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Presentation

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Do States have a role to influence multi- and bilateral processes in a political and economic environment ?

Premier Carr and Minister President Teufel have offered a very specific perspective regarding the very unique role of their respective states within a federation.

I should like to look at the topic from a different angle: the angle of a federation, namely the Federal Republic of Germany.

I admit on this occasion that Chancellor Schröder or, as it were one of his ministers, would have a far more authoritative view than I can present to you today. However, I take my legitimacy to speak to you today from the fact that I have in the past for many years worked on issues where national views have been constantly confronted with multilateral dynamics such as in the European Union and in Nato. And also as German ambassador to Australia I am the official representative of the President of the Federal Republic who according to our constitution represents the Federation in terms of international law.

Ladies and Gentlemen,

The German democracy established after the atrocities of World War II flourished upon the basis of a constitution which consists of a number of unique particularities:

First, it is called Basic Law and not constitution as its normative content would have allowed, because it was conceived as an interim solution applicable only until reunification of the two German states became a reality.

The prime objective of German policy from its outset was the unification of the two German states. This objective was achieved in 1990 when – after the collapse of the Berlin Wall – the communist German Democratic Republic acceded to the Federal Republic of Germany, of course with the agreement of the then four powers for Germany, USA, UK, France and the Soviet Union.

Second, the Basic Law, in its Art.23 and 24, foresees the integration of Germany in the international community, such as integration in terms of international law, integration in a united Europe and in international organisations and in a system of collective security.

This article of the Basic Law constitutes the legal basis for the membership of Germany to Nato in 1955, to the European Community in 1957 and to the United Nations in 1973.

It is fair to say that the policy of post-war Germany from the outset was geared towards her integration into multilateral and international structures. And this basic policy has not changed after unification. It is also undisputed between the Federal State and the Länder.

This commitment is emphasized even further by Art 24'1 of the Basic Law, which reads: "The Federation may by a law transfer sovereign powers to international organisations "and further down in the same article "The general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory."

The articles I quoted from our constitution clearly mark the overriding priorities of Germany's foreign policy.

You might ask yourselves how do the Länder in Germany come into this equation. Firstly, the Länder have the right to legislate insofar as the Basic Law does not confer legislative power on the Federation. This is a concept that requires some explanation for some of our closest friends like the French, but needs no further clarification in front of an Australian audience. The division of authority between the Federation and the Länder is clearly spelled out in the German Basic Law. There are issues like foreign affairs and defence, immigration, currency to name just a few, that are subject to an exclusive legislative power of the Federation. Other issues, like for example criminal law, law relating to residence, public welfare, matters concerning refugees, road traffic, and many more, are subject to the so called concurrent legislation. Any law on these issues requires the consent of the Bundesrat, the upper house of parliament, which consists of representatives of the 16 German Länder. Unlike the Australian Senate these representatives are not elected by the people but appointed by the government of the Länder.

As I just mentioned, foreign relations are according to the constitution conducted by the Federation. The Federation has exclusive power to legislate with respect to foreign affairs and defence.

However, ladies and Gentlemen, things can change. I remember very clearly, when working in the German Foreign Ministry on issues related to the European Union in the early nineties, that the Länder started to react forcefully against the speed with which the federal government promoted further steps in the European integration which –in particular in the economic and financial field, - had immediate effect for the citizens in all the German Länder. This was the case in particular with the treaty of Maastricht of 1992 which created the basis for economic and monetary union.

These strong reservations of the Länder, not having been heard and consulted by the federal government before taking such wide-ranging decisions - though legally the Federation was not obliged to do so - led to an amendment of our Basic Law which came into force in 1992.

This new Art. 23(2) reads:” The Bundestag and through the Bundesrat the Länder shall participate in matters concerning the European Union” And further down: “to the extent that the legislative powers of the Länder, the structure of Land authorities or Land administrative procedures are primarily affected, the position of the Bundesrat shall be given the greatest possible respect in determining the Federation's position.” And finally:” when legislative powers exclusive to the Länder are primarily affected, the exercise of the rights belonging to the Federation shall be delegated to a representative of the Länder.”

This constitutional change led to a dramatic change in the formulation of German policy with regard to the European Union.

The Foreign Ministry started to conduct regular meetings with representatives of the Länder before finalizing its positions in Brussels. At the same time, all

German Länder opened their own missions or representations in Brussels with the aim to directly inform their respective Länder governments about the developments in the European Union.

Please allow me to add, Minister President, that this development does not particularly facilitate German policy making in the European Union.

I remember vividly a speaking engagement during this period in Munich, Bavaria. After my presentation I was asked whether the opening of a fully fledged Bavarian mission in Brussels would not make life much easier for the Federal Government's European policy making. I caused quite a commotion when I bluntly rejected this assumption and argued that European policy had already become an extremely complicated coordination exercise within the Federal Government not to mention the endless battles among member countries for a satisfactory outcome. I could see little advantage for the Federal Government in Länder having their own missions to the European Union alongside the federal German representation.

However, ladies and gentlemen, if I had been confronted with a similar question in Stuttgart, my home state, I would probably have argued the case in a less combative way.

A different situation prevails in Germany for example with regard to security and defence. In this respect, the authority of the Federation is – as far as I can see – uncontested. Having been responsible for security and defence matters in the Ministry of Foreign Affairs in the early nineties when the Cold War had ended, the Soviet Union had disintegrated and when the European nations, old and new, small and large, had to reassess their identity in a completely new political environment. It was the responsibility of the federation alone to

formulate and discuss the way forward with her partners and allies in the European Union and in Nato.

The same was true between 1997 and 2001 when I served as an Assistant Secretary General at Nato.

The difficult and very sensitive discussions concerning the deployment of German troops outside Nato territory, the decision of the Alliance to admit new members, the extremely delicate decision concerning the Nato air campaign in Kosovo in order to prevent atrocities and ethnic cleansing instigated by Milosevic and his cronies. And further, the urgent need to restructure the armed forces of Nato member countries to enable them to respond convincingly to the new threats and challenges, the decision to seek cooperation with the emerging security and defence policy of the European Union. The position to all these issues were developed by the federal government without any significant input by the Länder. The same holds true for most issues that are being discussed and decided in the United Nations.

In this respect, I detect a lot of similarities between the role of the Länder in Germany and the States in Australia. I sometimes get the impression that the Länder and the States in our two countries used to be quite happy not to be involved in security and defence matters.

The advent of new threats, however, international terrorism and weapons of mass destruction have in my view changed the way, states and Länder ought to look at security issues. The more, security and defence in the traditional sense are replaced by the fight against international terrorists, the more the Länder will have to be involved and will have to cooperate with the federation in combatting this emerging scourge of the 21st century.

As I described above, it is in Germany's national interest to defer certain sovereign rights to multilateral authorities as is the case with a considerable number of issues where today the European Union is speaking on behalf of all its member countries. The German Länder and the Federation are in full agreement on this very clear objective. In this respect I find that there is limited understanding for such a policy in Australia. But one has to understand that the political developments in Europe are a result of its history and recent experiences in the 20th century.

Last but not least I should like to leave with you one more consideration:

Over the last two decades, the world has been witnessing the globalisation of the economy and information technology. All our nations are becoming more and more interdependent on each other. National policies bear less and less impact. This is particularly true for economic and financial decisions. Multinational conglomerates often dictate and influence currencies and economic performances worldwide. It is true that some nations cope with these new phenomena better than others. Continuous reforms are necessary to survive in a climate of global competition. Australia has set a good example. Effective economic reforms have paved the way for continuing, much admired economic growth in this country. Germany has also embarked on an ambitious reform policy. The federation and the Bundesländer together have joint responsibility to give entrepreneurs the best economic environment possible and to make sure that innovation can be put into practice. What I should like to stress in today's panel is the necessity for the Länder, the States and the federations alike, to address these developments jointly and not get bogged down by formal considerations of responsibility. If Länder and Federation, if States and Commonwealth start fighting each other about respective competences,

globalisation could end up to be a scourge for our people and for the development of our nations. If on the other hand States and Federations address the emerging developments jointly, the globalized world will enhance prosperity worldwide and strengthen international cooperation.

Thank you for your attention.