Draft Template for Country Case Studies

“Water Management in Federal and Federal-type Systems”

Overview Observations

Case studies in comparative federalism are most productive when all authors address the same basic set of questions. At the same time, the peculiarities of each system are such that the weight and attention given to any particular issue will vary considerably. If the papers and published volume are to be of use in a policy context for governments, it will be important for authors to try to draw out some key lessons regarding the strengths and weaknesses of the approaches followed in the case under study.

Water and Federalism

In all federal countries and federal-type systems, effective development and implementation of water policies requires coordination among all levels of government, administrative commissions, and independent agencies. Therefore country cases should provide an analysis of policy issues related to the use of water resources (including surface water and groundwater), as well as the legal and administrative arrangements by which federal, state, and local governments/bodies share responsibility and authority over the broad issue of water management (including quality, quantity, developmental activities), including those related to international bodies of water.

Authors should remain conscious of the need to focus on the intergovernmental dimension of water management. Thus major policy issues that do not give rise to intergovernmental issues should be dealt with lightly and as contextual background, with more detailed analysis oriented to issues of coordination and conflict between orders of government. As well, authors should draw out the dynamic dimension of water management in the system, including the forces driving the emergence and resolution of issues and conflicts between the jurisdictions.

The following questions illustrate items that should be covered for each case study and which should guide the development of each chapter:

A: Overview and Policy Context

1. How salient are water issues (relative to other major issues) within the federal system? In what policy context do issues of water management obtain salience in the federal system? (Water shortages? Excess? River water-sharing? Pollution/Environmental concerns? Foreign relations?)

2. The management of what types of water resources has a federal dimension – groundwater? surface water (rivers, lakes, estuarine, costal waters)?
3. Is water treated as a valuable and scarce resource which generates significant revenues (rents) for government?
4. Provide some basic hydrological information (geography, flow of rivers, presence and movement of water in aquifers, etc.)

B: Constitutional Structures and Politics
5. What constitutional responsibilities of each order of government, both proprietary and legislative, bear most directly on water management?
6. Are there emergency or other special provisions that provide for the centralization of the management of water resources?
7. Is there a role of judicial participation/oversight in the implantation of policy?
8. Has the central government made significant use of fiscal incentives to influence water policies at the state level and to circumvent weaknesses in the federal legislative power?
9. Are the major constraints on effective action by the federal government constitutional (in that it does not have a necessary authority) or political (in that for political reasons it is not prepared to impose a necessary policy)?

C: Issues of Coordination
10. What issues require interaction between different levels related to: management of river waters, groundwater, lakes, water safety and regulation?
11. What are the primary issues of dispute between jurisdictions?
12. Do issues of inter-jurisdictional water management primarily arise in the context of federal-state relations, or state-local government relations, or both?
13. In cases where there are trans-boundary water resources, how are allocations made (particularly between upstream and downstream states)? Are there different approaches or formulas for inter-state and intra-state allocations?
14. Do states abide by common-law riparian doctrine or by the appropriation doctrine? (The former allows riparian landowners to use surface/groundwater for any locally recognized beneficial purpose. Whereas the appropriation doctrine to allow nonriparian landowners to establish rights to divert water for use outside riparian lands.)
15. In addition to constitutionally established proprietary rights over water for each order, what other allocations of responsibility to each order (Agriculture? Transportation? Trade? Sanitation? Development? Foreign relations?) impel the need for interaction between orders?
16. What are the priorities of different states and how do they intersect with the jurisdictional responsibilities of other orders?
17. Are there national standards for water use and safety, and if so how are they arrived at? Who monitors them and who implements them and how do these bodies interact? What are the respective roles of the federal, state and local governments?
18. What joint programmes exist between various orders of government for the development of water resources? (Dams, Agriculture, Conservation, Pollution control, navigation?)
19. With increased urbanization the world over, regional and local agencies have frequently gained additional authority to pursue broader water management
responsibilities. What implication does this have for higher order coordination, as well as the capacity for local agencies does deliver on their responsibilities?

D: Managing Interaction
20. Are federal-state or state-local government relations on water issues managed multi-laterally or bilaterally? To what extent do asymmetries prevail?
21. What role do sub-national units play in shaping the national approach to international trans-boundary water management? Are such entities compensated when losses occur due to the national interest?
22. To what extent is inter-jurisdictional management of water resources cooperative or conflictual?
23. What are the mechanisms and institutional arrangements for interaction (scientific, administrative, policy and political)? Are they formal or informal?
24. Are there major differences between political parties at the federal level over the management of water issues between jurisdictions?
25. What provisions exist for dispute resolution? Are these legally binding?
26. What role does litigation play in dispute resolution?

E: Conclusions
1. What are the key current issues in the federal dimension of water management?
2. What lessons, good and bad, have been learned about addressing major water management issues between the jurisdictions?
3. Are current mechanisms of interaction and allocations of responsibility viewed as adequate given the key current issues? If not, what new approaches may need to be considered?