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For two weeks now, we have been witnessing a new solidarity among the people of Germany. The disastrous flooding has galvanised many individuals, and they are not just thinking about those in need but are also lending a helping hand. We are also experiencing an outpouring of international readiness to help. From America, from England, from Russia, from Switzerland, from the Principality of Liechtenstein – from all over the world people are coming to assist us. Before I begin my remarks on federalism here today, I would like to express my heartfelt thanks to all who are standing by us during these difficult weeks. I would like to thank you, President Villiger, on their behalf.

For the Germans, there is a locus classicus reflecting the idea of federalism. In literary terms, it can be found in the works of Friedrich Schiller; geographically it lies in Switzerland. In “The Ruetli Oath”, Schiller expressed it this way:

We will become a single land of brothers,

nor shall we part in danger and distress.

We shall be free, just as our fathers were,

and sooner die, than live in slavery.

Liberty, indivisibility, brotherhood – today we say “solidarity” – these are still the core values of federalism. They are a unique and longstanding tradition of

the citizens of the Swiss Confederation. That is why I cannot envision a better host for an international conference on federalism, and that is why I have gladly come here to St Gallen.

By the way, Germany's federal tradition is notable as well. It is older and more constant than the tradition of our state as such. The Holy Roman Empire of the German Nation was already a federation, although it never developed into a state in the modern sense. The federalist principle lived on in the Confederation of the Rhine (1806) and the German Confederation (1815), but not until the North German Confederation (1867) and the German Reich of 1871 was the step actually taken to adopt a federal constitution. And while the Empire founded in 1871 was admittedly monarchical, as early as 1848 the democratic revolutionaries in St Paul's Church in Frankfurt had drafted a federal constitution. The Weimar Republic too, was constituted as a federal state.

After the Second World War, the Länder in western Germany carried on this worthy tradition. The three military governors of the western occupation zones charged them with drafting a democratic constitution that would "establish a governmental structure of federal type". At the end of the deliberations, the Basic Law emerged, the Federal Republic of Germany emerged as the union formed by the Länder and the German people in the western Länder. Incidentally, even back then the Basic Law also expressly provided for the accession of the eastern Länder to its area of application, a step that could finally be taken 41 years later.

I would like to follow up this brief review with two initial general remarks that could certainly also be backed up with other examples of federalism besides Germany's.

First, federal constitutions are not ready-made items where "one size fits all". Rather, they are custom-made. Cut from fabric woven of the most diverse historical developments and experiences, they are tailored to each nation's circumstances and respond to the special challenges and problems with which each is confronted. This does not, however, mean that they fit perfectly once and for all. Even a tailor-made garment needs some care. It must be aired out and pressed from time to time, a seam or two may need to be repaired, and over the years it may have become too short or a little snug here or there and need to be altered accordingly.

Second, precisely because federal constitutions are as unique and distinctive as peoples and countries, a comparison of them is just as difficult as it is intriguing. Anyone who knows something about the subject will not search for patent recipes and will not force a patent recipe on anyone else. An international collection of good solutions and an analysis of the conditions conducive to their success, on the other hand, are of great value to any discussion of constitutional policy. Time and again, however, debates on constitutional policy are unfortunately dominated by the patent recipe peddlers instead of the wise federalists.

I am not here today as a patent recipe peddler. I would merely like to say a few words to you about some of our experiences in Germany that could perhaps prove useful for your further work during this conference.

Let me begin by pointing out where we Germans see the successes and advantages of our federal constitution.

Like the two speakers before me, I deliberately place respect for regional diversity at the very top of the list. The federal order not only tolerates the historical, cultural and regional uniqueness of Germany's Länder, but also allows them to develop unfettered. That releases valuable creative energy. In all the Länder there is a strong feeling of identity, of belonging together, a great willingness to cooperate in a spirit of solidarity, and a healthy regional self-awareness. All this has also grown very swiftly in the Länder that were newly formed after 1945. In eastern Germany, where the Länder were effectively abolished in 1952, the memory of them endured unbroken until the peaceful revolution of 1989. Perhaps some of you remember: just a few days after the fall of the Berlin Wall, the demonstrations for democratic reform came to be peppered with more and more flags in the colours of the old Länder – Thuringia, Saxony, Mecklenburg – and more and more banners calling for the re-establishment of the eastern German Länder. In 1990 this demand was met – by the first and only democratically elected parliament of the German Democratic Republic.

The tasks of government in which regional awareness and identity figure particularly prominently have taken on even greater importance in recent years. Conservation of landscapes and protection of nature, protection of historical monuments and sites, cultivation and preservation of culture, and even regional television give rise to and intensify a feeling of homeland and a sense of belonging. All the Länder make a point of exercising their rights to shape policy in these areas, and this ultimately serves to further the political

stability of the federation as well. Its unity is based not least on this unfettered diversity. Thus federalism maintains a golden mean; it prevents the emergence of both nationalism and separatism.

The federal system in Germany has led to a relatively high degree of decentralisation, self-government and pluralism. This has promoted greater proximity to issues and greater transparency of governance in many areas, and has usually tapped greater expertise as well. Moreover, the subdivision of the federation into Länder gives citizens a twofold opportunity for active involvement in democratic processes, for democratic control and for democratic utterance of the public will in elections and votes.

Precisely at the local and regional level, where people still know one another personally and have a better grasp of the overall situation, these increased rights to shape policy, and the greater proximity of policy to the citizen make it easier to master important integrative tasks concerning the body politic as a whole. I would like to give you a few examples.

- It was no accident that the acceptance and integration of the refugees from the eastern German territories after 1945 proceeded so successfully in the Länder that the Sudeten Germans, for example, have long since come to be the “fourth Bavarian tribe”.
- Precisely at local and Land level, the integration of foreigners has been fostered particularly effectively – through the establishment of foreigners advisory councils, first at local and later also at Land level – this has helped pave the way for further important progress such as the right of citizens of the European Union (EU) to vote in local elections.

- The Länder are already testing forms of direct democracy such as popular initiatives, petitions and referendums that are still lacking at federal level. This is, by the way, a subject that has been on the agenda of the debate on reform of the Basic Law for quite some time.

To sum up, it has been our experience that the federal structure significantly strengthens the integrative force of the body politic and increases the opportunities for participation in democratic processes.

The federal system also promotes creativity of governance. Greater leeway for responsible creative action increases the possibilities for finding new and better ways to enhance public welfare. The risk of failure increases as well, of course, but contrary to the situation in centralised states, mistakes then tend to be limited to only part of the country.

In terms of both successes and failures, the federal state is a learning community. The federation and the Länder look very closely over each other's shoulders. What consistently proves successful is incorporated into general practice, what fails is studiously avoided henceforth if at all possible.

Moreover, the diversity and self-confidence of the Länder fosters healthy competition. During my visits as federal president I am often treated to glowing recitals of accomplishments that are intended to prove that the given host Land ranks first in the national league – or at least near the top of the list.

There is much to be said for this competitive aspect of federalism – as long as it does not flourish at the expense of the necessary solidarity. For the currently fashionable use of economic terminology in the context of federalism notwithstanding: within the federation there are no “constituent peoples” who

could go it alone economically without concerning themselves with the needs of the others. The federal populace is one people, indivisible. The federation and the Länder are merely different tools and trustees of the commonwealth. The federal state is an indivisible community based on solidarity.

To this day, the federation and the Länder have invariably demonstrated this solidarity. In particular, the financial equalisation regime between the federation and the Länder, and among the Länder themselves has proved its worth for decades. Together the federation and the Länder have also mastered the tremendous financial challenge posed by Germany's unification. Within the framework of two "solidarity pacts", they have succeeded in generating the enormous amounts needed by the eastern Länder to offset the disadvantages resulting from Germany's division and to rebuild their economies. There is nevertheless also a need for reform of the financial system laid down in the Basic Law. A prominent indication of this is the fact that the Federal Constitutional Court has instructed federal legislators to revise the allocation and equalisation criteria governing federal financial relations by the beginning of next year and to restructure the entire financial equalisation regime by the beginning of the year 2005.

I would like to mention one last fundamental success of German federalism. It does not thrive on unilateral decision making but rather on dialogue and negotiation, on consultation and cooperation. Because there are a number of political centres and because the federation and the Länder are dependent on one another in many different ways in their enactment of legislation and application of the law, all the parties involved must accommodate one another and seek discussion and compromise. The fact that nearly all the political

parties operate nationwide, as well as their equally nationwide strategies, foster this intermeshing of policy without, however, blunting the distinctive features of the Länder or reducing their interests to a common denominator.

At the same time, the federal system is “more open” than others – it offers more leeway for responsible creative action by individuals and groups. The precise allocation of rights and responsibilities under the constitution thereby serves to promote objectivity and hence also the maintenance of peaceful relations under the law – if worst comes to worst, the parties simply meet again at the Federal Constitutional Court.

This type of articulation of political will is too slow a process for some observers. It does promote good governance, however; it accommodates regional interests and distinctive features, and it reduces the influence of ideologists who have an easy answer for everything, but a viable solution for nothing.

There is no doubt that there have also been times when the federal decision-making process has been deliberately blocked – a course of action loudly decried – as a rule by federal governments without a majority of their own in the Bundesrat, the upper house of parliament. But if one follows up the accusation of frequent blockades, one finds relatively few instances where no compromise could be reached despite the intercession of the Mediation Committee. In most cases it was not just political party machinations that were involved, but also very real divergent interests of the Länder. Resistance in the Bundesrat has always also served to strengthen the separation of powers and the parliamentary opposition. At any rate, ill-considered blockades are not

worth the effort – the electorate, after all, are watching on the sidelines and can severely punish a policy of obstruction.

Such a constitutional order predicated upon dialogue and cooperation is dependent on good team mates. It demands of the federation and the Länder the resolve and ability to exercise their rights and perform the tasks incumbent upon them, to demonstrate initiative in their own areas of competence, and vigorously to repudiate any overstepping of authority by others. It also needs citizens who are interested in this interplay of forces and are willing to take an active role. It is therefore perhaps especially dependent on political education and the cultivating of civic virtues.

Georg Christoph Lichtenberg, a physicist and man of philosophical bent who lived in Göttingen in the eighteenth century, often comforted himself with humour. His writings on constitutional issues contain the following note: “Two men fighting on one horse – a fine symbol for the constitution of a state.”

I will leave it up to you to decide whether Lichtenberg was right or not. At any rate, however, Germany’s experience with federalism has been this: it tends to increase the number of horses rather than the number of people fighting.

This, however, brings me to the developments that have given rise to an already lengthy and ongoing debate on a reform of federalism in Germany. These developments can be outlined quickly.

Over the years the federation has made extensive use of its powers in the areas of concurrent and framework legislation, a course of action justified above all by the desire for uniformity of living conditions and the call for uniformity of the law. There was also consent to this on the part of the Länder

and, in cases of conflict, the approbation of the Federal Constitutional Court. In the process, the Länder lost innumerable legislative powers of their own. To be sure, in return they acquired greater rights to participate in the framing of federal legislation via the Bundesrat, but it was above all the Land governments that benefited from this, whereas the influence of the Land parliaments declined markedly. This trend towards cooperative federalism within the executive branch was further strengthened by other developments, such as the emergence of a multitude of formal and informal bodies in which the governments and administrations of the federation and the Länder work together.

In the 1960s and 1970s, moreover, the legislative powers of the federation were significantly broadened and the so-called “joint tasks” of the federation and the Länder were introduced, thus institutionalising the system of mixed financing. For the Länder, this meant an alleviation of their financial burdens but also a further loss of influence on policy making. On top of that, responsibility for tasks and for the financing of these tasks has long since ceased always to lie in one set of hands as the Basic Law in principle envisions. Already on a number of occasions the federation has assigned tasks to the Länder and the municipalities without ensuring the availability of the necessary funding.

All this has led to a loss of democratic transparency as well: it is becoming increasingly difficult for citizens to figure out who is responsible for what and who pays for what. This poses a threat to the acceptability of policy. The framers of the Basic Law actually wanted a clear delineation of responsibility between the federation and the Länder, one similar to a layer cake. Today,

however, the federal system in Germany more closely resembles a marble cake.

There is one more development that is profoundly changing the face of federalism in Germany: as integration within the European Communities has progressed, more and more sovereign rights of the federation and the Länder have been transferred to the supra-national level. For a long time the federation alone was compensated for this, for it was the federation that exercised the rights to participate in policy making at the European level – also in areas formerly falling within the purview of the Länder. As a result, however, the Länder were threatened with an ever-greater loss of power.

It is precisely in the context of European integration, however, that German federalism has demonstrated its capacity for reform. A number of important powers of the Länder have been enshrined in the new Article 23 of the Basic Law and in an implementing statute:

- The right to be comprehensively informed by the federal government on matters concerning the EU;
- The right of the Bundesrat to participate in the decision-making process of the federation insofar as it would have been competent to do so in a comparable domestic matter, or insofar as the subject falls within the domestic competence of the Länder;
- Depending on the domestic distribution of interests and powers, graduated participatory rights of the Länder at EU level as well, which can extend as far as the exercise of the rights of the Federal Republic of Germany as an EU member state by a representative of the Länder.

This reform has placed cooperation between the federation and the Länder on a firm foundation and has simplified and furthered this cooperation as well. It shows that a federal state can remain capable of entering into treaties and negotiating effectively at international level without having to sacrifice or even impair its internal federal diversity.

At the same time, this new Article 23 of the Basic Law was one of the most important outcomes of a constitutional debate that began with German reunification, led to the establishment of a Joint Commission on the Constitution and ended, for the time being, with the implementation of the bulk of the commission's recommendations in 1994. That, too, demonstrates capacity for reform, even though some people had hoped for more extensive modernisation – for example in the area of direct democracy – and even though a major debate on constitutional reform failed to materialise within society as a whole.

The federation and the Länder now want to reconsider the distribution of powers among them. The lists of demands and wishes are nowhere near completion. A number of tendencies are already clear, however. The Länder will insist that responsibilities once again be more clearly delineated and that the areas now subject to mixed competence and interdependency be drastically reduced. Various ways of accomplishing this are under discussion:

- A reform of the financial system laid down in the Basic Law that will give the Länder and the municipalities more breathing space and abide by the principle: "He who orders also pays";

- Significantly higher thresholds for the need for federal statutory regulation;
- A form of inverted concurrent legislative power regime favouring the Länder and according the Bundestag a right of objection;
- A disentanglement of functions, in other words, a re-shifting of legislative powers back to the Länder and their parliaments.

It remains to be seen what will come of the talks between the federation and the Länder. I have no doubts whatsoever as to the earnestness of all the parties involved. I am refraining from making suggestions of my own, as the neutrality of my office requires, but when the time is right I will gladly pose a few questions to help provide guidance.

This finally brings me to the question of whether the federalist experience of countries like Germany could prove useful in the context of the discussion on the future shape of the EU.

Time and again the fear, and occasionally also the hope, is voiced – above all by the other member states in the EU – that Germany seeks to structure European cooperation according to the German federal model. I do not think this would be a good idea, for the EU will not become a federal state in the foreseeable future. The vision of a “United States of Europe” is not a goal of European cooperation. Rather, the aim is to establish a federation of nation states with clearly defined competences at the European Community (EC) level and at the level of the nation states.

In the process, the federally organised member states could bring their experiences to bear on the further development of the EU. From Germany’s

perspective, the challenge is to preserve the important role of the Länder and municipalities, the entities with which the citizens identify themselves, and at the same time ensure the ability of the supra-national organisation “European Union” to take action. Only in this way can we hold our own in a globalised world. Only in this way can we preserve and safeguard the shared values of freedom, peace, respect for human rights, and prosperity.

In our opinion, particular importance attaches to a clear delineation of competences between the member states and the EU. It will come as a surprise to no one that this is also one of the demands of Germany’s Länder.

The issues involved in the division of competence are now a central topic of the European Convention, which began its work in February 2002. It has already become apparent that the division of competence and the elaboration of the subsidiarity principle associated therewith will figure prominently in the work of the European Convention. This is well documented by the large number of contributions submitted by the members of the convention on the subject of subsidiarity and by the establishment of a special working group.

The subsidiarity principle can be found in every federally organised body politic as an important structural principle. The concept means – to put it simply – that the higher level of government should only take action when the problem in question cannot or cannot as capably be resolved by the constituent states. What can be decided at the lower level should not be decided at the higher level. It is also, moreover, an expression of the idea that a claim to competence entails the obligation to take action.

At European level, subsidiarity above all means that EC action must always generate some “added value”. This was expressly laid down in the Maastricht Treaty and applies not just to measures of the EC but also to the entire EU.

In the past, differences of opinion have arisen between the EC and the member states concerning the scope of the competence of EC institutions. This is attributable not least to the fact that the subsidiarity principle has not always been observed. Precisely this, however, shows how important it is for the success of a project like the EU that the supra-national level only take action where the individual states cannot act, or cannot act effectively. Only in this manner can the acceptance be generated on which a project as ambitious as European integration depends.

To be sure, even the most meticulous adherence to the subsidiarity principle will not make it possible to avoid all resistance and persistence on the part of individual states. That is not its function anyway. Rather, the crux of the matter is that effective implementation of the subsidiarity principle is one of the basic conditions for responsible participation in the European project by all the parties involved. This is all the more so in the light of the upcoming enlargement. If Europe wants to avoid foundering on the shoals of divergent interests and reciprocal blockades, it must create clear and functional structures today. The subsidiarity principle will play an important role in this context.

In addition to the subsidiarity principle, there is another federal element at the European level that I would like to mention: the Committee of the Regions. As in the case of the subsidiarity principle, it is envisioned in the Treaty on

European Union and has been an integral part of European policy for over eight years. It is composed of very different regional structures of the member states – Länder, cantons and departments as well as districts and municipalities.

To be sure, at least for now the powers and authority of the committee are still limited to merely advisory functions and rights to be heard. The treaty likewise makes no provision for a right of the committee to bring an action before the Court of Justice of the European Communities. Nevertheless, it represents a first step towards affording the regional entities a common forum. The establishment of the committee creates a framework for a dynamic process of development in the area of regional cooperation. Its impact is already visible today. Several regions in the committee have grown closer and pursued cooperation more tangible to the citizen than their respective nation states.

All these federal elements at European level have an important aim. They counter the risk of a loss of identity on the part of the people at local and regional level. The approval and support of Europe's citizens for further integration can only be ensured if on the one hand the desire for independent decision making and identity building is respected, and on the other, the advantages of a new supra-national body politic continue to be perceived. The latter will become all the more visible as the economic and political processes at global level gain momentum.

Ultimately each member state must and will decide for itself how it should be internally organised, both now and in the future. Within a European federation of nation states, federal states such as the Federal Republic of Germany or

Belgium can very well work together with centrally organised states such as France or the United Kingdom.

I said it at the beginning and I will say it again here at the end. Federal states are learning communities. That is true both domestically and in their external relations. At home, German federalism faces the prospect of internal reforms. At supra-national and international level, we Germans will strive to bring our experience with federalism to bear without, however, presuming to suggest that we have all the answers. We want to learn from others – also from you. That is why I am very pleased that this conference is taking place, why I am curious as to what it will bring, and why I wish you a very fruitful discussion.