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Federal Structures and Foreign Policy of International and Supra-national Organisations

(Work Sessions 4 and 16)

1. Introduction

The author has attempted to structure the summary thematically. As discussion in the work sessions did not always follow a linear path, a chronological structure would have made the report much less comprehensible. Although the main subject of discussion was the federal structure of the European Union (EU), the author has chosen to highlight a few specifically Swiss aspects in order to associate the International Conference on Federalism 2002 more closely with its host country.

2. Foreign policy and flexibility

Foreign policy demands rapid, flexible action, as illustrated all too clearly by the events of and following 11 September 2001. Alternatively, in the pithy words of a case statement maker with great experience in foreign policy matters: "Foreign policy is basically about acts, not rules." Another case statement maker put it slightly differently: "It's products not process that count."

3. Federalism and complexity

It would appear that federalist systems demand the sort of basic attitude that was described by Denis de Rougemont as an "amour de complexité" (Thürer, 2002). Discussions returned time and again to the complexity of decentralised federalist systems and their inherent tendency to be slow and cumbersome (see Ehrenzeller, Hrbek, Malinverni, Thürer, Part B; Wessels and Diedrichs, Part B). A journalist from a most respected European periodical illustrated this with an anecdote. Recently, he said, he had asked an influential Swiss person about the chief concerns of Switzerland's foreign policy. The person answered: "Switzerland doesn't have a foreign policy!" This statement may perhaps be an exaggeration, but it indicates the difficulty of operating a coherent foreign policy in a system in which consensus is taken to extremes. A Swiss scientist upheld the view that, ultimately, Swiss neutrality ensures that the country's delicate balance between different religions, linguistic groups, cultures and parties is not upset. If we were to apply the Swiss example to Europe, the logical consequence would be a passive or at least very restrained foreign policy. Yet a direct comparison with Switzerland is misleading for several reasons. There is another key factor that stands in the way of an active Swiss foreign policy: government opinion forming is shaped by direct democracy, so domestic policy absorbs most of the country's political energy and thereby limits the ability of government to act (Thürer, 1999, 150). Switzerland also differs from Europe on another point: it is small and has therefore been able to "afford" a passive foreign policy – at least in the past. By contrast, as will be demonstrated here, the need for a common foreign policy for Europe is undisputed – an "à la Suisse" approach is out of the

question at the European level, as one case statement maker acknowledged: "Neutrality and non-intervention are not a option for Europe. We can't just cultivate our garden."

4. Common foreign policy: an undisputed necessity

The need for a common foreign policy was a recurring topic of debate. In the past, this need was usually seen in terms of a common military threat. According to one case statement maker, "all federal states are born for military reasons"; this also applies to a certain extent to Europe. After all, European integration was promoted after the Second World War precisely in order to avoid future intra-European conflict. To date, this objective has been achieved beyond dispute. By contrast, a further step towards integration – a common external front on issues of foreign and security policy – seems to be a great distance away (Habermas, 2001, 7). At the same time, however, participants in the discussions often expressed clear agreement that new social problems and threats such as terrorism, drug trafficking, crime, migration, health policy etc., can only be countered effectively from a common base. "Foreign policy works best when powers that have reach and respect say the same thing, at the same time, in the same way, to the same people. Europe must learn to walk stronger and taller and speak as one", as one participant put it in the discussions. Frequently quoted in this context was Tony Blair's statement that he wants EU to be "a superpower, not a superstate". The last half of this quotation ("not a superstate") not only addresses the aspect of common power, but also that of restraint – federalist restraint.

5. Federalist foreign policy: a Gordian knot?

During the debate, a German scientist asked the question that is probably the crux of the matter: what is the relationship between the concepts of federalism and flexibility? Are they at all compatible? If we look at the Swiss example (see below), we might conclude that federalist foreign policy is an oxymoron. This led a case statement maker to talk about a "dilemma between a common EU foreign policy presence on the one hand, and the vital force of nation states on the other". Although inter-governmentalism is impractical where foreign policy is concerned, it is the only viable option at present. According to a member of the Convention of Europe, the Convention's difficult objective is thus to increase Europe's ability to act, while maintaining the capacity of the member states to operate independently.

6. Common foreign policy and the willingness to waive national sovereignty

If an effective common foreign policy is to be put into practice, inter-governmental frameworks and instruments must be dismantled. The imminent expansion of the EU to the east will further increase pressure in this regard. Expansion will not be possible without greater depth. As the number of member states rises, inter-governmental mechanisms will become more and more ponderous, inflexible and "unjust". It would be a problem, for example, if small states such as Cyprus or Malta were able to veto crucial points of the EU's foreign policy. The scope of foreign policy authority is becoming a litmus test ("Lackmus-Test") of the degree of member states' collectivist intentions and their willingness to give up their sovereignty. Ultimately, foreign policy is

all about a "pooling of sovereignties" (see Ehrenzeller, Hrbek, Malinverni, Thürer, Part B).

However, putting this awareness into practice has proved extremely difficult. The willingness to give up national sovereignty is particularly lacking when it comes to foreign and security policy, and emotional resistance is considerable. This became especially clear in discussions of examples in which foreign policy has used its last resort – armed force. A British politician was not alone in his view that the decision to send a nation's soldiers to carry out duties that place them in danger of injury or death is not one that can be under the control of any body other than the elected government and parliament of individual nations. "I find it hard to imagine looking the parents in the eye and saying: your son has died because he was sent under the orders of a commission in Brussels or even of an Assembly in Strasbourg", he said. However, some participants opposed his views. A German scientist warned that the deployment of soldiers should not be used as a killer argument ("Totschlag-Argument") to nip every discussion about Common Foreign and Security Policy (CFSP) in the bud. A student from Slovakia also pointed out that a single European currency seemed inconceivable just 20 years ago. Security policy might follow a similar path, subject to the readiness of politicians to develop visions to push developments forward. Such a vision could be that of the German Federal Minister of Foreign Affairs, Joschka Fischer – oft-quoted in the discussion – who said "I am working on making myself surplus to requirements".

7. A question of national sovereignty: Europe – a "federation of nations"?

The issue of waiving sovereignty on foreign policy is closely linked to the question of whether the EU is a federal state (Bundesstaat) or a federation of states (Staatenbund). The Bundesstaat designation still brings to mind the definition of Swiss statesman Alfred Escher (1819-1882): "External unity, internal diversity". So what did German Federal President Johannes Rau mean when he referred to the Europe of the future as a "federation of nations"? Debate about whether the EU should be classified as a Bundesstaat or a Staatenbund concluded that wrangling over terminology does little to aid clarity. Europe will probably have to be described using new terms such as Staatenverbund (as coined by German Federal Constitutional Court) or simply as an entity sui generis. A journalist in the discussions also added pointedly: "Semantics have always been at the heart of the federalist debate". This observation is confirmed by a look back at Swiss constitutional history. According to Art. 3 of the Swiss Federal Constitution, the Swiss cantons are "sovereign insofar as their sovereignty is not limited by the Federal Constitution". This provision was one of the few to be adopted in the 1999 constitution virtually unchanged from the original constitution of 1848. There is no debate that this sovereignty provision runs counter to modern teaching on constitutional law. Yet Art. 3 of the Swiss Federal Constitution contains a seminal political message even today. The Swiss Confederation is not the result of late-stage decentralisation or administrative fragmentation, but has grown up out of a "bottom-up" federation of sovereign states (McKay, 2001, 105).

Johannes Rau's choice of words should therefore be interpreted in a similar way to the use of the term "sovereignty" in the Swiss federal constitution. "When Rau speaks of a 'federation of nations', then he means that the process is a slow one" explained one participant. It will be achieved through a "federal evolutionary process", or in other words: "The structure of Europe is an evolving process; it's biology, rather than architecture." Concerning foreign policy, a high-ranking European official offered: "Experience is a great school. Fools will learn no other." He was echoed by a scientist who stated that: "It's a trial and error process." This process will be examined in greater detail below.

8. Does the "federation of nations" need a common constitution?

Closely linked with the Staatenbund/Bundesstaat issue is the question of whether Europe should continue to be bound by treaties or whether it needs a common constitution. One case statement maker in particular, disputed that a "constitutional demos" or "ethnos" is a precondition for a European constitution. In the discussion that followed, this precondition for a formal constitution was rejected by all sides. Firstly, it was pointed out that a constitution might itself help to create a "demos" (see also Habermas, 2001). Secondly, the positive example of Switzerland was held up as a counterweight to the negative examples of Canada and Spain.[1] It was suggested that the reason for the "unstable compact" in Canada and Spain may lie in the imbalance between the majority and a clearly defined minority. As such, discrimination against, or the repression of the minority is seen as a latent risk. By contrast, this risk is much lower where cultural, religious, political and

linguistic groups overlap and are always forming new coalitions with different constellations – as in Switzerland or Europe. In Switzerland, federalism means that everyone simultaneously belongs to both a majority and a minority (Rhinow, 1993, 779; Schindler, 1993, 35).

In addition to a repeated emphasis that nothing (negative) stood in the way of a European constitution, discussions also returned to the (positive) need for such a document. The aim of a common constitution would also be to engender or strengthen a sense of European identity (referred to in German as a "Wir-Gefühl"). Working with the general public, institutions can develop a common identity (Wessels and von Bogdandy, 2002). So far, the process of European union has been driven by primarily economic considerations, but the Euro should not be allowed to remain the only unifying element in the eyes of Europe's citizens. A community of values is needed, and the European Charter of Fundamental Rights has laid the first foundation stone. As early as 1961, the Swiss constitutional law expert Max Imboden, called for the European Community (EC) to draw up its own constitution as a deliberate contrast to the integration efforts determined by economic factors (Imboden, 1961, 128; Habermas, 2001, 8).

Closely related to the goal of creating an identity is the carving out of a common constitutional reality. There are parallels here with the objectives set for the revision of the Swiss constitution in 1999. One of the tasks was to catch up with the unwritten constitutional law that had developed since 1874. It soon became clear, however, that such a process is prone to making value judgments and occasional changes, which is why, with hindsight, the revision is more accurately described as an update (Rhinow, 2000).

German participants were particularly keen to point out that the function of a European constitution would be to create primary legislation that clearly lays down the competences of the Union and its member states. According to the Germans, the regulation of these authorities is a political task that can no longer be delegated to the European Court of Justice. "Europa ist kein Amtsgericht".[2]

A clear delineation of the authorities of the Union and its member states also pursues another objective: the limitation of power. Montesquieu was concerned not only with the division of power, but also with its restraint: "Que le pouvoir arrête le pouvoir".[3]

9. Structures of a future European foreign policy: what is Europe's telephone number?

9.1. 11 September 2001 as a test of strength

Henry Kissinger, the Former United States Secretary of State, once complained: "When I want to call Europe, what number do I ring?" What Kissinger meant was that when a crisis occurred, Americans did not know who to turn to as the authentic and immediate voice of European opinion. That question has not been answered entirely, even though the EU now has a High Representative for CFSP in the shape of former NATO Secretary General, Javier Solana, and a Foreign Affairs Commissioner in former British Minister, Chris Patten.

More than any other event, the response to the terrorist attacks on the United States on 11 September 2001 and the reactions to that response left an

uneasy feeling that the EU as such was not able to coordinate and harmonise the views of the member states efficiently (see Wessels and Diedrichs, Part B). Smaller member states, in particular, criticised the approach of the "Big Three" (Britain, France and Germany). Firstly, President Chirac, Prime Minister Blair and Chancellor Schröder held a brief mini-summit (a huis clos) before the official EU summit in Ghent on 20 October 2001, then Blair convened a dinner in Downing Street on 4 November 2001. Initially, invitations went only to Chirac and Schröder, although they were ultimately also sent out to the Italian, Spanish, Dutch and Belgian prime ministers (the last representing the EU presidency), as well as Javier Solana. That the exclusive inner circle of the three countries was expanded indicates greater sensitivity towards the smaller states on the part of the larger ones. Yet the fact that invitations were sent out almost as an afterthought led a British journalist to describe the affair as the embarrassing "Downing Street dinner disaster".

9.2. Foreign policy also needs rules and stronger institutions

To most of the participants in the discussions, one thing was clear in the wake of the events of 11 September 2001: "When the game gets bad then that lack of rule book and procedure gets really obvious". For two scientists, this very experience shows that the statement "foreign policy is basically about acts, not rules" does not always apply. Times in which foreign and security policy-related inter-governmental mechanisms must be observed are exactly the sort of context in which we need procedures and structures which facilitate coordination and harmonisation between member states, even in crisis situations.

The creation of common foreign policy institutions and the strengthening of existing frameworks take things a step further. However, it soon became clear in discussion that it is an extremely difficult task. This is where a "pooling of sovereignties" takes centre stage. One proposal is to combine the functions of External Relations Commissioner and High Representative of CFSP (see Wessels and Diedrichs, Part B.). A German politician, however, pointed to the danger that one individual could easily become a paper tiger or a puppet of the "Big Three" (a "Kaiser ohne Kleider"[4]). However, if a European "directoire" were to be created, there would be a very real risk – as with the United Nations Security Council – that the powerful EU states would dominate. Resistance from the smaller member states would be inevitable. A British case statement maker drew attention to the difficulty in appointing people to fill these newly created offices as – at least for the time being – there is no European "classe politique": "We don't have enough Solanas!"

The issue of how sub-national bodies should contribute to the foreign policy of the EU attracted only marginal attention. The opinions that were voiced tended to reject this approach. A German participant for example, argued that reaching a consensus on foreign policy is complicated enough already without making the process even harder. The outcome was likely to be counterproductive, i.e. lead to greater centralism. And an analysis statement maker raised the difficulty caused by the significant differences in structures and constellations in some areas at sub-national level, making the relationship between the EU and these bodies highly complex.

9.3. Foreign policy is also about steel and bananas

While discussion focused on the failure – real or imagined – of European foreign and security policy after 11 September 2001, a high ranking European official underlined another important aspect: foreign policy is not limited to the settlement of international crises like 11 September, the Middle East or the Balkans. Foreign policy is also about the settlement of trade conflicts ("steel and bananas") and coordinated intervention in financial and monetary markets. And it is in these very areas – i.e. the EC and the European Central Bank (ECB) – that an effective common foreign policy exists. In this case, unlike Henry Kissinger, Federal Chairman Alan Greenspan does not need to ask who to call. The ECB's crisis management in the wake of 11 September can be regarded as a success. Working alongside the United States, it succeeded in preventing a collapse of the international financial markets.

A Swiss scientist also indicated that military considerations have come to dominate the discussion too heavily. Europe's strength is not military – it lies in its commercial and financial relationships and its diplomatic network. "Our approach has to be dialogue-based, and not military-based. That's what sets us apart from the United States." However, at the same time, the coexistence of two systems of foreign policy – a communitarian system in the first "pillar" and an inter-governmental system in the second – is less than efficient.

10. Attempted conclusions

Discussions were dominated – almost inevitably, given those taking part – by the questions surrounding the form a future EU foreign policy should take. For example, one of the youth participants pointed out that the contrasts between

individual national policy and policy at supra-national level were even sharper within the United Nations (UN). There was also an interesting contribution from a country that is very close to Europe but not part of the EU itself: a Turkish scientist (and journalist) described the EU's difficulties with his country and vice-versa. The EU, he said, relied on Turkey specifically where foreign policy is concerned because the country forms a buffer zone to the "axis of evil". Yet at the same time, in the eyes of certain European countries, Turkey represents a religious and cultural threat (all the more so following the result of the elections in November 2002). Nonetheless, there are close economic ties between Turkey and Europe. The scientist believes that both the EU and Turkey would be perpetuating a myth if they were to continue to uphold the idea of accession.

In summarising the outcome of the discussions on a common European foreign policy, one of the participants was probably right when he said: "Europe is not at all a failure in foreign policy terms. But the hard end of foreign policy is defence!" Security and defence is an area that highlights the European Convention's difficult task of finding a "golden blend between federal and confederal structures". After the second work session, it was clear to all participants that a revolution is not on the cards. In any event, politics is more a case of taking many small steps in the right direction. Mapping possible routes is the task of the scientist, deciding which route to take that of the politician. In seeking the right route, however, the Convention cannot allow its gaze to be diverted from the road ahead by fruitless semantic discussions about Staatenbund and Bundesstaat etc. Here it is worth remembering something that is recorded in the minutes of the Swiss "Convention" of 1848:

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"... reams ('Folianten') have been written about the terms Staatenbund and Bundesstaat; it would therefore seem sensible to suspend any basic terminology decisions ..." (Schiess, 1848, 13). There are no standard off-the-peg patterns of federal structure. The search for the right route must always start again at the beginning. This was just as true 150 years ago as it is today.

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[1] The "founding fathers" of modern Switzerland recognised that a constitution is not necessarily conditional upon the existence of a nation: "the term 'nation' has no place in our organism, because nationhood has nothing to do with systems of government; we talk about the German, French or Italian nations while these nationalities, divided into different states, have their own particular public law institutions and at the same time experience a feeling of belonging together" (Schiess, 1848, 13).

[2] "Europe is not an inferior court." See Thürer, 2002.

[3] "So that power stops power."

[4] An "Emperor's New Clothes" scenario