

# Comparative Reflections on Foreign Relations in Federal Countries

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Foreign policy has traditionally been the responsibility of central governments. In countries with a unitary system of government this state of affairs is relatively unproblematic since most powers accrue to, and most public policy is conducted at the national level. In federal countries, however, constitutional powers and responsibility for the conduct of public policy are shared between the federal government and those of constituent units – states, provinces, cantons and so on, with each level responsible for a set of functions. But here also, foreign policy has traditionally been the constitutional responsibility of the central government because this function was seen as transcending the division of powers due to the need to present a common front toward foreign states.

That is not to say that constituent units of federal countries have not been involved in trans-border, foreign relations in the past. These were mostly interactions with neighboring polities involving practical matters such as cooperation in transportation, flood and pollution control and even the sharing of services – matters of low politics, conducted primarily in a very limited geographical context. However the scope and nature of constituent unit involvement abroad, whether with other polities, international organizations or with private organizations, have grown as the volume of international transactions increased dramatically in the last half century in part due to the development of high speed communications and faster, more efficient transportation. These changes led, in turn, to ever-growing international commercial transactions and cross-border human contacts. As a result, constituent units in many federal countries have become more engaged in international activities because the exercise of their constitutional responsibilities has been increasingly affected by globalization. The chapter on the United States discusses how these developments have affected foreign relations in the US, and that country's experience is mirrored in various degrees in other federations. Globalization, in other words, has prompted constituent units to become players, even if relatively minor players, on the international stage.

Globalization has not, of course, had a uniform impact on all federations nor has the reaction been similar in each country. The form of international relations in which constituent units have engaged, as well as their scope and intensity, vary considerably across federal countries and, for that matter, within them. The twelve federal countries presented in this booklet have had different experiences. Certain major factors have affected the conduct of foreign relations in these and other federal countries, however.

One crucial factor in understanding constituent unit foreign relations is the constitutional context in which they are conducted. The extent to which the jurisdiction over foreign relations is clearly specified in constitutions varies considerably as do the powers, if any, that are formally assigned to constituent units. At one end of the spectrum, for example, are Canada and Australia, in which constitutional conventions and court rulings define the terrain and allow constituent units significant scope for action. In other countries, including India, Malaysia and South Africa, the constitution explicitly assigns powers over foreign relations only to the federal government. In these countries there is limited scope for constituent unit foreign relations. At the other end of the spectrum are countries whose constitutions assign them explicit powers: Argentina, Germany, Switzerland and Belgium, in ascending order of constituent unit empowerment.

The power over treaty-making and their implementation are of particular importance when considering constitutional factors. To state the matter succinctly, even in countries where the federal government is assigned the lion's share of, or exclusive, treaty-making powers, the implementation of the resulting agreements is often the responsibility of constituent units because it affects matters over which they have jurisdiction. Hence it is clearly expedient for the federal government to take into account the interests of its constituent units since implementation could be jeopardized were they to be uncooperative, with all of the consequences that would arise from failing to meet commitments made to foreign partners.

The management of relations between the two levels of government in this regard takes on surprisingly different forms. For example, in Australia judicial interpretation has given the Commonwealth government powers to implement treaties even in areas under state jurisdiction, although consultation structures and processes have been created in an attempt to forestall such heavy-handedness. In Germany, South Africa and the United States, where legislatures must ratify some treaties and upper houses have constituent unit representation, national executives have institutional reasons for taking into account the need for their assent. The German, Swiss and Belgian constitutions have provisions that require consultation of constituent units by the central government, insofar as treaties affect their interests. These countries have developed structures and processes that provide predictability to the consultation process. In Canada, consultation practices vary across policy sectors and are governed by informal

agreements that in some sectors have nonetheless become highly institutionalized. In the US, consultation is minimal and observers have expressed concern that this state of affairs may well hurt the country's international interests. India, Argentina and South Africa are working on the development of consultation procedures as provinces and states gradually become more engaged in foreign relations.

Only a limited number of constitutions, among them the German, Swiss, and Belgian, assign constituent units treaty-making powers, with those in Belgium having the strongest powers to enter into treaties in areas of their jurisdiction. In Argentina also, states are empowered to sign agreements with foreign partners. But even where such powers are not explicitly granted, constituent units often sign numerous agreements with international partners which, though perhaps not called treaties, nonetheless connect them with these partners in a wide range of commercial, economic, cultural, and other relations. A frequent observation in the chapters that follow is the need for strong cooperation between the two levels of government to ensure that the conduct of foreign relations works in the best interests of the whole country.

Constitutional and legal provisions are clearly not the only factors affecting the conduct of foreign relations in federal countries. In India, for example, the complex partisan relationships between the states and the Union Government and national authorities' reliance on political support from regional power brokers to maintain office allows some state political leaders considerable say in foreign relations, even though states are not constitutionally granted powers in the field. In South Africa, participation by provinces in foreign relations is limited not only for constitutional reasons but also because of a lack of institutional capacity and political experience in provincial governments. In Malaysia, the domination of an authoritarian central government rules out practically any meaningful foreign relations role for the states. Malaysia dramatically demonstrates the importance of domestic political factors for the conduct of foreign relations. Argentina and Spain are also examples of this, as the evolution from authoritarianism to liberal democracy allowed constituent units to engage in foreign relations that were not open to them previously. In India, fundamental changes in political orientation leading to a much more liberal regime in foreign economic policy provided the rationale and impetus for the gradual increase in state foreign relations.

What other factors affect the nature and intensity of constituent unit foreign relations? Clearly geography matters. Australian states do not have international land borders and thus have a more limited range of international relations than their counterparts elsewhere. Relations are often problematic between India and the countries it shares borders with. By contrast, Germany shares peaceful borders with nine countries and *Länder* adjacent to these countries have built networks of relations with

their constituent unit or regional governments to cooperate in matters ranging from maintaining transportation infrastructure to economic development.

In Europe, regional influences blend into political factors as the five European federal countries considered in the following chapters, Austria, Belgium Germany, Spain and Switzerland, are either members of or, in the case of Switzerland, closely affiliated with the European Union (EU). The dense intra-Union political relations that are a hallmark of EU membership engage constituent units in a multitude of relations with its institutions and with their counterparts in other states, as well as national governments. Regional integration among the Southern Common Market (MERCOSUR) countries has also encouraged increasing provincial foreign relations in Argentina, and in India, provinces have become involved in a number of nascent South Asian integration projects that have led some of them to increase their international economic ties. In all three contexts economic motivations are crucial for understanding constituent unit regional activity.

Economic motivations are central for understanding the foreign relations of constituent units. These relations include activities such as foreign travel by political leaders and officials to promote exports and tourism and to seek foreign investment. Some Canadian provinces and American states have set up offices abroad to promote commercial ties. Constituent units also seek to be consulted on or participate in international trade negotiations. They may seek foreign investment through such domestic measures as offering development of infrastructure and tax breaks. Measures that impede foreign competition for domestic firms are more controversial, such as erecting or maintaining non-tariff barriers, and government procurement practices favoring domestic firms.

More altruistic motives can also play a role. Constituent unit governments have the expertise in such policy areas as education and health care delivery that is absent in the public service of many federal governments, and thus undertake aid projects in the less developed countries, sometimes as agents of their federal government. Such aid can also take the form of government capacity-building by training public servants and providing policy advice.

Ethnic and cultural factors are important in some countries. Quebec in Canada, Catalonia and the Basque country in Spain, and the Belgian communities and regions are among the most active constituent units internationally as they seek not only to serve their economic interests but also to create links with ethnically or linguistically and culturally-related communities abroad. In most cases such activities are not politically charged as they help forge strong human links across international frontiers. But at times they have been used to serve, or have been interpreted as serving, separatist goals and have thus become highly controversial at

home. Quebec's foreign relations under the separatist Parti Québécois is an extreme example of such actions.

It is indisputable that politicians, while engaged in promoting the interests of their constituent units abroad, enhance their political profile at home and partisan political considerations may well play a role in undertaking such journeys. These are matters of minor importance even if they may raise objections at home. Overtly political actions that stray into the realm of foreign policy are much more controversial. Constituent unit politicians have been known to make statements, even while abroad, on politically charged foreign policy issues that are the concern of the federal government. In the US, states have become involved in symbolic or much more aggressive actions that seek to put the spotlight on what domestic lobby groups consider objectionable government or private sector practices in foreign countries. And the economic, ethnic, cultural and other interests of one or more constituent units may well clash with the interests of the country as articulated by the federal government.

The challenge, then, in each federal country is to ensure that the foreign relations of constituent units and the foreign policy articulated by their federal governments do not clash. Both orders of government can contribute to developing an effective foreign presence. Constituent unit governments have a detailed understanding of the interests and concerns of private sector actors who are or wish to become engaged internationally, and much relevant technical expertise. Federal governments can bring greater experience to bear in dealing with the international environment and wield greater political and economic clout than can individual or even groups of constituent units. Their cooperation requires consultation through durable and adequately conceptualized institutions of intergovernmental relations and it requires the willingness to make compromises. Effective cooperation is essential as effective foreign relations become increasingly important for success in a highly interdependent world.