

Organisation of External Relations

Case-Study: Schwyz

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Ladies an Gentlemen,

With my presentation, I would like to give you today first of all a short general overview of how Swiss Cantons in general deal with foreign an external relations. Subsequently, I will then focus on a number of practical aspects and issues which I hope will help to animate the following discussion.

The organisation of foreign and external relations in Switzerland

According to the Swiss Federal Constitution, the states, i.e. the Cantons, enjoy all legislative powers which are not explicitly attributed to the Federal authorities by that very same Federal Constitution. As in many federal States, however, there has been an evolution which led to the attribution of more and more powers to the central level. From a today's perspective, it can be said that the Swiss Cantons maintain mainly powers in the fields of education, health, assistance of disabled persons, justice and home affairs as well as fiscal policy. In almost all other policy areas, legislative powers have been fully or partially shifted to the central authorities.

As regards foreign policy, the Swiss Constitution expressly states that foreign policy in general as well as the treaty making power is an exclusive competence of the central Government. Swiss Cantons, however, maintain powers as regards relations with foreign regions insofar as these relations do not interfere with the interests of the central State or of other Swiss Cantons. In other words, within the limits of their internal competencies Swiss Cantons have maintained the external powers to conclude public international law agreements and treaties with neighbouring or other foreign regions.

In all other cases, it is the Federal Government which has the exclusive power to exercise foreign policy. Nevertheless, this exclusive power is limited in two respects:

- First of all, in exercising their foreign policy powers, the Federal authorities must respect and safeguard the interests of the Cantons.
- Secondly and in practice more importantly, the Cantons have a participatory right in the Federal Government's exercise of its foreign policy if their internal competencies or their essential interests are affected. In such cases, the Federal authorities must consult the Cantons before taking a foreign policy decision.

Moreover, the Cantons may also participate in international negotiations led by the Federal government.

Next, I will focus on this latter aspect of Swiss Cantons` participation in the Federal Government`s conduct of foreign policy. I do this not least because of the fact that the Canton of Schwyz, given its geographic situation in the centre of Switzerland, does not have itself a very active policy vis-à-vis neighbouring foreign regions.

Participation of Swiss Cantons in the foreign policy of Switzerland

As you might know, there are 26 Cantons constituting Switzerland. At first sight, it appears therefore difficult for the central authorities to respect and to safeguard the interests of all 26 Cantons and to furthermore consult them before making foreign policy decisions. In addition, 26 Cantons participating in negotiations with foreign countries might render the federal authorities` task a little bit unpractical.

It is therefore evident that in practice, Swiss Cantons are obliged to coordinate themselves if they effectively want to preserve their powers and interests in the foreign policy of the Federal government. As a result, the Cantonal Governments – which according to all Cantonal Constitutions are entitled to represent their respective Cantons in external matters – have founded the so called “Conference of Cantonal Governments (CCG)” whose main aim is to defend the interests of the Cantons in the foreign and external relations of Switzerland.

The CCG has a permanent Secretariat in Bern. Its main task is to monitor relevant areas of Swiss foreign policy, and to analyse the potential impact of these developments on the Cantons. This work builds the basis to then subsequently elaborate common positions of the 26 Cantonal Governments to the address of the Federal Government. Draft common positions are usually submitted to all 26 Cantonal Governments who discuss them first separately and then in a second step within the assembly of the Cantonal Governments which takes place four times a year in Bern. If at least 18 Cantonal Governments agree on a common position, this position is then lodged with the Federal Governments as the position of the Swiss Cantons.

The Cantons` participation in negotiations that are conducted by the Federal Government usually is warranted by the attendance of one or two cantonal representatives who speak for all Cantons. They act within the mandate that is based on the respective common position previously adopted by the Cantonal Governments. These Cantonal representatives form usually part of the Federal Government`s team of negotiators.

Moreover, the Federal Government and the CCG have agreed to embed cantonal representatives within the federal administration. The idea being that this would facilitate the information flow between federal and cantonal authorities in particular in the field of the relations between Switzerland and the European Union. Today, the Swiss Cantons are therefore represented at the Swiss Mission to the European Union in Brussels and in two

federal ministries that are particularly active when it comes to relations with the European Union.

The consultation procedure in the field of foreign policy in Switzerland can therefore be shortly summarised as follows:

- If the Federal Government intends to start negotiations with a view to conclude an agreement in an area which potentially affects the competencies or interests of the Swiss Cantons, it adopts a provisional negotiation mandate which is then sent to the CCG for consultation.
- The Secretariat of the CCG sends these documents to the 26 Cantonal Governments, together with a draft of a common cantonal position on this issue.
- After deliberation, the Cantonal Governments send their comments back to the Secretariat of the CCG which, on the basis of these comments, adapts the first draft common position and submits the adapted draft, together with all comments received, again to all Cantonal Governments.
- Each Cantonal Government takes a final decision on the draft common position and gives a mandate to one of its members to defend this position at the CCG's general assembly.
- If 18 Cantonal Governments agree on a common position at the general assembly, this position is formally adopted and transmitted to the Federal Government. If there is no agreement on a common position, there will be no common position of the Cantons. Instead, each Canton will transmit its own position to the Federal Government who will take due account of these positions. In practice, this means effectively that the Federal Government is free to decide whatever it deems appropriate.

A similar procedure applies as regards the result of foreign policy negotiations, i.e. entering into international treaties. Finally, it ought to be mentioned that the Federal Government is not bound by Cantonal Government's common positions. The Federal Government simply needs to substantiate its motives for deviating from a particular cantonal common position.

As international treaties in general have to be ratified by the Federal Parliament and may be subject to a popular referendum, it is thought to be difficult for the Federal Government to get the approval of the treaty against the Cantons' opposition.

For a better understanding of the Swiss system, it ought also to be mentioned that members of the cantonal Governments are directly appointed by popular vote. Cantonal ministers have therefore a direct political mandate to speak for and on behalf of their constituents.

Moreover, past experience has amply demonstrated that the Cantons must lobby the Federal Government on foreign policy issues as early as possible. If the Cantons wait until the Federal Government officially seeks to consult them, the decision making process on the federal level is almost terminated. It becomes subsequently very difficult to influence or even to change the Federal Government's position as provisionally as such position might be from a formal point of view.

Some practical and organisational aspects of the Swiss system

Structural changes in the organisation of Swiss Cantons

Foreign policy in Switzerland has been considered to be an exclusive domain of the Federal authorities since the foundation of the Swiss Confederation in the middle of the 19th century. Therefore, Swiss Cantons have shown very little activity in this field, with the exception of dealing with certain matters concerning their immediate foreign neighbours.

Therefore, Swiss Cantons generally had no structure, instruments or organisations to deal with foreign policy matters. It was only when the Federal Government decided in 1989 to strengthen the relationship with the European Union that Swiss Cantons realised that they are directly affected by the Federal Government's pursuit of foreign policy. In addition, Swiss Cantons are very small units in terms of geographic and demographic size on an international level. These two factors explain why Swiss Cantons decided to create a common structure amongst themselves in order to defend their interests in the field of foreign policy instead of creating 26 new foreign policy structures.

On the other hand, the fact that even with a common structure Cantons had to organise themselves to define their mutual interests inside this common structure led in some Cantons to an internal reorganisation of their administration and – in some cases – even of the Government. Nowadays, there are Cantons which have created a unit which is in charge of preparing Government decisions on foreign policy matters. Other Cantons have decided to attribute foreign policy matters to one of the members of the Government. Finally, in recent years, some Cantons have decided to abandon the traditional Swiss system of a rotating presidency of the government in favour of a system where a president of the Government is elected for a period of four or five years and where the main task of this president consists of representing the Canton in external affairs.

Relationship between the Federal Government and Cantonal Governments

Traditionally, the Federal Government felt no need to have a regular dialogue with the Cantonal Governments in the field of foreign policy. For instance, the Federal Government did not consult the Cantons when it entered into negotiations in order to join the European Economic Area (EEA) even though this step would have greatly affected cantonal prerogatives and powers. The Federal Government only set up a body composed of cantonal and federal officials whose main task consisted of advising the Cantons as regards necessary changes in their internal legislation if the treaty was to enter into force.

Only because the EEA treaty was finally rejected in a popular referendum in December 1992 the federal authority realised the necessity to involve the Cantons in foreign policy matters. Thereafter, there were some arrangements on the administrative level, like the integration of cantonal representatives in the federal administration that I have mentioned earlier. A real political dialogue, however, was more difficult to establish. It appeared very quickly that in the Federal Government's opinion the Cantons should only be involved in foreign policy matters to support the Federal Government's views who

should remain the only instance to define Switzerland's best foreign policy interests. The view still remains in various circles that if the Cantons dare to adopt a different opinion, such divergence would hamper Switzerland's ability to defend its interests in the field of foreign policy. From the Cantonal Governments' point of view, however, there should first be a dialogue between the Federal and the Cantonal Governments to define the Swiss interests in the field of foreign policy; these commonly defined interests could then be defended in external relations.

Even though today, there is a regular dialogue between the Federal Government and the Cantons, there still is no consensus as to how Swiss interests in the field of foreign policy should be defined.

Involvement of municipalities and major cities

Like in other European States, foreign policy activities more and more affect also the interests of Swiss municipalities in general and larger Swiss cities in particular. Thus far, the Cantons have embraced this demand by associating the Secretariats of the association of Swiss municipalities and the associations of Swiss cities to the CCG Secretariat's activities. It appears, however, that in particular a few major Swiss cities (which – by definition - are almost all located directly or very close to the Swiss border) intend to strengthen their foreign policy activities and their active involvement in the developments in Europe.

Even though this has not yet been a subject of discussion at the level of the Cantonal Governments, it would seem to me that this subject will soon have to be appropriately addressed. It goes without saying that this additional aspect will further complicate the internal co-ordination of foreign policy in Switzerland. On the other hand, if foreign policy should continue to be inclusive and supported by the population – which in Switzerland is particularly essential in light of the instrument of popular referenda – a solution needs to be found to include these interests as well when defining Swiss foreign policy.

I hope this brief overview has given you a taste of the very complicated foreign policy situation in Switzerland. I am of course happy to answer any questions you may have and to further explore these issues with you in the following discussion.