some are purely “horizontal” (between constitutive units, or CU)², others take place between units and federal authorities.

¹ See section « The Challenge of Terminology » for further consideration of the use of this expression.

² Ibidem.

This theme deals with both formal and informal institutions and processes of IGR. It is not limited, however, to interdependence and cooperation between federal partners. The range of interaction within a federal regime includes “cooperative” institutions and processes (consultation, co-decision, coordination), but also collusion, competition, confrontation, control, conflict, coercion. The analysis of IGR in particular countries should account for the trends and movements in particular federations. They should notably underline the causes of these forms of confrontation (political disagreement, ethnicity, fiscal imbalance, etc.) and the areas in which interaction is most effective.

The main purpose of the Global Dialogue program is to facilitate the process whereby federal regimes may learn from each other's experiences. Consequently, country chapters should explain not only the formal institutional arrangements, but also their operation in practice, to enable them to be adequately understood. Each chapter should also reflect a consensus view of the state of IGR in the country concerned or, if there is no consensus view, should identify the lines of difference and, where appropriate, the prevailing view.

Indeed, any comparative exploration of intergovernmental relations in federal countries must be placed within the larger social and political context of the relationships, both conflictual and consensual, that shape the underlying dynamic of political issues. Country chapters should not merely describe intergovernmental relations, but should also explain the constitutional, legal, institutional, political, socio-economic, and cultural sources of each country's patterns of intergovernmental relations. The theme should notably account for the impact of ethno-cultural cleavages, as well as the influence that the number of regional units, and their relative sizes, have on the conduct of intergovernmental relations. Additionally, the theme should consider whether the nature and/or character of IGR differ across policy fields.

As a means of illustrating the workings (or not) of various IGR processes and institutions, it would be useful for country chapters to include a number of concrete examples of issues or policy areas in which IGR are either particularly central, contentious or effective.

COUNTRY CHAPTERS

This theme will use the following federal-type countries or regimes as case studies: Argentina, Austria, Australia, Brazil, Canada, Germany, India, Nigeria, South Africa, Spain, Switzerland, the United States. These include “old federations” and some that have only been recently established. They include both parliamentary and presidential systems, as well as federations from the “North”, the “South” and emerging economies. The European Union, this “unidentified political object”, is clearly not a federation, at least in the same sense. However, it is a source of innovative forms of intergovernmental relations and is included for this reason in this theme.

Six of the cases covered in this theme are federations grounded in the “civil law” tradition (Austria, Argentina, Brazil, Germany, Spain, Switzerland); four have a legal system grounded in the “common law” (Australia, India, Nigeria, USA) and two have a mixed legal system (common law and civil law) although in both cases, the public law, particularly constitutional and administrative law, is primarily common law in character (Canada and South Africa). The legal system of the EU is also arguably mixed, including in its public law dimension.

THE ROLE OF LAW

In political science literature, IGR are often conceived as political power-games and negotiations, in which the legal system plays a marginal role (except, perhaps, when a significant decision on the distribution of competences reinforces a party's particular

position). To use an analogy with the international scene, the focus has been on “diplomacy”, rather than on the rules of “international/interfederal” law.

We would like to use this comparative exercise to enhance the dialogue between those regimes in which the role of the legal system is more “visible” – and presumably relevant – and those in which IGR are presumed to be largely immune from legal norms. This should help us reflect on the hypothesis that the dominant common law or civil law legal culture may exert some influence on the design and workings of federal systems. It should be underlined that “law” refers *both* to the existence of a constitutional or legislative framework which provides some ground rules for IGR, and to the possibility for the courts to control the conduct of IGR (or some aspects of them).

WHAT IS NOT INCLUDED

Increasingly, policy making involves non-government actors, as well as political institutions which are not formally “partners in the federation”. These may include municipalities, First Nations, occasionally other neighbouring countries and private actors. In the interests of containing the dimensions of the theme, these should not be included in their own right, but only as an incident to the main questions of the relations between the federal authority and that of the constitutive units, and of the relations between these units *inter se*.

THE CHALLENGE OF TERMINOLOGY

Students of comparative federalism face the perennial challenge of “corresponding” vocabulary. In the context of this Global Dialogue, three terms require some preliminary clarification.

First, anglo-american political scientists traditionally use the umbrella expression “intergovernmental relations” to refer to the wide variety of ways through which orders of government enter into relations with each other. Until recently, this expression was rarely used in continental European federations, where the expression “cooperative federalism” has tended to dominate, particularly amongst jurists. Neither, unfortunately, is fully adequate. The former suggests that these relations are dominated by the respective executive branch or “government” of each order, thus marginalizing other forms of institutional arrangements. On the other hand, “cooperative federalism” is clearly under-inclusive, in the sense that interaction between federal partners includes negotiation, conflict, competition, as well as collaboration. “Cooperative federalism” conveys a more harmonious vision of federal life than may often be the case. This being said, for lack of a better, more inclusive expression, this Template uses the phrase “intergovernmental relations” (or IGR). We want, however, to be sensitive to the expressions used in respective federations and would welcome remarks on this issue in country chapters (or suggestions for a better term!).

Secondly, the term “dualist” is regularly used in at least three distinct ways. First, it refers to federal systems in which each order of government has an executive power and civil service which implements its norms and policies. By contrast, in “integrated” (or “administrative” or “executive”) federal regimes, one order (often the constitutive units or “CU”) implements laws and programmes of another order. In these latter systems (Germany, Switzerland, for instance) the constitutive units administer federal laws. In a related fashion, the term “dualist” is also used to describe judicial systems in which constitutive units have their own courts, as opposed to those in which justice is a federal matter. Thirdly, “dualist” (or “dual”) is also often used to refer to the exercise of competences by several orders of government in a

manner that is essentially independent of each other. In this Template, we use “dualist” in the first or second sense.

Finally, the terms “horizontal” and “vertical” cooperation are commonly used in many federations, but may be less familiar in others. In the United States, for example, relations between constitutive units are often described as “interjurisdictional” instead. However, the expression “interjurisdictional” may not be adequately understood in other federations. In this Template, we have preferred to use the expressions “horizontal” and “vertical” cooperation. In doing so, we make it clear that we do not imply any form of hierarchy between orders of government. In individual country chapters, authors may opt for terms that are in use in their own discourse, including “federal-provincial”, “interprovincial”, “federal-cantonal”, “Commonwealth-state” etc.

ASSESSING IGR : THREE MAJOR CROSS-CUTTING ISSUES

Having described the main trends in IGR, as well as the principal mechanisms and processes of IGR, each country chapter should highlight what seems to work well, and why, and, conversely, what arrangements do not seem to work well, and why. This assessment should rest on several cross-cutting considerations.

First, do IGR in each country enhance or diminish democracy, citizen participation, accountability, justice, and the rule of law? Are they predominantly the prerogative of the executive branch, and largely immune from control from the legislative and judicial branches? Is this considered to be a problem or not in the particular federation?

Secondly, are the mechanisms and processes effective in terms of policy making and implementation? Can we provide an assessment that this leads to better results in terms of public services? Does it depend on the policy sector? If so, what lesson can we draw for the organization of IGR? In other words, what role can we attribute to IGR in the success (or not) of policy making and programme delivery?

Thirdly, do formal and informal modes of interaction effectively manage to ease political and societal tensions within the federation? Do they lead to increasing centralisation or decentralisation of the federation? Is this movement challenged by some groups or constitutive units? Are IGR used to introduce asymmetrical features in the federation? Does this ease tensions, or does it create new ones?

Where parliamentary and/or judicial forms of control exist, they should be underlined by authors, since this lacuna is often deplored in the literature on federalism, while concrete solutions remain largely elusive. This being said, it may be that there is a trade-off between transparency/accountability on the one hand, and efficiency on the other. (It may also be that politicians and administrative personnel simply find it useful to *justify* lesser degrees of parliamentary and judicial control on grounds of efficiency).

STRUCTURE OF THE ANALYTICAL GRID

This Template is divided into 10 sections.

- **The first** is an **introduction** to the main features of the federation under study, which may have an impact on the conduct and output of IGR.
- **The second** is a brief survey of the **major characteristics** of IGR, as well as their **historical evolution**, in the country.

- The **third** deals with **cooperative techniques** which involve the **LEGISLATIVE BRANCH** and which allow for joint, coordinated or delegated law-making.
- **The fourth** deals with **THE EXECUTIVE DIMENSION OF IGR** (except for agreements, which are dealt with in a distinct section). These include **settings/fora** in which representatives of the federal authority and of constitutive units (or only the latter) meet, negotiate, take decisions etc. It also covers role of the **civil service** and of the **impact of informal contacts** on IGR. Questions of the **judicial control of decisions** emanating through these processes are asked throughout.
- **The fifth** is concerned with **bodies or organs created by several federal partners (joint agencies)** and with **other specialised institutions** that play a role in IGR.
- **The sixth** deals with all forms of **AGREEMENTS** between federal partners, whether they are « purely political » or are considered « domestic treaties ». It is put in a distinct section since in some cases they will involve the legislative branch and in some cases, not...
- **The seventh** addresses IGR in the specific context of **fiscal federalism**
- **The eighth evaluates** the evolution and the conduct of IGR in the country **from** the perspective of **efficiency in policy making** and delivery
- **The ninth** deals with the impact of IGR on **political accountability**, the **rule of law** and **democratic legitimacy**.
- **The tenth and final section** examines the impact of IGR on the evolution of **federalism**, the **management of political tensions**, **trust-building** between federal actors. It also includes reflections on **future directions**.

SOME THOUGHTS ON THE EUROPEAN UNION AND OTHER FORMS OF REGIONAL INTEGRATION

The Template, as it stands, is not adapted to the structures and processes of the EU. A specific Template will be developed for that chapter so as to facilitate comparisons and contrasts with institutions and processes in existing federations. The focus will largely – but not exclusively – be on the potential and challenges of multilevel governance.

This being said, in the case of European federations (Austria, Germany, Spain), it would be interesting to consider IGR in the context of EU integration (both in the ascending phase of policy or norm making and the descending phase of EU policy implementation within member states). This may be relevant to Switzerland also, given its special relationship with the EU. European matters are clearly a crucial field of “vertical” IGR in these federations. The way these federations manage the control of the subsidiarity principle would also be interesting. If processes of regional integration (Mercosur, NAFTA, Australia New Zealand etc.) have implications for the conduct of IGR, they could also be outlined in relevant country chapters, so as to draw useful parallels.

QUESTIONS TO BE ADDRESSED IN COUNTRY ROUND-TABLES AND CHAPTERS

This Template provides a guide to the information that each country chapter should contain. Questions which are irrelevant in a particular context should be ignored. If the Template omits questions which are relevant to a particular country, or takes an unduly narrow perspective, please let the Theme coordinators know, so that the template can be adapted accordingly. Whenever helpful to do so, please provide concrete examples to illustrate the actual workings of specific institutions or processes in your country. It would be useful to canvass “horizontal” IGRs as well as those which take place between federal and federated authorities.

Overall, country chapters should be around 25 pages (around 10,000 words) and include a bibliography. As a guideline, section I and II, which are introductory, should cover about 4-6 pages as a maximum.

I. INTRODUCTION

The purpose of this section is to set out the main features of the federation under study, which may have an impact on the conduct and output of IGR. It is not necessary to provide a great degree of details.

I.1 General features of the federation

- What is its population size?
- What is the size of its territory?
- What is the GDP *per capita*?
- Is the system best described as presidential or parliamentary?
- Is the federation the result of a process of integration or devolution, or both?
- How many constituent units are there? How do they compare to each other, in terms of size, wealth and national influence?
- Is the population basically homogenous or are there significant differences between segments of the population in terms of religion, language, ethnicity, or anything else?
- Are boundaries between federal units related to such “cultural” distinctions?
- Do these differences help explain the modes of interaction between orders of government
- Is the federation dualist, integrated or mixed? In other words, do constitutive units and the federal authority each implement their own legislation and administer their own programmes, or do the CU implement federal law and programmes? ³
- To which legal tradition is your country primarily attached: civil law? common law? mixed?

I.2 The distribution of competences and resources

- Please provide a summary description of the distribution of legislative competences in your federation. You need to do so only to the extent necessary to place IGR in context; the distribution of competences has already been the subject of specific Global Dialogue theme.
- Are legislative competences primarily distributed on a “exclusive”, “concurrent”⁴ or “shared”⁵ basis?

³ See definition in introductory part of this Template.

⁴ In which case, laws of one order of government (generally, the federal) will take precedence in case of conflict.

- Is there a distinction between the formal distribution of competences (per Constitution) and the way in which competences are actually exercised?
- Does the distribution (and redistribution) of natural or fiscal resources affect IGR?

II. A GENERAL OVERVIEW OF IGR in the country

- What – generally – are the social and political forces which drive IGR in your country (regionalism, ethnicity, fiscal imbalance, party politics, resource management, EU integration, etc)
- Does IGR play any role in the negotiation and implementation of constitutional change?
- What are the main areas of confrontation, conflict, tension between federal partners? Have these changed over time? Are they assisted by IGR?
- Are IGR primarily negotiated (even if sometimes in a heavy handed way)? Alternatively, do IGR tend to be the result of a unilateral fiat on the part of one order of government (usually the federal). Does this vary between policy areas?
- Are there policy areas in which IGR runs more smoothly than others? Has this changed over time?
- What are the main historical trends concerning IGR in your country: have they led to more decentralisation? More centralisation? Has the federal regime become more cooperative? Competitive? Coercive?
- Does interaction tend to be primarily “vertical” (between the federal authority and the units) or “horizontal” (between units), or does it depend on the policy sector and the time period?
- Do IGR lead to asymmetrical arrangements?
- How do you explain these trends? Does it depend on policy areas?
- If your system is presidential (or directorial), are there situations in which the legislative arm of government is in conflict with the executive branch on the conduct of IGR? Do they tend to be subjected to competing lobbying groups and interests? Could you provide an example?
- Is congruence (or not) between **political parties** in power within the various components of the federation a factor in the type of interaction and the successes or difficulties in reaching compromises? If so, does it sometimes lead to asymmetrical arrangements?
- Do negotiations within and between political parties act as a substitute for IGR?
- Are processes for IGR provided for in the Constitution, federal legislation, or other formal document? (if so, it may be useful to include them in an Annex so that they can be shared with other authors, even if not formally included in your final chapter)
- Is there a constitutional obligation to act in good faith (*Bundestruue*, federal loyalty, trust, etc.). Is this provided for in the Constitution or did it emerge through case law?
- Whether such an obligation is explicit or not, is there a sense that federal partners “respect” each other, and their respective competences and priorities?
- Do IGR in your country depend largely on consensus (or unanimity) or are there areas in which majority or special majority decision-making is used? In the latter case, what is the rationale for majority decision-making in some areas and not others?

III. LEGISLATIVE MECHANISMS

⁵ Each order can intervene on an aspect of a particular policy area, without predominance in case of conflict.

III.1 Legislative institutions

- Is the federal legislature bicameral or unicameral?
- If there is a second chamber, to what extent does it “represent” the interest of constitutive units, or of specific “cultural” minorities?
- Does this type of participation by CU represent a (partial) substitute for other forms of IGR? The Bundesrat in Germany and the National Council of the Provinces in South Africa are examples of chambers designed to act in this way.
- Are there formal/informal modes of cooperation between the federal legislative assembly and those of constitutive units? What form does it take? What purpose does it serve?
- Are there any particularities regarding the legislatures of constitutive units which have an impact on IGR?
- Are there formal/informal modes of cooperation between legislatures of constitutive units? What form does it take? What purpose does it serve?
- Are there organisations which act as lobby for legislatures?⁶
- Do legislatures – including parliamentary committees or other forms of commissions – oversee the conduct of IGR by the executive? If so, do they issue reports? Are these public? Can the public actually participate (through reports or testimonies, for instance?) What other actions can the legislative branch take with regards to interaction with other orders of government? Can it block executive action? Can it initiate cooperation?

III.2 Legislative techniques (please provide examples, where relevant)

- Can a legislature delegate or otherwise transfer its legislative power to another order of government?
- Does the executive have regulatory power, in its own right or as the result of a delegation from the legislature? What are its limits? Can such regulatory power be delegated to another order of government? If so, must the legislatures authorise it?
- Are there other legislative techniques that enable different orders of government to coordinate their law/policy making?
- Are there legislative powers which enable one order of government (likely the federal) to impose actions on the part of another order (“unfunded mandates” in the USA, fiscal sharing decisions, etc). Do formal or informal negotiations tend to precede such actions? Are there any limits on them? Do such laws have the status of special or ordinary laws?
- Are there cases in which the adoption of laws or regulations by the federal or federated order must be preceded by *formal consultation* with another order? Is this a legal obligation or is this a practice?
- Are there cases in which the *consent* of that order is actually required before the law or regulation enters into force? Is this a legal obligation or is this a practice?
- Can courts intervene if a compulsory legislative arrangement is not respected? (eg. Obligation to consult another order of government to legislate etc.). If so, which court? Who can initiate the legal challenge? (only the other order of government, or any third party?) What sanction can that court impose? (for example: can it annul the legislation in question?)

IV. EXECUTIVE MECHANISMS

IV.1 Official fora for top executive interaction between federal government and the constitutive units

⁶ For example, in the USA the National Conference of State Legislatures.

- Does the federal executive contain representation from all regions or ethnic/language groups? Do these have an impact on relationships with other orders of government? Is this the result of a practice, or is this provided for in some legal text?
- Do the Heads of the federal and federated executive branches meet in an official context (other than as the second chamber of the federal legislature, which has already been covered in III.1)?
 - What purpose do these meetings serve? (dispute resolution? Negotiations? Formalisation of already agreed upon projects, etc.?)
 - How often do these meetings take place?
 - Do all CU always attend? If not, why not?
 - Who sets the agenda?
 - Who chairs the meeting?
 - Who provides the administrative support and infrastructure for the meeting?
 - What is the decision-making rule (unanimity? majority? qualified-majority?) What is the general effect of such rules (is it effective? does it lead to stalemates?)
 - Is the position of the respective Heads in each of these meetings authorised by their Cabinets (by whatever name called)? If not, what is the relationship between decisions taken in such meetings and collective decision-making within each order of government (the significance of this point will vary between presidential, parliamentary and other systems)
 - Are decisions taken in the context of these meetings binding?
 - Are all or part of these meetings held in public? Why (or why not)?
 - Are decisions taken in the context of these meetings made public?
 - Can such decisions be challenged before courts? Which one? By whom?
 - Are these fora, and the rules which govern them, provided for in an official or a legal text?

IV.2 Official fora for top executive interaction between constitutive units

- Do the Heads of the federated executive branch meet in an official context?
- What purpose do these meetings serve (policy coordination? development of a common platform in federal-CU negotiations, etc.)?
- How often do these meetings take place?
- Do all CU always attend? If not, why not? does this lead to “regional” arrangements (between just a few CU)?
- Who sets the agenda?
- Who chairs the meeting?
- What is the decision-making rule (unanimity? majority? qualified-majority?) What is the general effect of such rules (is it effective? Does it lead to stalemates?)
- Are decisions taken in the context of these meetings binding?
- Are decisions taken in the context of these meetings made public?
- Can such decisions be challenged before courts? Which one? By whom?
- Is this fora, and the rules which govern them, provided for in an official or a legal text?

IV.3 Meetings/Fora of sectoral ministers/secretary of states (per policy area)

- Do sectoral ministers in charge of a specific policy area meet regularly? In what areas?
- How often do these meetings take place?
- Is the federal order always present? Or are some meetings exclusively “horizontal”?
- Who sets the agenda?
- Who chairs the meeting?
- What purpose do these meetings serve?
- Is the position of the respective ministers in each of these meetings authorised by their Cabinets (by whatever name called)? If not, what is the relationship between

decisions taken in such meetings and collective decision-making within each order of government (the significance of this point will vary between presidential, parliamentary and other systems)

- How formal or institutionalised are these meetings? How are they established? Are they provided for in an official or legal document?

IV.4 The civil service

- Does each order of government have its own civil service?
- If so, are there possibilities to move from one order to the other?
- Does this facilitate/impede good relations with other orders of government?
- Is the civil service considered to be “politicized” or “professional” (thus less likely to be influenced by partisan politics?)
- Are civil servants largely in charge of IGR, or is this the prerogative of ministerial cabinets (or political parties)?
- Does part of the training of civil servants address relationships with other orders of government? Is experience with IGR valued in a civil servant’s career?
- Are there regular meetings of policy specialists/civil servants (per policy area)
 - How often do these meetings take place?
 - Is the federal order always present? Or are some meetings “horizontal” (between CU) ?
 - Who sets the agenda?
 - Who chairs the meeting?
 - What purpose do these meetings serve?

IV.5 Specific IGR organs within the federal administration

- Is there a specific department in the federal administration charged with the conduct of IGR with constitutive units?
- What purpose does it serve?
- If not, who controls this process (ex: the President or PM’s office)?
- Do sectoral departments have a specific service dedicated to IGR?
- Are specialised IGR institutions sometimes in conflict with sectoral departments (within the same order of government)? How are such conflicts resolved?

IV.6 Specific IGR organs within the administration of the federated units

- Do CU have organs or institutions dedicated to the conduct of IGR?
- What purpose does it serve?
- If not, who controls this process (ex: a Governor’ or PM’s office)?
- Do sectoral departments of CU have a specific service dedicated to IGR?
- Are specialised IGR institutions sometimes in conflict with sectoral departments (within the same order of government)? How are such conflicts resolved?
- Is the administrative capacity of some components of the federation too weak to allow for effective conduct of IGR? What is the consequence of disparities between CU in this regard?

IV.7 The logistics of executive IGR

- Is there a specific secretariat charged with organizing intergovernmental conferences? If so, under what authority does it fall? How is it staffed? Financed?
- Is it in charge of all conferences between the federal authority (from Head of executive to civil service) and the CU? Is is responsible of horizontal meetings as well?
- Are there specific secretariats in charge of particular IGR arrangements (regional trade arrangements? Financing of higher education, etc.)? How are they staffed? Financed?

- Is there a secretariat charged with archiving agreements between orders of government?

IV.8 “Informal” IGR

- How important are social networks to the conduct of public affairs in the federation?
- What is the basis of these networks (political parties, cultural/religious/ethnic connections, ect.)
- What role do phone calls, emails, informal or behind the scene meetings, etc. play in IGR?
- Is there a sense that regardless of the formality of institutions dedicated to IGR, the “oil in the federal machine” consists in “personal connections” between decision-makers?
- Does the presence of an institutionalised/legal framework for IGR lessen the need for such informality? Or do “informal IGR” take place in a parallel fashion anyhow? Can one assess the relative importance of “institutionalised” or “formal” arrangements vs. informal ones?

V. Joint agencies, specialist agencies and Independent Commissions

- Are there joint bodies or agencies, created by several members of the federation?
- What purpose do they serve?
- Are there bodies created by the federal authority which also fulfill certain tasks on behalf of CU?
- Conversely, are there bodies created by the CU which also fulfill certain tasks on behalf of the federal authority?
- Are there bodies created by the federal order that also play a role in IGR (eg the Indian Finance Commission; the Australian Grants Commission)? Is there any input by the CU into appointments to these bodies or the decision-making processes of these bodies?
- What kind of work do each of these kinds of bodies do?
- Who staffs them? Who finances and supervises them?
- Who are such bodies/agencies politically accountable to?
- Can they adopt regulations or subordinate legislation? Or decisions that are binding on third parties?
- Is there a sense that “joint action” is nearly immune from judicial control?
- Can decisions taken by such bodies be challenged before courts? If so, which ones?
- What role do Commissions of Enquiry, Planning Reviews, and other arms-length organisations established by one or more orders of government play in the conduct of IGR? What actual impact do they have? Is their potential fully realised?

VI. AGREEMENTS BETWEEN ORDERS OF GOVERNMENTS

Agreements between orders of government go under a large array of names, even in a single federation. For short, we shall use the expression “intergovernmental agreements” or “IGAs”. For this section, we have mind the entire range of agreements from the clearly legally binding to the informal ones, which punctuate federal practice.

VI.1 The practice of agreements

- Do federal partners conclude agreements between themselves?
- Are they generally respected? Or subject to changes in political priorities? Or changes in political parties?
- Is there a way of estimating the number of IGA adopted any given year? Or currently “in force” ?

- Is the practice of agreements primarily “vertical” or “horizontal”?
- Primarily “bilateral” or “multilateral”?
- Do they tend to involve third parties (private associations, municipalities, aboriginal groups, etc.)?
- In which policy areas are IGA mostly used?
- What purpose do they serve?
- Are some agreements “oral” deals?
- What are IG agreements called in your federation?
- Are agreements systematically published? If so, where? By whom? Is there an official secretariat in charge of archiving them? Of verifying their status or follow-up?
- If they are not, are some agreements made public (through the internet, for instance)? Or are they available on demand (through access to information legislation, for instance)?

VI.2 The functions played by agreements: Please provide examples, where relevant

- Are agreements used to harmonise the exercise of interrelated but exclusive competences? Or to sort out who does what in cases of concurrent or shared competences?
- Are they used to "informally" circumvent constitutional norms, notably the formal distribution of competences?
- Are agreements used to create joint services? Or to extend the services of one component of the federation to another?
- Are they used to create joint organs?
- Do they outline further cooperation procedures (“accords de bon voisinage”)? Or are they more specific?
- Are they used to introduce asymmetrical arrangements that are less contentious than formal constitutional ones?
- Are agreements used by the federal authority to “favour” certain CU at the expense of others? Is political party congruence a factor in such cases?

VI.3 The constitutional/legal framework and status of agreements

- Does a formal legislative or constitutional regime govern the conclusion or status of agreements?
- Are there legal/constitutional impediments to the conclusion of certain types of agreements (particularly vertical agreements)?
- Must certain procedures be followed for their adoption? (legislative approval, referenda, submission to some judicial organ, publication?)
- Is the conclusion of agreements the exclusive purview of the executive, or is the legislative branch involved (at the negotiation stage, or by being kept informed, or because its approval is, *in fine*, required for the agreement to come into force)
- Can agreements introduce legally binding obligations between governments? Or are they mostly conceived as "purely political" instruments?
- Can agreements create rights and obligations for third parties, notably the citizens of each order of government party to an agreement? If so, must a specific procedure be followed, such as approval by the legislative assembly?
- Would such a source of rights and obligations take precedence over other legal sources in case of a conflict (typically those which flow from a single order of government, such as legislation)?
- Even when there are formal agreements which are clearly legally-binding, does this lead to the conclusion of parallel "informal" agreements, which play a similar role, but circumvent formal adoption procedure, and are immune from a number of parliamentary or judicial control?

- If IGAs are not the object of a formal legal framework, does this seem to impede the practice of contractual cooperation in particular federations? Or, on the contrary, does it ease the conclusion of "informal" arrangements between federal partners?
- Are "non-binding" agreements generally respected? Or are they subject to unilateral repudiation?

VI.4 Dispute resolution regarding agreements

- How are disputes between federal partners concerning the implementation of IGAs primarily resolved? (negotiation, arbitration, courts, etc.)
- Is there an *official political* forum for resolving disputes concerning the implementation or violation of IGAs?
- Can courts enforce agreements concluded between orders of government if one party fails to respect its end of the deal?
 - Which court?
 - Which legal rules are applied to resolve the dispute (analogy with private contracts? With the law of treaties?) In case of a mixed legal system, does the civil or the common law apply?
 - What sanction can that court impose?
 - Does it depend on the type of agreement?
 - If courts have that competence, do they actually use it, or do they shy away from "interfering"?
 - Is there any case law on this issue?
- Can third parties (typically, citizens) seek judicial review of decisions taken pursuant to agreements?
 - Which court?
 - What sanction can that court impose?
 - Does it depend on the type of agreement?
 - If courts have that competence, do they actually use it, or do they shy away from "interfering"?
 - Is there any case law on this issue?
- Are judicial organs properly structured to deal with such arrangements? (if each order of government has its own judicial institutions, which are competent to rule on inter-governmental disputes)?⁷

VII. IGR and fiscal federalism

Intergovernmental relations interact with fiscal federalism in many ways in all federations. Issues of transfers, equalisation, and redistribution are likely to be one of the main sources of tension, and to consume of substantial part of the energy directed at maintaining good relations between orders of government. Authors should deal with fiscal federalism to the extent that it has an intergovernmental dimension; they should not, however, focus on fiscal federalism as a subject in its own right, as this has been the object of a specific Global Dialogue theme. In other words, issues of transfers and solidarity may be invoked as background to explain tensions and bargains in a particular country, but the focus should be on the institutions and processes whereby redistribution between federal partners takes place.

⁷ As background, you may briefly explain whether the judicial system is "unified" or whether federated entities, and the federal order, have their own judicial branch. Does the same answer apply to private law and public law matters (particularly administrative law?)

- How do financial transfers between orders of government take place in your federation? (legislation? Agreements? Grants? Conditional grants? Equalisation?)
- Are there specialised institutions dedicated to this purpose? How is it composed?
- Are its decisions binding?
- What kind of decision-making processes or rules apply? Can the federal order act unilaterally? Are decisions made on the basis of unanimity? majority vote? qualified majority?
- What is the general effect of such rules (is it effective? Does it lead to stalemates?)
- If there is no formal body in charge of fiscal federalism, are “unilateral” decisions nevertheless preceded by negotiations?
- Can one order of government finance projects/programme over which it does not have legislative competence (spending power)? Does this happen?
- What is the impact of co-financing mechanisms on the budgetary process for constitutive units or the federal budget?
- Can the federal legislature exert any effective control over the ways federal grants are made to constitutive units?
- Conversely, do the legislative assemblies of constitutive units have a role to play in the way such grants are spent in their jurisdiction, or is this the prerogative of the executive branch?
- What is the impact of conditionality and control by the “provider” of grants or transfer payments on the equilibrium in the federation?
- Do the “official” fora responsible for the conduct of IGR (*supra*, section IV.5 and IV.6) have counterparts in the Departments of Finance? Are there cases in which the “official” IGR body and the Departments of Finance do not see eye to eye?). How are conflicts resolved?

VIII. IGR and efficiency in policy-making and implementation

- How effective are existing IGR in terms of policy development and/or implementation?
- Do they limit or increase duplication? Increase policy-coordination?
- Do they slow down or accelerate decision-making? In particular, is policy-making affected by the “joint-decision trap” (the need for coordination or multi-layered agreement rendering any reform process extremely complicated)?
- Do they tend to result in solutions on the “smallest common denominator”? Or do they tend to promote better policy making (through emulation, competition, etc.?)
- What is the main output of IGR? (information-sharing ? coordination ? financial transfers?)
- Does it depend on policy area? Please provide examples
- Which mechanisms/processes seem most effective?
- Which seem to impede effective policy making and programme delivery?

IX. Political Accountability, the Rule of Law, Citizen Participation and Democratic Legitimacy

Please respond with regards both to the federal and the federated orders of government:

- In general, have concerns been raised with regards to the role played by legislatures, the courts or civil society in the conduct of IGR?
- Do the conduct of IGR in general tend to support democratic government in your country? Or do they tend to reinforce the sense of “democratic deficit”?

- Is there a sense that the executive branch either dominates the legislative agenda with regards to IGR (likely in parliamentary systems) or that it is eclipsed by the executive (in presidential systems) ? If so, could you give an example? If not, can you explain how legislative prerogatives resist to stronghold of the executive?
- Are IGR considered “opaque”? Are decisions made largely behind closed doors? Is this a concern?
- Is there a role for public input into IGR (consultations on proposed agreements, for instance?)
- Have there been cases in which one order of government appeals to its public opinion to put pressure on another order of government?
- Is there a sense that federal partners are prone to lobbying by private interests or civil society in their relationships with one another?
- Do scientific and professional associations play a role in developing policies and standards, before they become the object of intergovernmental negotiations? In other words, are there “professional” lobbyists in the IGR game? What kind of initiatives do they take? What is their impact? Please give an example.
- Are there cases in which private associations play a role in IGR?⁸
- Are documents relative to all the “comitology” of IGR (agendas, minutes, documents, etc.) made public? Are they accessible through “access to information” procedures?
- Do pressure groups use these documents to promote their agendas?
- Have some methods in place (or have some been suggested) to respond to these various concerns? For instance:
 - Does the (federal or federated) executive report on its relations with other executives to the legislative assembly? Is this a legal obligation?
 - Are there special parliamentary committees responsible for the overview of IGR?
 - Does it issue public reports? What do they include (major meetings? list of agreements? ongoing negotiations and issues?, etc.?)
 - How does the role of legislative assemblies regarding IGR reflect the parliamentary/presidential structure of the country?

X. The impact of IGR on Federalism: overall assessment and future directions

- Overall, how would you describe IGR in your country? Hierarchical? Effective? Coercive? Cooperative? Formal? Informal? Vertical? Horizontal? Bilateral? Multilateral? Chaotic?
- What is the general impact of IGR on the balance between shared rule and self-rule in the federation?
- To what extent and in what way have IGR evolved over time? Have relations between federal partners become more centralised? Decentralised? Competitive? Cooperative?
- Is there a trend towards more or less formalism or institutionalized cooperation?
- Are IGR generally understood to be conducted in a fair manner or is there a sense that some partners fare better than others? In what arenas are these power-games particularly played out?
- Do the existing mechanisms and processes encourage the building of trust between federal partners?
- Are there concerns that IGR have the effect of circumventing formal/official/constitutional structures and processes?
- Has « cooperation » been used to encroach upon constitutional powers?

⁸ For instance, cantonal chemists in Switzerland, which cooperate for the control of food quality all over the country.

- Is “horizontal” cooperation considered to be an “antidote to centralization”? or do they play other roles?
- Do IRGs allow for asymmetrical solutions which the formal legal structure does not provide for? Does this ease or increase political tensions?
- Do existing modes of IGR enhance or reduce political and social tensions within the federation?
- How are conflicts solved (negotiation? Alternative dispute resolutions? courts?)
- How adequate are the current mechanisms and processes of IGR?
- Are reforms considered? If so, in what direction?
- Would you recommend areas of reforms? What would seem to be a priority?
- What future trends in IGR do you anticipate in your country?