

Maastricht und das Europa der Kulturen¹

The Dutch author *Cees Nooteboom* recently wrote in an essay:

"I don't know who will be able to achieve the dream of a united Europe. Nor do I know when this will come about. But I do know that it will require many writers in order that it will turn out to be a success for the 350 million main protagonists."

I, myself do know that it will require not only many writers but also many other thoughtful people to affect a successful outcome, such as *Cees Nooteboom* hopes for. And I also know that at Wiston House this week once again many competent people have come together to consider how to achieve such a successful outcome.

European integration is underway. And thus, all those who want to contribute in clearing the path will have to be mobile as well: Today at Wiston House, tomorrow in London, the days after in Bonn, Brussels, Strasbourg and Munich. One gets to know Europe inside out when one works for Europe. But my topic today is Germany, Germany in Europe, Germany, and Europe.

"The Federal Republic of Germany as a model of Regional Devolution".

With all due respect to the gentleman who coined this phrase – it includes an assertion I cannot confirm. But I will gladly examine the question of whether the Federal Republic is indeed a model for "devolution". I should like to look at the following points:

- What elements characterize and practice the essence of the Federal State of Germany?
- Which of these elements could be useful for the establishment of a European Union?

Germany is a Federal State. Thus, the Federal Republic of Germany is not a model for regional devolution. After all, in a Federal State the Länder constitute the Federation. The competences of the Länder as far as legislation, administration and jurisdiction are concerned are concentrated on the Länder and are not acquired through delegation. Art. 178 of the Bavarian Constitution, dating from 1946, had stipulated that Bavaria would *"become a member of a future German democratic Federal State"*, which was to be "based on a voluntary federation of individual German States" whose "legal independence was to be assured".

This ultimately came about in 1949, after long debates, after profound considerations and some hesitation. The Federal Republic of Germany thus owns its existence to the Länder. By means of the majority of their parliaments, the Länder laid down our constitution.

Reunified Germany is also a Federal State – a State which came about through the joining of the new "Länder of the former GDR, which gave itself a federal structure before joining.

Germany's democratic and federal state system was introduced and even forced upon the protagonists of German constitution of 1949 by the victorious allies. After World War II they wanted to establish a government system in Germany that would guarantee a real democratic development in Germany and that would teach the Germans what democracy is all about.

¹ Statement beim gleichnamigen Seminar am 1. 10. 1992 im Vlaams-Europees Congrescentrum in Brüssel, in: *Schelter, Amnesie – Der größte Feind Europas*, 2012, S. 13.

As we all know the system has been successful and it has worked for more than 40 years. Now the Federal State of Germany has a structure - more in fact: a form of coexistence that is irreversible. Bavaria recognizes this Federal State, because we acknowledge the German Nation: *"We want to shape Bavaria's responsibility to Germany in national solidarity"* (Prime Minister *Max Streibl*).

Being a representative of the Free State of Bavaria please allow me to emphasize the fact that Bavaria – as one of the now 16 federal states – has always supported "Federalism" in Germany very strongly. Bavaria has been the most outspoken and resolute advocate of our federal system ever since our constitution was drawn up. It is for this reason that Bavaria upholds the principle of Federalism also with regard to the shaping of the Europe of the future.

What are the aspects of the structure of Germany that seem to be essential for the undeniable attractiveness of this Federal order? The Federal principle of the German Constitution is taken very seriously. Federalism has permeated into all levels of state action, has been incorporated in the three aspects of the state, that is: legislation, administration, and the judicial system:

- Legislation is enacted on both, the Federal and the Länder level.
- Administration also is performed on both - the federal and the Länder level.
- And the judicial function is exercised independently by the Federal Courts and the Courts of the Länder.

This balance of power is stipulated in the constitution, our basic law, is generally accepted and it works. It works because these different levels of power are not unrelated to each other and in disorder. Nor do they work counterproductively, consciously, or even intentionally. Federal and Länder levels are variously interlinked by a competence order that is laid down in the constitution and is the result of a well-organized opinion shaping and legislative process.

To all participants of the policy-making-process this system is not inflexible. But it is also a matter-of-course that the applicable rules must be observed. Federalism in Germany is a living, frequently even a quite controversial, constitutional reality.

In the history of the Federal Republic of Germany there have been several serious differences of opinion between the Federation and the Länder – above all in the fields of education and culture, the heart of the competence of the Länder. But in all those disputes the principle of the Federal State has never been questioned. What has been disputed is the *extent* of the rights of the Länder within the Federation. But when the Länder argue for their rights, it does not mean they want to be separated from the Federal State.

In all those disputes there was never any question concerning *"Federal State Yes, or No?"* It was always a matter of justified interests, the rights of the Länder within the Federation. There is, moreover, no reason for any such strivings. Also, after reunification, the Federal Republic of Germany fulfills an essential structural characteristic of a stable Federal state: the homogeneity of the Member States with the constitutional order of the Federation, as stipulated in Art. 28 of our constitution. The State order in the Länder therefore must correspond to the basic stipulations of the republican, democratic, social and legal state within the constitution.

The philosophy of Federalism would not work, if – in practice – we would fail to apply in legislation and in administration the principle of subsidiarity. This term, which originated in Catholic social philosophy, was initially coined as an answer to the question: which tasks, which responsibilities should be taken care of by the state:

According to the *Encyclica Quadragesimo Anno*, dating from 1931, the smallest social unity, if possible, the individual himself, should execute as many tasks as possible on his own. The next, "bigger unit" should only intervene, may only undertake tasks and later competences, if the smaller, "weaker group" is unable to comply adequately with this responsibility.

So the principle of subsidiarity is based on a sensible interaction between state, society and individual. It means self-responsibility and self-determination of the autonomous citizen as far as the organization of his own life is concerned. As far as we are concerned, the state does not exist for its own sake. There are few "agenda" that are naturally entrusted to it, e. g., foreign and defense policy as well as questions of internal security. In most of the other spheres of life the following questions should be asked:

- What is absolutely necessary?
- Where is the individual, where is society overcharged?
- Where do justice, expediency and legal security demand uniform, compelling regulations?

If the answer is affirmative, then and only then the State should act. That is what we deem subsidiarity to be.

What has been recognized as correct for the relationship between the individual, the society and the state and has been proven viable cannot be wrong in terms of Federal and supranational institutions. This context is emphasized in the 10th Amendment of the American "Articles of Confederation" dated 1791:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

So, according to the principle of subsidiarity, we believe that the next, „bigger unit" should only intervene, may only undertake tasks and later competences, if the smaller, "weaker group" is not able to comply adequately with this responsibility.

In Germany the basic premise of subsidiarity thus becomes viable not only for the sharing of tasks between the individual and the community but also for that between the Federation and the Länder. The Federal German State system is peculiar, difficult, and complicated but it is the only political System by means of which Germany can exist.

The question is: Can elements of such a state structure contribute to the success of European integration? Is the European system, in turn, not so complex that any analogies with member politics are not viable at all?

I would deny this. The untold wealth of the various constitutional traditions and experiences must be integrated into a united Europe if we wish a united Europe to come about. Federalisms the basic political form of order is undisputed in Germany. However, Germany does not stand alone. We are partners in a European Community, which is developing into a Political Union. This Union will have to accept new tasks-from the financial policy to the defense policy, from social policy to environmental protection measures.

Many political matters which are currently still a matter of national responsibility will become objects of European policy. A Federal state order must be prepared for this obvious trend: The

Länder must ensure that their role in the policy-making-process remains guaranteed. They must endeavor to gain influence on the policy-making-process of the European Community itself.

Europe's future is a united Europe with a unified Germany. We did not approve a centralized German State nor do we want European centralism. Our aim is a Europe in which cultural and social diversity and public-oriented policies remain unchanged. The Europe of the future will only be a Europe with a future if it is structured according to the principles of "subsidiarity" and "federalism".

Subsidiarity must become the principle of action within Europe. Thus, the EC can only take up tasks which have a "European aspect" and must maintain its regulations within the framework of necessity and viability. The Community may only undertake new tasks in so far as the execution thereof is vital on a European level and full effectiveness can only be guaranteed at that level.

The measures of the EC must not transcend the objective of each measure. Regulations of the Community are not justified merely because a problem is a supra-national one, or that a pan-European activity makes a "European Value added" feasible.

The principle of subsidiarity has been stipulated as a compulsory aim in the Community Treaties by the Treaty of Maastricht. The relevant article of the Maastricht-Treaty states that in areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and so far as the objectives of the proposed actions cannot be achieved by the Member States and can therefore - by reason of the scale or effects of the proposed action - be better achieved by the Community.

The formulation in Art. 3 b of the Maastricht Treaty concerning Political Union fulfills this requirement to a tolerable extent. One week ago, the European Council in Lisbon dealt with the introduction of the subsidiarity principle. The final statement of the board was:

"The European Council is convinced that harmonious development of the Union over the coming years depends to a considerable degree on the strict application to existing and future legislation of the principle of subsidiarity by all the institutions. This will be essential to ensure a direction of the European construction which is in conformity with the common wish of Member States and of their citizens. The European Council, having heard a first report by the President of the Commission on this subject, invited the Commission and the Council to undertake urgent work on the procedural and practical steps to implement the principle and to report to the European Council in Edinburgh. The Commission undertook, for its part, to justify, in the recitals of future proposals, the relevance of its initiative with regards to the principle of subsidiarity. The Council will have to do the same if it decides to amend the original Commission proposal."

As we can see, subsidiarity has been approved by all the top level politicians, who participate in the making of Europe. Now we have to implement what has been agreed upon. Bavaria will be reliable partner in this process. We will continue to contribute to the process with practical proposals.

Federalism must become the principle of architecture of the Europe of the future. Only in a structure of Federalism can the principle of subsidiarity develop its full potential and only thus will diversity within a unified Europe be retained. We need as many "small units" as possible, able to implement these tasks. Local authorities are an integral part.

The Europe of the future should be organized on the following levels:

- "Länder/ "Regions"/ "Autonomous authorities"
- National States and
- European Community.

It must be part of the status of the "Länder" and regions that all tasks are transferred to them which they are best able and prepared to execute. "Länder and regions must be allowed to participate in EC-discussions and play the role in the decision-making-process as for example in the new Committee of the Regions which is required by the Maastricht Treaty. A direct appeal to the European Court of Justice should be made possible in all cases relevant to their own concerns.

The following demands are part of our vision of a Europe to come:

- Self-responsible, self-confident citizens,
- A democratically, legitimized parliament, with the requisite competences and
- Vital regions that are permitted to participate in the structure of the European House.

Europe does not need any models and a "Model Germany" would probably cause new psychological barriers and thus make the process of European integration more difficult rather than easier. Europe's strength, the attractiveness of the community in its unification is based on diversity - the diversity of the models of its nations and regions.

We do not need "European federalism". What we need is "Federalism in Europe". And if the political rights of all citizens of Europe that live in historically evolved regions, communities or Länder, if the political rights of the citizens of the EC and national states are respected and where necessary strengthened, then we no longer need to argue what federalism in Europe is all about.