

INTERGOVERNMENTAL RELATIONS IN THE RUSSIAN FEDERATION

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PART I: GENERAL CHARACTERISTICS OF THE RUSSIAN FEDERATION

The Russian Federation is comprised of 89 constituent units and consists of: 21 Republics, 6 provinces, 49 regions, 2 federal cities, 1 autonomous region and 10 autonomous districts. Theoretically and historically; Republics, the autonomous region and autonomous districts are ethnically defined constituent units, while the other units are considered to be territorially based ones. Today, however, the so-called titular ethnicities constitute a majority in only 10 of the 32 ethnically based units. On the other hand, the portion of non-Russians in some regions is relatively high. For example, Tatars make up 17% of the population in Ulianovsk region, while in several ethnically named constituent units the proportion of the population belonging to the ethnic group identified by the name of the constituent unit, is less than 10%.

That a need exist for intergovernmental coordination in Russian Federation is not very difficult to establish. The very existence of a federal system is predicated on the existence of regional diversity. The cultural, economic, climatic and environmental differences among the territorial units of the Russian Federation produces wide differences in policy priorities, not only among the 89 constituent units themselves, but also between the constituent units and the Federation. The 1993 Russian Constitution provides the constitutional basis for intergovernmental interaction. As with so many other federal constitutions the constitutional provisions are not always sufficiently clear in this area. In addition, in many spheres of public policy there is a considerable degree of overlapping jurisdiction.

The 1993 Russian Constitution includes features of both symmetrical and asymmetrical federalism. Article 5 of the Constitution is particularly controversial. Section 1 of Article 5 stipulates that all constituent units are equal members of the Russian Federation and Section 4 of the same article states that all units of the Federation shall be equal in their relations with federal governing bodies. Section 2 of Article 5, however, provides that only Republics shall have their own constitutions. All other constituent units are entitled to their own charters. All the constituent units have similar legislative and executive capacity. Section 2 of Article 68 gives the Republics the right to establish their own official languages, in addition to Russian.

PART 2: DISTRIBUTION OF LEGISLATIVE JURISDICTION

Article 71 of the Constitution grants exclusive legislative jurisdiction to the Russian Federation over:

- the adoption and amending of the Russian Constitution federal laws, control over compliance therewith;
- the federative structure and the territory of Russian Federation;
- human and civil rights and freedoms regulation and protection; Russian citizenship; national minorities rights regulation and protection;
- establishment of the system of federal legislative, executive and judicial bodies, their organization and procedures of their functioning; formation of federal governmental bodies;
- federal State property and administration thereof;
- definition of the basic principles of federal policy and federal programmes in the sphere of governmental, economic, ecological, social, cultural and national development of Russian Federation;
- establishment of the basic legal principles for national market; financial, currency, credit and customs regulation, money emission, the basic principles of pricing policy; federal economic services, including federal banks;
- the federal budget, federal taxes and levies, federal funds of regional development;
- federal power-engineering systems, nuclear power, fissile materials, federal transport, railways, information and communication, activities in space;
- foreign policy and international relations, international treaties of Russian Federation, issues of war and peace;
- foreign economic relations;
- defence and security; military production; determination of the procedure for selling and purchasing weapons, ammunition, military equipment and other military hardware; production of poisonous substances and the procedure of their use;
- definition of the status and the protection of the State border, territorial sea, air space, the exclusive economic zone and the continental shelf of Russian Federation;
- the judiciary, public prosecution, penal, criminal-procedural and criminal-executive legislation; amnesty and remission; civil, civil-procedural and arbitration-procedural legislation, legal regulation of intellectual property;
- federal collision law;
- meteorological service, standards, metric and time systems; geodesy and cartography; names of geographical sites; official statistics and book-keeping;
- official awards and honorary titles of Russian Federation;
- federal public service.

Article 72 of the Constitution establishes the following areas of concurrent legislative jurisdiction between the Russian Federation and its constituent units:

- measures to ensure the correspondence of constitutions and laws of republics and the charters and laws of other constituent units as well as other sub-national regulations to the Constitution of Russian Federation and federal laws;
- human and civil rights and freedoms protection; national minorities rights protection; law and order, public security; border zone regime;
- issues of possession, utilization and management of land and subsoil resources, water and other natural resources;
- sharing of State property between federal and sub-national bodies;
- use of natural resources; protection of environment and ecological safety; specially protected natural territories; historical and cultural monuments protection;
- general issues of young generation upbringing, education, science culture, physical education and sport;
- coordination of health care issues; protection of family, maternity, fatherhood and childhood, social insurance and protection;
- taking appropriate measures in case of catastrophes, natural disasters, epidemics, and rectification of their consequences;
- establishment of common principles of taxation and levies in Russian Federation;
- administrative, administrative-procedural, labour, family, housing, land, water and forest legislation; legislation on subsoil resources and environmental protection;
- personnel of judicial and law enforcement bodies; lawyers and notaries;
- protection of the traditional habitat and the traditional way of life of small ethnicities;
- establishment of general principles of governmental bodies organization, including local government;
- coordination of international and foreign economic relations of constituent units, fulfillment of international agreements of Russian Federation.

The exclusive legislative jurisdiction of the constituent units is found in Article 73. Their jurisdiction extends to all matters not assigned exclusively to the Russian Federation under Article 71 or to the areas of concurrent jurisdiction found in article 72. As should be readily apparent from examining Articles 71 and 72, the exclusive legislative jurisdiction of the constituent units is somewhat limited.

As one can see, the constitutional provisions dealing with the distribution of legislative jurisdiction between the Russian Federation and its constituent units are in many cases unclear and, as a result are controversial. For instance, human and civil rights and freedoms protection, as well as national minorities rights protection are included within exclusive Russian Federation jurisdiction and joint jurisdiction of the Russian Federation and its constituent units. How might this contradiction be resolved? Nobody knows!

One of the most acute problems, which has not yet been resolved since adoption of the 1993 Constitution, is how the Russian Federation and the constituent units are to share responsibilities within the area of joint jurisdiction. Article 76 of the Constitution gives some guidelines with respect to federal paramountcy. As a result of frequent political stalemates at the federal level, many constituent units have acted unilaterally in areas of joint jurisdiction. Consequently, their legislation often contradicts the Constitution or subsequently adopted federal laws. That is why



the most controversial aspect of this division of powers is the ambiguous nature of the concept of concurrent jurisdiction. The Constitution itself is not clear about how the federal government and the constituent units are expected to coordinate their legislative activities, particularly in the absence of federal legislation. However, the Constitution does provide that powers within the joint jurisdiction of the Russian Federation and its constituent units might be shared by a federal law or by a treaty between federal governing bodies and constituent units' governing bodies.

There are a number of such treaties and agreements that strengthen the asymmetrical character of the federal framework. The treaty with Tatarstan signed on February 15, 1994 represented the first significant move towards this asymmetrical federation. Since 1994, 46 individual constituent units have signed special bilateral treaties with the federal government. Such treaties are rapidly replacing the division of powers provisions of the Constitution as the primary basis of intergovernmental relations. These bilateral accords often give the particular constituent unit substantial extra rights over the disposition of natural resources on their territory, special tax concessions and other economic and political privileges. In many cases such treaties have been signed on the eve of parliamentary and presidential elections, which could be seen as part of a package to encourage the constituent units to support the Russian President.

In energy-rich Tatarstan and Bashkortostan, bilateral agreements have led to such profitable industries as petroleum extraction, petroleum refining and power generation being removed from the centre's jurisdiction and handed over to local control and ownership. In June 1995, Sakha signed a treaty with the Russian Federation, which gave the Republic ownership of 26 per cent of its diamond output, 30 per cent of its gold output and a slightly smaller percentage of its oil and gas reserves. According to some Russian experts, outright tax losses in 1994 (and presumably in 1995) to the federal authorities as a result of special budgetary deals with the Republics of Karelia, Tatarstan, Bashkortostan and Sakha, came to at least 2 trillion rubles, or 2.3 per cent of the federal budget's revenues for 1994.

Among non-economic asymmetrically acquired privileges one can find transfers of exclusive federal jurisdiction to republican jurisdiction in the treaties between the Russian Federation and Tatarstan and Bashkortostan. The constitutionality of such transfers is questionable.

On the other hand, the federal government intervenes in some treaties in the exclusive jurisdiction of certain constituent units. For example, the treaty with Sverdlovsk region stipulates that a regional Charter (analogy for Constitutional) Court might be created there. But a region needs no special permission from federal bodies to create this or that governmental institution, because the 1993 Russian Constitution provides that state power in constituent units is exercised by governmental bodies, formed by constituent units themselves.

Practically each treaty was complemented with a series of bilateral agreements dealing with certain branches of administration. In total, more than 200 bilateral agreements were signed along with the treaties. These agreements were signed between constituent units' ministries or departments and individual federal ministries. As just one example of many, the Ministry of Fuel and Energy had signed 26 such deals by 1996.

Although the legal-constitutional status of these treaties is still unclear, in most cases they provide the constituent units in question with more autonomy in relation to the federal government and units that have not signed bilateral treaties. While the Constitution does allow for some flexibility in relations between the centre and periphery (see Article 78), there is a danger that such

treaties can seriously undermine the Constitution's authority. The treaties also make a mockery of Article 5 of the Constitution, which states that relations between center and all the federal subjects are equal. Moreover, it is clear that the bilateral treaties have, in all but name, elevated a select number of regions to the status of de facto Republics. The former Russian President, Boris Yeltsin, had clearly adopted such a policy towards the regions as part of a divide-and-rule strategy, but there are questions as to how long this policy can be sustained. It is known that a treaty-based federation is a weak federation that will ultimately destroy itself.

Since 1999, the process of drafting and signing new treaties between the Russian Federation and constituent units has been frozen. President Vladimir Putin, after his election to the presidency, decided to reconsider the previous practice of dividing powers within the joint jurisdiction of the Russian Federation and its constituent units. Thus, a new Commission on division of competence and powers between the Russian Federation and constituent units was set up by presidential decree on June 29, 2001. Dmitri Kozak, deputy head of the Presidential Administration was appointed as Chairman of the Commission. Under the decree the Commission must prepare proposals regarding the division of powers between the Russian Federation and the constituent units by June 1, 2002. The Commission is composed of several federal ministers, highly ranked civil servants of federal ministries, heads of executive bodies of some constituent units (including Mentimir Shaimiyev, the President of Tatarstan), and certain experts. The decree requires creation of regional commissions in each of the seven federal districts under the supervision of the plenipotentiary representative of the Russian President. The regional commissions had until December 15, 2001 to provide their views on the division of powers proposals to the Commission.

There has been an emerging discussion in Russia about the division of powers between the Russian Federation and its constituent units. Many politicians and scholars consider that the very existence of joint jurisdiction is the reason for asymmetry within the Federation and the legal and organizational ambiguities associated with the relations between the Russian federation and the constituent units. However, it does not always follow, that where jurisdiction is clearly defined and settled there will be less intergovernmental contact. No federation can avoid situations where certain policy areas may involve both the federal government and its constituent units, even though the Constitution of the federation says nothing about joint jurisdiction (the most vivid example being the United States). Interdependence and jurisdictional overlap are a fact of life in federal systems.

As a result, the task does not consist of how to avoid joint jurisdiction between the Russian Federation and its constituent units, but how to define and clarify the spheres of involvement of Russian Federation and its constituent units within the policy areas of joint jurisdiction. The task also includes how to organize cooperation between the Russian Federation and the constituent units' governing bodies as they act to fulfill their responsibilities.

PART 3: THE STRUCTURE OF INTERGOVERNMENTAL CO-ORDINATION

The Constitution outlines a number of specific mechanisms for resolving disputes between the federal government and the constituent units or between the constituent units. Article 85 states that the President may use reconciliatory procedures to settle such disputes. If no agreement



is reached, the President may send the case to the appropriate court. The Constitutional Court, for instance, has been involved in the resolution of several cases of jurisdictional conflict. The Constitutional Court's rulings are gradually filling gaps in the Constitution, as well as clarifying certain constitutional provisions.

According to Article 15 of the Constitution, constituent unit legislation is not allowed to contravene the federal constitution. While such a provision exists, one of the most contentious issues of the post-Soviet period has been the "war of laws" between the federal government and the constituent units. In 2000, the Ministry of Justice revealed that upwards of 50,000 regional legislative acts do not comply with the federal Constitution or federal laws. One finds different figures on this situation, released by the Ministry of Justice, the Prosecutor General, the Main Legal Department of the President. For example, the Prosecutor General announced in 1998 that over the period of 1996-1997 prosecutors at all levels had contested some 2,000 resolutions and laws passed by regional parliaments, because they violated the federal Constitution to some extent. While these are the views of different national institutions, it should be realized that only the federal courts have the right to rule on the inconsistency or conflict of constituent units' laws and other actions with federal laws. Furthermore, only the Constitutional Court, has the right to determine the inconsistency of constituent units' constitutions (charters) and laws with the Russian Constitution.

The President also has the power to suspend executive acts of the constituent units, if they contradict the federal constitution, federal laws, international obligations of the Russian Federation or constitute a breach of human or civil rights and freedoms.

There are certain federal bodies, within which constituent units are represented. Such representation permits constituent units to take part in the decision-making process at the federal level. One of the most important among them is the Federation Council, one of two Chambers of the Federal Assembly. The Federation Council has the competence to:

- approve changes of administrative limits between constituent units of the Russian Federation;
- approve a Russian President's decree on the introduction of martial law;
- approve a Russian President's decree on the introduction of a state of emergency;
- decide upon a possibility to use the Russian Armed Forces outside the territory of the Russian Federation;
- call a presidential election;
- impeach the President of the Russian Federation;
- appoint judges of the Constitutional Court, Supreme Court and Superior Court of Arbitration of Russian Federation by a proposal of candidates by the President;
- appoint and to dismiss the Prosecutor General by a proposal by the President;
- appoint and to dismiss the deputy Chairman and half of the auditors of the Accounts Chamber.

The Federation Council cannot amend legislation approved by the State Duma. It can only accept or reject the legislation. If it does not consider a bill within 14 days of receiving it, the legislation is considered approved as passed by the State Duma. It is important to note that the

Federation Council normally meets for a single 2-3 day session each month. As a consequence, the Federation Council has no real possibility of considering all proposed federal laws in any great depth. The Constitution requires the Federation Council to examine certain matters and to decide on the following:

- the federal budget;
- federal taxes and levies;
- financial, currency, credit and customs regulation, money emission;
- ratification and denunciation of international treaties of Russian Federation;
- the status and protection of the border of Russian Federation;
- war and peace.

The Federation Council plays a particular role in intergovernmental relations, because of its composition. Each of the 89 constituent units has two representatives in the Federation Council. The Constitution provides that one of these two seats is reserved for the constituent unit's executive branch, the other for the constituent unit's legislative branch. The manner of their selection is determined by federal law. In 1993, the people voted for their two deputies directly (and many heads of constituent units' executive and legislative branches were elected). In 1995, members of the Federation Council were selected on an *ex officio* basis from the heads of executive and legislative branches of constituent units' government. In 2000, President Putin initiated further reforms in the selection process. Under a federal law enacted in 2000, the executive and legislative bodies of the constituent unit each appoint a member of the Federation Council. A gradual replacement of the heads of executive and legislative branches by their nominees in the Federation Council occurred in the last half of 2000 and throughout 2001. In January 2002 the Federation Council is expected to begin its work, consisting completely of deputies appointed under the new selection process. This arrangement is expected to make the Federation Council more efficient while maintaining intergovernmental cooperation at a high level. The composition of the Federation Council (initially the heads of the constituent units' legislative and executive branches and since 2000 – of nominees of these branches) gives its members direct access to the federal decision-making process for individual constituent units. As a result, the Federation Council serves as a significant overarching institution for intergovernmental cooperation.

Some experts and politicians expressed a certain degree of anxiety after the adoption of the new selection process for members of the Federation Council. They think that the absence of governors and presidents of constituent units from Moscow may spoil the machinery of intergovernmental coordination and cooperation. President Putin, however, also set up a consultative body – the State Council in the fall of 2000. This body consists of all the heads from the executive branch of the constituent units. The State Council meets quarterly at the request of the Russian President to discuss particular issues. A Presidium was created within the State Council. The Presidium meets monthly and consists of seven members drawn from the State Council on a rotating basis. These meetings give constituent units' heads an opportunity to express their opinions on major initiatives undertaken by the federal government.

In addition, certain ad hoc working groups have been already created within the State Council to prepare proposals for reforms in economic and political spheres. For example, work-

ing groups on issues such as federalism, energy production and distribution, development of local government, and the improvement of federal administration are in place. The composition of working groups of the State Council has not been limited to members of the State Council. Membership includes 2-3 representatives from the State Council plus deputies of the State Duma and constituent units' legislatures, senior officials from respective federal ministries and the Presidential Administration, and highly qualified experts.

Plenipotentiary presidential representatives, whom President Putin appointed after dividing the country into seven federal districts in May 2000, are also involved with intergovernmental cooperation and coordination. These representatives are expected to keep an eye on the implementation of federal policy at the regional and local level and coordinate local branches of federal executive bodies. Accordingly, presidential representatives cannot help but cooperate with constituent units' governing bodies when dealing with issues within joint jurisdiction. Presidential representatives and their staff meet regularly with constituent units' officials, organizing bilateral and multilateral coordination of efforts. Some presidential representatives set up consultative bodies and ad hoc working groups, inviting local officials and scholars to serve as members. All presidential representatives have shown that their priorities include among other things, social and economic development projects, attracting investment and fighting economic crimes. It is clear that positive achievements in these fields are possible only in case of joint efforts of federal and constituent unit bodies. Presidential representatives are also active in the processes of ensuring that the constituent units' constitutions (charters) and laws are consistent with the federal Constitution and laws.

Many constituent units have offices in Moscow. Republics within the Russian Federation maintained their offices established during the Soviet era. Other constituent units have opened their offices in the post-Soviet period. While the activities of these offices do not attract much public attention, they are really important for the every-day technical and operational assistance of intergovernmental relations.

There has been a recent trend to strengthen the power of central authorities. For example, in 1999, amendments to the federal law on the general principles of the organization of constituent units' legislative and executive bodies were adopted. These new legal provisions permit the Russian President to dismiss the head of the constituent unit's executive branch or to dissolve a constituent unit's legislature. Exercise of the President's authority may occur in situations where a court has determined there has been a violation of the federal Constitution or a federal law by the head of the executive branch or of a legislature respectively and no action has been taken to remedy the situation.

In 2001, the federal law on militia (police) was amended. According to the new version of the federal law, heads of constituent units' departments of internal affairs are to be appointed by the federal minister. Previously they were appointed by the federal minister with the consent of the constituent unit's head of the executive branch. Practice showed that in some instances this method of selecting heads of constituent units' internal affairs departments brought the department to a stalemate, which gave additional opportunities to criminals.

PART 4: INTERGOVERNMENTAL RELATIONS IN THE BUDGETARY SPHERE

At present, in accordance with the federal Budgetary and Taxation Codes, the constituent units' share of tax revenues should be about 50 per cent of total revenues. This rule was violated in 2000. (Value added (VAT) and corporate profit taxes and excise are shared between the federal government and the constituent units, while personal income tax is given entirely to the constituent units.) The federal government prepared a draft budget for 2001, which suggested that tax revenues should be shared as follows: 70 per cent to the federal budget and only 30 per cent to constituent units' budgets. After a long struggle in the Federal Assembly, the 2001 budget was adopted. Tax revenues were allocated 65 per cent to the federal budget and 35 per cent to the constituent units' budgets. Constituent units consented to this revenue sharing on the understanding that the federal government would pay foreign debts. In the future the federal government can try again to modify the prescribed tax revenue shares outlined in the Codes.

Of the 89 constituent units that comprise the Russian Federation, fewer than 10 remit more revenues to the federal budget, than they receive in subsidies. Some constituent units are almost entirely dependent on federal subsidies. The distribution of federal funding has not always been based on economic need. In reality, federal transfer payments have often been made as a means of buying off constituent units' leaders who are critical of the government. It is clear that such tactics are short sighted. They encourage obstructionism on the part of the constituent units while simultaneously adding to economic disparities across the country.

PART 5: HORIZONTAL INTERGOVERNMENTAL TIES

To this point, only federal-constituent units' relationships have been considered. Such relationships are, of course, very important. Of equal importance are forms of cooperation established between and among constituent units without a direct involvement of the federal authorities. For instance, eight associations for economic cooperation were founded in the first half of the 1990s. These associations were identified geographically (the Far East, the Siberian Accord, the Greater Volga, etc.) and were created through the initiative of the constituent units. Although there is no prohibition against constituent units participating in more than one association, almost all of the constituent units have joined only one association. Moreover, the composition of these associations is stable. During the whole period of their existence only a handful of constituent units have changed their membership from one association to another. Associations have been set up for the purposes of economic development and mutually beneficial cooperation, and each of them consists of different types of constituent units (Republics, regions, provinces, autonomous districts, etc.).

The significance of these associations grew in the second half of the 1990s, and in 1998, Prime Minister Yevgeni Primakov even invited elected leaders (one of the constituent units' heads of the executive branch) of all eight associations to enter the cabinet. Later the situation changed. A 1999 federal law on associations of economic cooperation, was vague and contained no mechanisms and legal incentives for further development of this form of interregional cooperation. The creation of seven federal districts in May 2000 brought additional confusion, because the boundaries



of the federal districts only partially coincided with the boundaries of the eight economic associations. At the same time some presidential representatives expressed their readiness to cooperate with respective associations and established links with the associations' leadership.

There are also different and multiple ad hoc multilateral and bilateral contacts among or between constituent units. In certain cases, such as instances where one constituent unit includes other constituent units, the constituent units through treaties and agreements have formalized these contacts. For example, Tyumen region includes within its administrative limits both Yamalo-Nenets and Khanty-Mansi autonomous districts, though all three constituent units are considered to be equal in status and have direct relations with the federal government. Such a situation is a historical legacy of the Soviet period, when all the autonomous districts were parts of certain regions and provinces. At that time there was a strict hierarchy among the constituent units. In order to make relationships among them clear and regulated, Tyumen region, Yamalo-Nenets autonomous district and Khanty-Mansi autonomous district signed a treaty.