

# Dialogue Table Proceedings: Summary Address

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## Federalism and Foreign Relations

(Dialogue Tables 1 and 4)

### 1. Foreign Relations of Sub-national Units

The scope for sub-national units to develop foreign relations is very different in various federal states. However, the discussion demonstrated that it is wise to make a distinction between more formal agreements and informal arrangements (“arte di arrangiarsi”). While Article 1, Section 10 of the United States constitution says that states shall not enter into agreements with other states or sub-national units without the consent of Congress, it was not entirely clear to me to what extent this provision also relates to more flexible forms of cooperation based on memorandums of understanding, conferences etc. There seems to be a certain latitude for informal agreements.

For the understanding of the solution chosen for external relations of sub-national units in a federal state, it appears to be useful to understand the whole political system of the respective state. The large treaty-making power given to regions and communities in Belgium, for example, has to be seen in a context of exclusive allocation of powers (no need to cooperate) and a lack of true national political parties. Moreover, the particular development of federalism in Belgium must also be seen against the background of this country’s history.

One has to be aware of the limits to cross-border agreements between sub-national units in border regions if their competencies to conclude such agreements vary widely between the states they are part of. The Oberrhein region with two federal and one non-federal states is an interesting case in this respect. The procedures for concluding such agreements can also differ. A German Bundesland can conclude agreements with sub-national units of another state, but needs the consent of the federal government.

It has been mentioned that the process of European integration makes it more necessary for sub-national units to conclude cross-border agreements. The case of Switzerland indicates that this holds true for both European Union (EU) member and highly integrated non-member states. One might even argue Switzerland would have been more isolated in the process of European integration had the sub-national units not had considerable room for manoeuvre to conclude agreements with sub-national units of EU member states.

## **2. Participation of Sub-national Units in the Foreign Policy of the Federation**

The cases examined during the discussion were two EU member states (Germany, Belgium) and one non member state (Switzerland). Switzerland developed its constitutional and legal basis for the participation of the sub-national units (cantons) mainly as a consequence of the process of European integration. The principles of participation of the cantons in the area of foreign relations laid down in the Federal Law of 22 December 1999, on the participation of the cantons in the foreign policy of the confederation, were

already applied during the bilateral negotiations between the EU and Switzerland from 1994 to 1998, and proved to be fruitful.

The importance given in the discussions to the question of whether there should be the same or different rules for participation of sub-national units with regard to European integration and foreign policy in general came a bit as a surprise to me. Why? For a country located in Western Europe the process of European integration has a deeper and broader impact on its citizens than the process of globalisation in general. Even in a non-EU-member state like Switzerland it is more important for cantons to participate in the European policy of the federal state than in the foreign policy in general. The difficulty of recognising this fact in Switzerland may have something to do with the difficulty in recognising that non EU-membership is, in terms of shaping the future of Europe and in terms of an efficient defence of Swiss interests, a real handicap. The fact that the Swiss Confederation cannot participate in the decision making in Brussels also has as a consequence the fact that the sub-national units of Switzerland have no opportunity to influence the decision making. It was interesting to note that Austrian colleagues felt that the relationship between the federal state and the Länder had become much more intensive and substantial since Austria became a member of the EU. The legal and procedural situation of the Länder also improved as a consequence of EU membership. There were discussions about the effect of the number of sub-national units on their participation in the foreign policy of the federal state. It was felt the higher the number the greater the need for cooperation between the sub-national units in order to bring in the position of the sub-national units on time, during negotiations for example. My experience

is that the Swiss cantons were quite impressive in this respect during the bilateral negotiations.

### **3. Implementation of International and Supra-national Law by Sub-national Units**

It was largely felt that the more sub-national units are involved in consultations or negotiations leading to such law or the better informed they are, the more they are motivated to implement the respective laws. The less they are involved and informed, the less they feel concerned and accountable for implementation. We also heard of the difficulties in some federal states with regard to legal possibilities for imposing the implementation of international or supra-national law on sub-national units if the latter refuse to do so (United States, Austria). In Austria the federal state can only do so once the European Court of Justice has stated a violation of EU law by the Land concerned.

### **4. Federal Structures and Foreign Policy of International and Supra-national Organisations**

This issue was, in fact, examined in the context of discussions about the relationship between the EU member states and the EU, mainly in relation with the Common Trade Policy and Common Foreign and Security Policy (CFSP). The debate was more political than legal. The prevailing feeling was that Europe was shaped in the EU and that the EU could not pull out of the great decisions taken on the global level. There was unanimity that the EU alone carried the necessary weight to promote European interests in the global debate. The view of the EU as a superpower attracted more sympathy

than an image of it as a superstate. One foreign policy maker participating in this debate felt we should not only talk about democratic deficits, but worry more about decision-making deficits in the EU in an international environment where we might be exposed to conflicts. No directorate, but no lowest common denominators either.

## **5. Conclusions**

I will end with some more personal remarks. First, my experience is that the participation of sub-national units in the shaping of the foreign policy of the federal state whenever their powers or essential interests are concerned strengthens the foreign policy of the federal state.

Sub-national units bring in know-how and experiences relevant to a negotiation, which are often lacking at the central level. The bilateral negotiations between Switzerland and the EU between 1994 and 1998 have also proved that 26 sub-national units can organise themselves in such a way that they are in position to give their opinion on complex negotiating issues within days. The possibility for sub-national units to have their own foreign policy in areas of specific interest and concern, in my opinion, increases the flexibility of the foreign policy of the state as a whole. After all – and one can think here also of Switzerland – the degree of economic and social interdependence between sub-national units of different states can exceed the degree of interdependence between sub-national units within one federal state. For this flexible set-up to function, a climate of mutual trust between the federal level and the sub-national units appears to me to be indispensable. The federal authorities must feel secure that the state as a whole can defend

its foreign interest with a strong voice when the interests of the federal state as a whole are at stake.

Secondly, and without entering into the niceties of the precise legal nature of the EU with its complex structure, some of its federal characteristics are beyond doubt. There are similarities between the EU and federal states even if there is, as specialists will remind us, no constitutional demos.

In other words, what we have in Europe with the EU, is an additional federal structure whose importance exceeds, for the members of the EU, the importance of globalisation, a more narrow, in many ways also more superficial development than regional integration. European integration has, in other words, a deeper and broader impact on citizens in Europe than globalisation. After the extensive quotes of Napoleon in speeches so far I may add one quote of Bismarck in this context: “die Geographie ist die einzige Konstante auswärtiger Beziehungen” (Geography still matters). Switzerland is, with the exception of Liechtenstein, surrounded by member states of the EU. From this perspective I was somehow surprised that the debate on federal structures of supra-national organisations, that is on the relationship between EU member states and the EU, did not take place along similar lines to the discussion on the relationship between sub-national units of federal states and the respective federal state. I say so while being fully aware of the fact that the powers of EU member states in terms of foreign relations exceed by far the powers granted to sub-national units by federal states.

Had the discussion followed this pattern it might have appeared even more clearly that the creation of the EU in the second half of the last century was at

least as normal and natural a development as the creation of federal states like Switzerland in the middle of the nineteenth century. I noted with interest that representatives of federal states which are members of the EU attending this conference found their EU membership not only normal, but did not give any impression of seeing their own federal structure threatened because of EU membership.

Thirdly and finally, in my present activity, dealing with the causes and, above all, the consequences of armed conflicts in this world, I am faced more with questions related to Theme II of this conference: Federalism, Decentralisation and Conflict Management in Multicultural Societies. Whereas my earlier travelling took me to places like Brussels and London, my travel destinations are now Afghanistan, Angola, Columbia, Ethiopia and other countries at war or suffering from the consequences of war. It gives me the opportunity to reflect from time to time upon the relationship of different states structures and armed conflicts. There are at present, as you are probably aware, internal armed conflicts both in federal and in centralised states. A federal state structure is no safeguard against armed conflicts, but, from what I have seen and felt, federal structures have an important conflict prevention dimension, because they imply and request a culture of what the French call the “respect de la différence”.

However, one can only really feel confident on the day that this respect for the other extends to each individual, independently of race, religion, nationality or other identities.