

FOREWORD

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Many people have contributed to this project. They are thanked more fully in the acknowledgements at the end of this report. Responsibility for any errors rests solely with the author.

The views expressed in this report are entirely those of the author and do not represent the position of any administration in the UK or elsewhere.

In affectionate memory of my father
Geoffrey Hunter.

INTRODUCTION

What this report is about

This report provides practical advice on managing conflicts and potential conflicts between governments within the UK after devolution. It is written for civil servants, by a civil servant.

Who should read this report

Anyone with policy responsibilities working for any of the governments in the United Kingdom - not only those in posts with an obvious devolution element. Some parts will be particularly relevant to senior managers, people working in central co-ordinating roles and trainers. But **Section 2 - Dispute Diagnosis** - is intended for anyone in a policy post.

Although the report is about relationships after devolution, many of the ideas here could also be applied in other contexts - working with the European Union, local government or other powerful bodies outside government.

Where the advice comes from

The experience of practitioners in other countries where there is more than one layer of parliamentary government. The examples looked at in most detail for this report were Australia and Spain. The most important source was a large number of interviews with serving public officials.

Why make comparisons

Devolution in the UK is very new. Practitioners in other countries have much longer experience of working with more than one layer of government. While no country provides a perfect model for any other, across the countries studied strong common themes emerged.

Fuller consideration of the comparative issues, including the choice of the two main case studies, is included as an annex. But this report is not offering a blueprint for organising intergovernmental relations, but a series of practical techniques - a toolkit. So the only comparative test which really matters is whether the individual suggestions here feel relevant to our own experience and whether they work in practice.

Why managing conflicts matters

Conflict is part of the fabric of government in all states. But in countries where significant political power has been dispersed from the centre conflicts are - unsurprisingly - generally more visible and issues of substance are more often involved.

Managing conflict is not about suppressing differences. It means avoiding the avoidable conflicts and having manageable processes for the rest. It involves sustaining working relations over the long-term. For those conflicts which remain unresolved for a long period, it means finding a way of containing their impact on the rest of public business. At its most basic, managing conflict is simply about the effective use of public resources.

What sort of conflicts can we expect?

Most attention tends to be paid to tensions over issues of high politics - conventional political differences, regional economic interests, finance and the formal allocation of powers. But from experience in the countries studied, it is clear that from day to day officials are at least as likely to find themselves dealing with classic administrative problems:

- not who has which powers, but whether to co-ordinate their use and, if so, how
- not major policy decisions, but the detail of implementation, including timing
- consultation procedures
- communication of information.

Addressing these issues means looking at governments' policy-making culture and processes, at least as much as at high principle and law. So devolution joins freedom of information, the impact of supra-national bodies and rules, the development of communications technology and changes in public attitudes, and more besides, as a challenge to traditional policy-making habits within the UK.

Section 1

Managing Intergovernmental Conflicts: Key Messages

1.1 Conflict management is rarely about some type of formal “dispute resolution” - even if sometimes the only way to resolve a particular dispute may be through the courts. Most emerging disagreements are simply swept up in the general, continuous business of intergovernmental relations, where arguments are constantly averted, redefined, accommodated, won and lost.

1.2 Few skills and techniques are unique to intergovernmental relations inside devolved or federal states. Many of the lessons will be very familiar to anyone who has any experience of working with other political entities - local government, in the EU and in other international bodies - or indeed any experience of negotiation and of policy planning in any setting.

1.3 Complex issues are most likely to be successfully tackled if the initial focus is on defining the underlying problem and governments’ real interests, rather than on developing detailed negotiating positions. See **Section 2: Part 1**.

1.4 In federal and devolved states it is true there will typically be a mass of informal contacts between officials in different governments. However to have the best chance of making progress on the most difficult issues the informal contacts need to operate round a clearly defined core of formal processes. Good working relations form most easily round a well-defined joint task. See **Section 2: Part 2**.

1.5 Individual behaviour and attitudes - of officials as well as politicians - can have a powerful effect on how easy or difficult relations are between governments. See **Section 2: Part 3**.

1.6 Whether disputes happen and how well they are handled is not just a question of external relations. How well co-ordinated each government is internally also exerts a powerful influence. See **Section 3**.

1.7 There are many right ways to manage an intergovernmental conflict, depending on the particular case and context. By contrast a much smaller number of things consistently go wrong and get in the way of resolving intergovernmental disagreements of all sorts. These - and what be done to avoid them or put them right - are the key things to understand. **Section 2** deals with these things.

Section 2

Dispute Diagnosis - Breaking It Down

Most of the things which can make an intergovernmental dispute seem inevitable or insoluble can be traced to a difficulty with one of 3 factors: the problem, the process or the people. Breaking a case down on this model can make it more manageable, help to expose the particular sources of difficulty and identify things which could be done to improve the chance of finding a solution.



THE PROBLEM

Ask:

What is the basic issue? What policy is one or other side, or both, trying to pursue?
What problem is one or other side, or both, trying to solve?



THE PROCESS

Ask:

What process is being or will be used to handle the discussion between governments?



THE PEOPLE

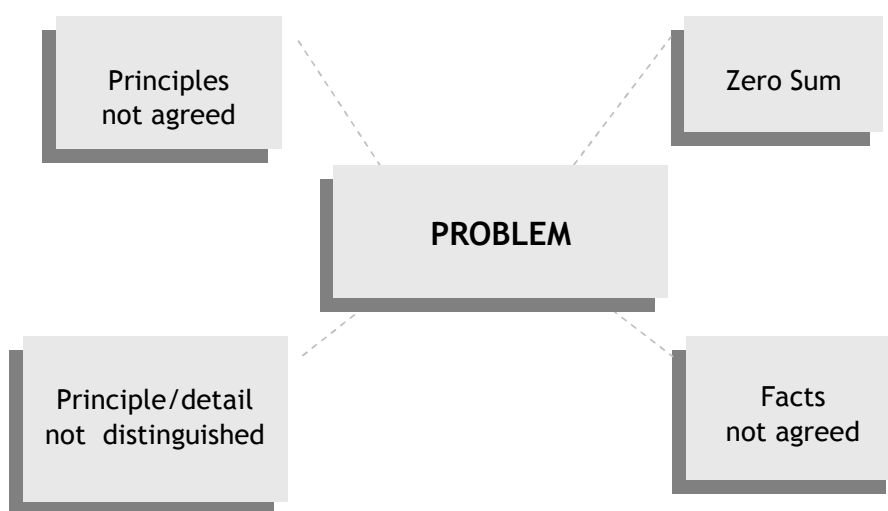
Ask:

Which individuals are or are likely to be most directly involved in the discussion between governments, at political and official level?

Dispute Diagnosis Part I: The Problem

Practitioners in the countries studied expected to spend a lot of time early on working out what the real points of conflict were in any particular case, so that energies could be concentrated on the areas that mattered most and issues tackled in a logical order.

Problem Diagnosis



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Each of the factors above - why it matters and what can be done about it - is considered separately below.

2.1.1 Principles not agreed

If a dispute is based on a fundamental issue of principle, then it will be hard to make progress. But in many cases, apparently opposing positions may mask the possibility of agreeing some basic points.

- Spending time reaching a high-level political agreement on broad principles can be a way of shifting the terms of a debate - by refocusing on what can be agreed rather than what is not. In Australia this is possibly the commonest technique used to make intergovernmental working productive rather than confrontational. Even quite generally-worded political agreements can create new room for progress and create negotiating space.

Example: National Environmental Protection Council (NEPC), Australia

The formation of the NEPC began with high-level political recognition of the need for greater integration of decision-making in certain environmental fields, including reducing disputes. This was followed by discussion by the relevant ministers, underpinned by a network of official level working groups, resulting in a more detailed draft intergovernmental agreement. This was then adopted by heads of government. The process of drawing up the agreement was key to identifying areas where differences were irreconcilable and areas where agreement and further work was possible. So negotiations which formally were about "agreement" in practice served an important dispute resolution purpose: defining the boundaries of agreement by identifying the areas where agreement could not be reached and which would not be further pursued. The process of drawing up the agreement compelled all governments to consider their priorities and where they were prepared to compromise.

The full text of the Intergovernmental Agreement on the Environment in Australia (1992) is at <http://www.environment.gov.au/psg/igu/pubs/igae.html> The language is legalistic, but the IGAE's status is purely political.

- Inquiries conducted by a neutral third party can sometimes be used successfully to shift the terms of a debate or at least create more time. For this to work both sides must agree the choice of third party and, crucially, the remit and basic process which will be followed in the inquiry. There may be an existing body willing to do the work which both sides trust. Both sides will need the chance to make an input to any inquiry. In the countries studied, these inquiries were only ever used as advisory bodies.

Example

The Productivity Commission is an independent Australian Commonwealth agency, which is permanently available as an inquiry body - roughly equivalent to a permanent Royal Commission. The Commission operates its inquiries by a well established set of procedures and was used repeatedly over the 1990's to open up and refocus arguments about aspects of economic reform. The openness and predictability of the Commission's processes have helped it play an accepted part in a number of intergovernmental discussions.

<http://www.pc.gov.au>

2.1.2 Principle/detail not distinguished

Sometimes what appears to be an unbridgeable conflict of principle may in fact be a conflict over a second-order issue, which can be split off and dealt with separately at a later stage.

- Good informal communication between officials is the first step in drawing out this distinction and then a high-level agreement, political if necessary, about the order things will be looked at.
- Where legislation is planned, administrators should talk about the principles before commissioning detailed drafting.

2.1.3 Facts not agreed

It is not necessary for governments to agree on every fact and some negotiators will argue that a certain amount of factual disagreement can be helpful if it allows both sides to interpret a single outcome as favourable. But a factual dispute can equally be an enormous obstacle. Are the regulations governing a particular type of business contradictory? How much is spent on a particular activity?

- It may sometimes be possible for officials to work jointly to clarify the position. But if the facts are themselves contentious, or the data analysis needed is very large, then using a neutral third party can be helpful - see **Principles Not Agreed** above.

Example: Social Union Agreement, Canada, February 1999

Canadian governments have drawn up an agreement on principles and procedures for developing social policy. The agreement contains a rare example of explicit intergovernmental dispute resolution arrangements. It is too soon to tell how these will work in practice. What's interesting is the strong link made between dispute resolution and fact-finding, ie:

- "Sector negotiations to resolve disputes will be based on joint fact-finding
- A written joint fact-finding report will be submitted to governments involved, who will have the opportunity to comment on the report before its completion
- Governments involved may seek assistance of a third party for fact-finding, advice, or mediation
- At the request of either party in a dispute, fact-finding or mediation reports will be made public."
-

http://unionsociale.gc.ca/news/020499_e.html

2.1.4 *Zero sum*

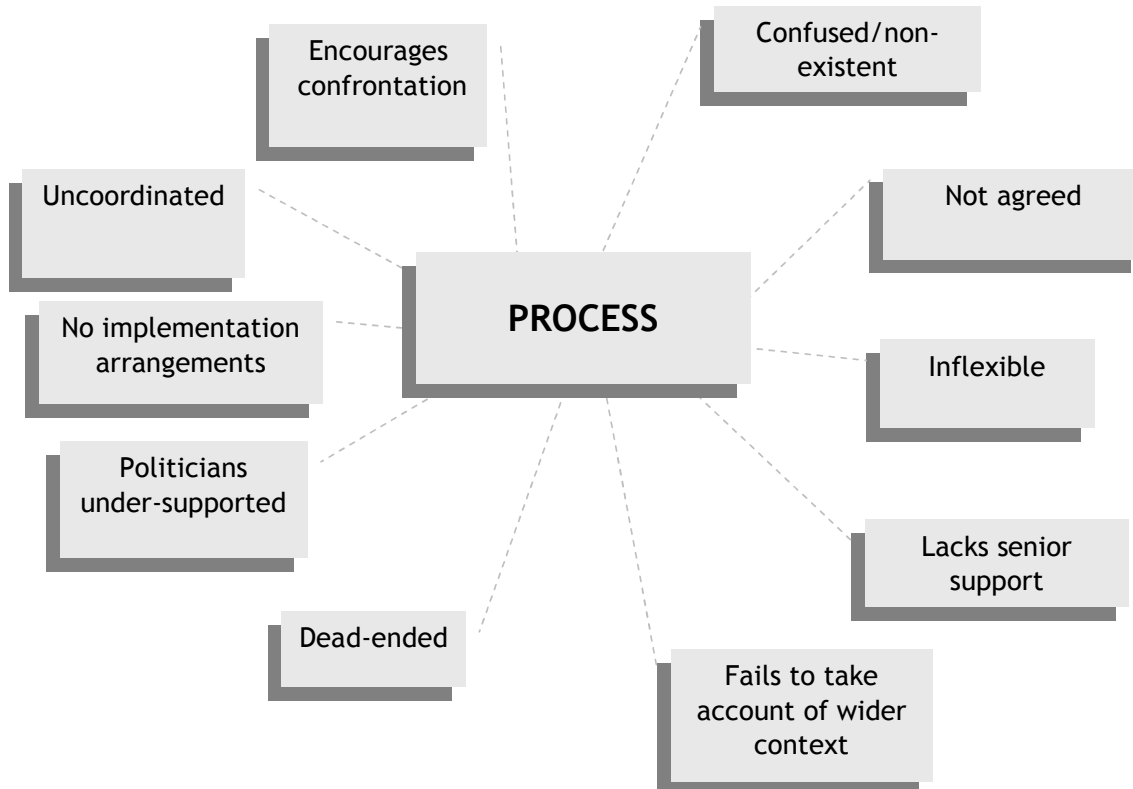
Zero-sum problems will always be amongst the hardest to resolve. Sometimes one side's gain will only be possible at the other's expense. But every effort should always be made to explore whether a problem really is unavoidably zero-sum.

- Packaging up a series of related issues in a negotiation can allow trade-offs. Experience in other countries suggests that trading-off between completely unrelated areas is unusual - not least because it is hard for the negotiators to be up to speed on all the parts of a disconnected package and therefore confident about trading between them. So the more closely linked a package of issues is, the easier it is likely to be find trade-offs.
- A classic technique for unblocking a zero-sum conflict over policies in other multi-layered countries is through one side offering the other financial incentives.

Dispute Diagnosis Part II: The Process

The single largest lesson from the countries studied in this research is that a good outcome can be as much about the process followed as the position reached - and that the most important guides to good process come from negotiating and policy management practice.

Process Diagnosis



Each of the factors above - why it matters and what can be done about it - is considered separately below.

2.2.1 Process encourages confrontation

In the countries studied, very few examples exist of specially-designed dispute resolution procedures, outside the courts. Even where such rules had been drawn up, they were not used in practice. In a similar way, bodies are rarely established with a limited remit of dispute resolution, only to be brought in when things have gone wrong. Nor are posts specifically dedicated to dispute resolution.

- Embedding the discussion of points of conflict in broader intergovernmental discussions shifts the emphasis away from confrontation and towards problem-solving. In particular, a process can be designed round the explicit aim of reaching an agreement on an issue rather than settling a disagreement - even though doing the first of those will mean doing something about the second. A process built around problem-solving also leaves more room to agree to disagree.

Example: The Council of Australian Governments (COAG)

COAG is the body which brings together the heads of all governments in Australia. It was established in 1992, but grew out of a much longer established tradition of heads of government meetings. It is based in convention, not law. Its “scope and objectives” are:

- To increase *cooperation* among governments in the national interest;
- To facilitate *cooperation* among governments on reforms to achieve an integrated, efficient national economy and single national market;
- To continue structural reform of government and review of relationships among governments consistent with the national interest; and
- To consult on major issues *by agreement* such as:
 - major whole-of-government issues arising from Ministerial Council deliberations; and
 - major initiatives of one government which impact on other governments.

From: Commonwealth-State Ministerial Councils: A Compendium, Department of Prime Minister and Cabinet, Canberra (December 1999) [emphasis added]

<http://www.dpmc.gov.au/briefing/doc/Compendium.pdf>

- Although it is generally better not to have separate “dispute” discussions, for a small number of issues it may help to have separate talks, where there is little hope of resolution and a high chance of bad feeling.

Example: Isolating Financial Discussions

Until 1990, Australian Heads of Government used the same forum to discuss how much funding would be allocated to the states and all other inter-governmental issues which needed highest-level political attention. The confrontational atmosphere from the financial discussions constantly spilled over into the discussion of other issues. The decision to split and create a separate Heads of Government body, with a separate title (eventually COAG), meeting on a separate occasion (and preferably not even on a day soon after a financial discussion) is credited by practitioners with having helped governments to make joint progress on other issues.

2.2.2 Process Confused/non-existent

Whatever the problem, if there is no clear process in place for dealing with it, or if the process being used to handle a particular case has emerged over time but never been openly discussed, the risk increases of misunderstanding, lack of progress and frustration.

Experienced intergovernmental practitioners put a lot of effort into jointly addressing process issues early on.

Checklist: Questions to ask early in the process

- What issues need to be dealt with politically and what can be handled at official level?
- What existing structures/processes will be used and what new ones may be needed?
- What is then estimated timetable for dealing with the issue, including "sunset clauses" on any new groups being set up?
- What consultation will there be at particular stages?
- Will bodies outside governments need to be involved and if so who, when and how?

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- Process issues also need to be kept under review - this often becomes a key role for high-level official bodies. Testing and re-testing each parties' understanding of the process as the work develops also helps.
- It is almost always less time-consuming and easier to agree a process in advance, or at least before too much work has been done, rather than trying to clarify and agree it once it is underway.

2.2.3 Process Not Agreed

A process may be clear - but if it has been imposed on one side by the other it is much more likely to cause resentment and disputes.

- The advantage of what appears to the more powerful side in any setting to be a more desirable process has to be balanced against the large advantage of both sides being committed to the process (and therefore more probably also to the outcome).

Example: International Negotiations

International negotiations cause some of the most difficult process problems in multi-layered states. National governments are the signatories to international treaties and are rarely, if ever, obliged to involve sub-national governments in international discussions. It is common for national governments to have wide-ranging powers which they can use in order to ensure international obligations are met. However many international obligations can only be met with the involvement of sub-national governments, creating pressure to find processes which balance legal authority with the reality of the need for co-operation.

In Spain, the ministerial Conference on European Affairs is one of the most active intergovernmental bodies and the mechanisms for liaising over European issues have been the focus of the most intense attention of all parts of the intergovernmental machinery.

In Australia, the Commonwealth's unilateral approach to international negotiations became an election issue in 1996, resulting in a major overhaul of the handling of treaty negotiations. The changes include more contact between officials before international summits, more use of states' representatives as observers/sounding-boards/technical experts in delegations and more parliamentary scrutiny prior to ratification. Existing "Principles and Procedures for Commonwealth-State Consultation on Treaties" were revised and agreed by the Heads of Government.

See <http://www.dpmc.gov.au/csrs/treaties.html>

- Periodically re-testing understanding of the process helps to prevent an agreed process from drifting into one which is not agreed.
- Process agreements can sometimes be breached without serious consequences. But if one side departs from the agreed process without any explanation this risks being seen as a unilateral withdrawal from the agreement. Explaining honestly why a deadline has not been met or a meeting has been cancelled goes beyond a courtesy gesture - it is a substantial way of avoiding a breakdown in relations.

2.2.4 *Inflexible Process*

Governments need to be willing to adapt existing machinery and practices to deal with particular issues as they emerge.

- In the countries studied for this research, extensive use was made of one-off, fixed-term working groups to look at particular problems.
- Because external circumstances change, the longer a particular process is likely to last, the more important it is that there should be continuing high-level monitoring of how it is performing and willingness to adapt it if need be.

Example: Australian Electoral Cycles

There are nine governments in Australia: the federal government, six states and two territories. Elections are not co-ordinated, so most years at least one of the governments will face an election and therefore for a period have to be less active in intergovernmental meetings. The processes need to be able to cope - for example, by avoiding as far as possible the need for political meetings or key decisions while an administration is in purdah and allowing administrations to send officials as observers who can only make a limited contribution. Equally, an unusually long election-free period has been used as an opportunity to take on more complex and long-term issues.

2.2.5 *Lacks senior support*

Without senior support at political and official level intergovernmental processes will struggle to succeed.

- Officials cannot assume that party politics will always be the dominant factor in how willing individual ministers will be to become involved in intergovernmental processes. Personal disposition and a minister's own assessment of what can be gained by negotiating can be just as critical and can be legitimately tested by officials.

Example: Micro-economic reform in Australia in the 1990's

Intergovernmental negotiations during the 1990's led to major changes to Australia's internal economy. Some of the key political alliances which made this possible were between the Labor Prime Ministers and Liberal State Premiers, such as the New South Wales Premier, Nick Greiner. Shared ideas about how the Australian economy needed to develop in order to compete globally proved more powerful than party affiliation.

- Ministers are more likely to be persuaded to engage in a process if they can be shown scope for early or easily achievable benefits.

Example: COAG Communiqués

An agreed communiqué usually issues at the end of each COAG meeting. This allows all the governments involved to demonstrate that they are actively pursuing solutions to particular complex problems, even when the work is still at an early stage.

<http://www.premiers.qld.gov.au/about/igr/communiqués.html>

But it is also very clear that the support of senior officials can be at least as critical a factor. Senior civil servants clearly have a key role in influencing ministers' attitudes. But beyond that, they will also play the key part in, for example:

- ensuring that ministers are not asked to become involved in conflicts which should be solved administratively,
- agreeing high-level processes,
- supporting their own staff,
- setting the culture of their own organisation,
- enforcing behavioural standards.

This may mean senior officials becoming involved in debates about seemingly trivial issues - it is striking how much linkage there is between productive relations and the willingness of the most senior managers to give process issues priority.

Example: COAG Senior Officials Group

COAG is supported by a Senior Officials group. The key members of the group are the most senior official from each jurisdiction. Meetings are used to: agree COAG agendas and papers; chase progress on work delegated down from COAG and agree whether that work is ready to be reported; agree consultation processes for particular pieces of work; receive presentation from the heads of policy departments; consider the detail of COAG processes - for example, the technicalities of producing cleared communiqués to a tight deadline; register concerns about lapses from procedure, such as lateness of papers, and so on. It is also a forum in which information can be shared. High-level representations can be made by the states, individually and collectively, to be channelled to the Prime Minister through officials, taking some pressure off the main COAG agenda.

How often Heads of Government meet will depend above all on the willingness of the national head of government to use summits. In periods when summits are infrequent, then the official structures and lower-level political meetings can support “summits by correspondence” - but this in particular requires the commitment of the most senior officials and works better where there is some history of face to face meetings between heads of government.

Examples: Pattern of summit meetings in Australia and Spain

The Australian Prime Minister since 1996, John Howard, has been less keen to use COAG meetings than his predecessors, preferring fewer, single-issue summits. Ministerial Councils and COAG Senior Officials have, however, continued to meet regularly and major initiatives, for example on deregulation, have continued to progress. Even without summits, the degree of co-ordinated intergovernmental contact is higher now than it was before 1990. The COAG Senior Officials group still meets regularly.

By contrast, in Spain no pattern of head of government summits involving all regional governments has yet developed and no shadow structure has grown up at the level of civil service heads. Networks of senior officials have however developed around the “sectoral conferences”, the range of political councils which has emerged over the past twenty years, which resembles the Ministerial Council network found in Australia.

2.2.6 Fails to take account of wider context

Intergovernmental negotiations in the countries studied are mainly conducted in private between governments - and practitioners emphasised that the more negotiations were conducted in public, the more likely both sides were to become trapped in a stand-off.

But even private negotiations need to be sensitive to the people outside them. For almost every issue there will be interested third parties who, in extreme circumstances, may be able to have an influence on a particular intergovernmental negotiation and, in some cases, unravel an agreement. Some of the key constitutional cases in other countries have been brought by third parties - agreements between governments always need to be sensitive to the legal context.

Checklist: Questions to ask about the wider context

- Who are the key third parties - from each side's perspective?
- Should this discussion be bilateral or multilateral - do other governments have an interest and need to be involved? The decision not to include another government should be a conscious one, with a clear justification. **See Section 4.**
- What are each participant's own internal process needs: Cabinet clearances etc? **Section 3 below deals with this in more detail.**
- What parliamentary involvement is needed? Will legislation need to be passed? What other scrutiny processes will apply?
- Is there a European dimension? Does EU legislation set any boundaries to what can be agreed or make action imperative? Are there any ECHR issues?
- Is there a local government interest? If so, how should local government be kept informed? Should local government representatives be brought in to discussions at some stage - if so, when and at what level?
- Similarly, are there statutory bodies (regulatory bodies, agencies) which will have an interest in the discussion?
- What other third parties will have an interest? How should they be kept informed? How might they seek to become involved and what could be done to involve them? Some Australian ministerial councils include local government and/or the New Zealand government as members.

Some techniques used to involve third parties:

- Planning at the start for a period of external consultation as part of the process
- When a neutral party has been given a phase of the work, using that to seek external comments
- Issuing agreed public statements at the end of ministerial meetings
- Regular reporting back on intergovernmental issues to relevant external liaison bodies established by each government
- Having external observers on some intergovernmental bodies
- Formally presenting intergovernmental agreements to Parliament
- Making information available on the internet

This study did not uncover well-developed models for reporting back to parliament on intergovernmental relations - parliaments took a less close interest than expected. UK civil servants should probably expect that their own parliaments and assemblies will want to be more involved.

2.2.7 *Dead-ended*

Some processes simply get stuck because all the scope for agreement has been found, problems remain and there is no clear next step.

- Voting rules can help - all sorts have been tried in other countries - but even where these exist intergovernmental bodies usually end up trying to reach agreement by consensus - or else treating “no” votes as equivalent to opt outs.

Example: Voting Rules

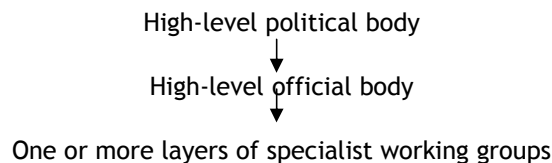
The model rules for Spanish Sectoral Conferences include a provision that decisions should wherever possible be unanimous, or otherwise reached on the basis of at least half the regional members agreeing, plus the State. But formal voting is reportedly little used. Accords which are not unanimously supported are taken to apply only to those who voted in favour.

Western Australia declined to agree to the establishment of the National Environmental Protection Council. The Commonwealth and other states went ahead, but the Council’s remit was not extended to Western Australia until the state eventually chose to join some time later.

- More often, a mechanism is established for taking a problem that one body cannot solve to a higher level. This in itself creates an incentive for officials, and departmental ministers to try to resolve issues, rather than be seen to have been unable to find an answer in their own area of expertise. See Section 2.2.8 below.

2.2.8 *Politicians under-supported*

Subsidiarity - solving problems at the lowest possible level - is a basic principle in intergovernmental working. The most effective intergovernmental structures tend to have the structure:



Example: Agricultural and Rural Development Sectoral Conference, Spain

The Spanish Agricultural Sectoral Conference is the forum in which the responsible ministers meet. There is an official-level Commission, which has the specific task of preparing for the political meetings, and beneath that technical working groups can be established, where much of the detail consideration of issues takes place. Although there is no Spanish equivalent to COAG to which issues can be referred, some of the work of the Agricultural Conference does feed into the European Affairs Conference.

- Civil servants play just as critical a role in preparing the way for political meetings and correspondence in intergovernmental relations as in internal government business - but if the work is not done well, the risks are potentially much higher and it will be harder to retrieve the position.
- Because bilateral political contacts often tend to be more informal and ad hoc, it is particularly important to make sure that bilateral meetings are well backed-up with administrative support before and after.

2.2.9 No implementation arrangements

An occasional problem is that all the effort goes into reaching a high-level agreement and no commitment is made, and no processes established, for reviewing implementation, risking further disputes and disagreements down the line.

- Wherever decisions are taken which require some action, a process should be agreed for monitoring implementation and discussing problems which emerge - for example, periodic reporting back to a high-level official group.

2.2.10 Uncoordinated

Many intergovernmental issues will be relevant to more than one department or involve issues of principle which affect the whole of government. Also, if individual governments themselves are not well co-ordinated internally, this can create serious problems. **Section 3** below, dealing with co-ordination inside governments, explores the reasons why co-ordination is needed in more detail. COAG's Scope and Objectives - see **Process Encourages Confrontation** above - emphasise its co-ordinating role.

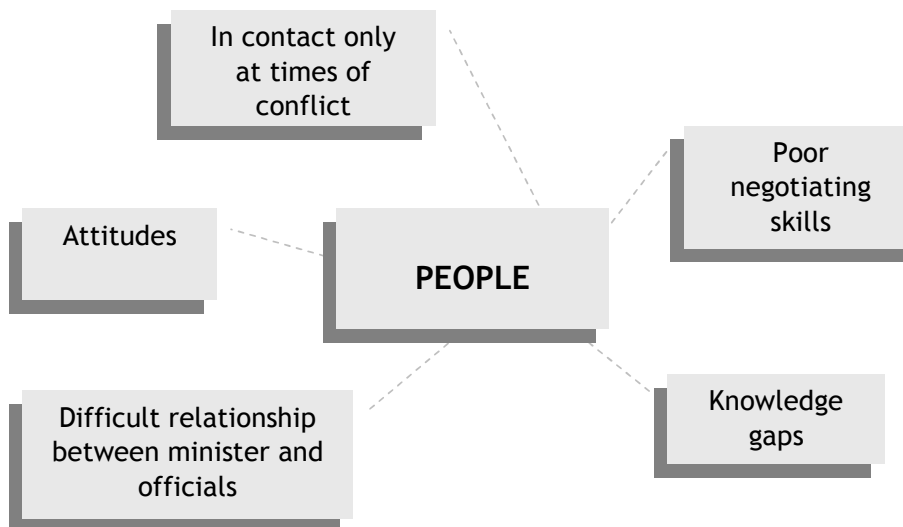
Example: European Affairs Conference, Spain

In Spain the pressure for co-ordination has been most irresistible in European issues and the European Affairs Conference is the only intergovernmental council which is cross-cutting rather than sectoral. Although there has been no general move towards a premiers' conference, the importance to Spain of the European Union and the need for Spain to function effectively in European discussions means not only that the European Affairs Conference is one of the most active parts of the intergovernmental machinery, but also that it became so relatively early on.

Dispute Diagnosis Part III: The People

The people directly involved in dealing with an intergovernmental issue have an enormous capacity to make a process work well or work badly, regardless of how well it is designed or how difficult the problem. Most of the people involved in intergovernmental relations are civil servants. Practitioners in the countries studied perceived individual civil servants' attitudes and behaviour to have a striking degree of influence.

People Diagnosis



Each of the factors above - why it matters and what can be done about it - is considered separately below.

2.3.1 *In contact only at times of conflict*

Practitioners placed a high value on good personal relations with their opposite numbers in other jurisdictions. Good relations increase levels of trust, reduce paranoia and improve the flow of information between jurisdictions. The informal exchange of information is particularly valuable. Although practitioners stressed that there would always be limits on what could be revealed to someone in another administration, being able to give some background on why a government was particularly unwilling to move its position on an issue or simply why a deadline had not been met was invaluable.

If people only encounter each other when there is a conflict or a confrontation of some sort it will be much more difficult to develop these sort of relationships. Without a history of more co-operative dealing, particularly face to face, officials will always be more wary of each other. Personal relations developed over a long period are also more able to withstand single bad episodes and move on to the next issue undamaged.

- Formal structures play a key part in helping informal relationships develop, by creating repeated reasons for contact - the arrangements for meetings, the production of papers. The process discussions which formal structures generate are very important in allowing relationships to develop.
- In practice, it is often easier for policy specialists to develop these relationships than it is for individuals working in central co-ordinating roles - so over-centralising inter-governmental contacts carries risks.
- Even if there is no history of inter-governmental working in an area it is useful simply to find out who the opposite numbers are and make an introduction. Very few issues have absolutely no potential to develop an inter-governmental dimension and most officials working in a federal or devolved state will find it useful at some point at least to have a contact in other jurisdictions, even if only for help with finding out basic information.

Checklist: Techniques for building relationships

- Making an introduction to opposite numbers an early priority in a new post
- Keeping opposite numbers up to date with staff moves in your own jurisdiction
- Not missing or delegating attendance at meetings, just because the business is uncontroversial - one of the largest temptations and one of the biggest mistakes
- ... but avoid setting up meetings which are not needed and have no real issues to discuss - because such meetings encourage skipping and delegation. How to deal with the tension between these last two points is looked at in **Section 4**.
- Informal visits when you are in the city for a different meeting.
- Using neutral settings - conferences, professional networks.
- Hosting intergovernmental seminars to explain developments in your own jurisdiction or research you have commissioned - a very common technique.
- Avoiding turnover in key posts at critical moments in a negotiation.
- Having informal discussions after particularly bad episodes of conflict to look at ways of improving processes - but not to attribute blame.

The quality of personal political relationships also clearly matters.

- It may sometimes be possible to improve poor political relationships by adding more informal elements - dinners, lunches, site visits - to formal meetings, particularly before the formal event.

Example: Development of the Murray-Darling Basin Council, Australia

The Murray-Darling Basin in Australia provides water for 16% of Australia's population, occupies 14% of its land area and accounts for around 40% of its agricultural production, by value. Five of the states and territories, as well as the Commonwealth, have an interest in its management. A Ministerial Council and executive Commission now exist which enable the various governments to share responsibility for decision-making.

The Council was established after an intergovernmental agreement in 1987, prior to which dealings over the Basin were frequently hampered by mutual suspicion and unresolved conflicts. Accounts of the work which led to the Council's creation emphasise the importance of informal contacts between politicians - particularly the dinners held before or after formal meetings - in breaking down distrust and making the agreement possible. The Council still regularly builds site visits into its formal meetings.

- Where political relations are personally strained, political staff can provide another channel for getting political soundings.
- Even if officials cannot do much to make relationships better, they can make them worse by generating or failing to solve process problems. The less good the political relationship, the more important good practice is across the rest of the system.

2.3.2 Poor negotiating skills

Serious problems are likely if some or all of the people most closely involved have poor negotiating skills.

- Negotiating skills can be learnt. Practitioners agree that the most important training comes through experience, but opportunities for that can be erratic, and formal training fills the gap. **Section 5** deals further with training issues.
- Although keeping numbers small at meetings can help with the dynamic, practitioners argue the need to allow delegations from each jurisdiction to include some who are there mainly to observe and learn, especially at lower-level official meetings. The more staff who are exposed to this experience as part of their development, the more diffused these skills will be in an organisation.
- Not everyone has the same definition of negotiating skills. In Australia, practitioners recommended *Getting to Yes: Negotiating Agreement Without Giving In* (Roger Fisher and William Ury, Penguin, 1983: short and readable). Produced by the Harvard Negotiating Project, *Getting to Yes* argues for “principled negotiation”. It contrasts this to the more traditional model - identifying each party’s starting position and then trying to find a compromise between these positions. Much of its detailed advice echoes what was spontaneously offered by practitioners in the countries studied for this research.
- Although negotiating skills can be learnt, not everyone will have the same aptitude or enthusiasm for them. In filling posts likely to have a significant degree of inter-governmental contact, negotiating skills or at least the potential to develop these should be a key consideration.

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2.3.3 Knowledge Gaps

If negotiators have a weak grasp of the overall **constitutional** settlement and how it applies in the area under discussions there is a high risk of wasted work, resentment and frustration.

- The experience of other countries is that it is not enough to rely on civil servants picking up this information through their work, even in well-established federations. It has to be dealt with through training - **see Section 5** - and there

must be robust internal systems for scrutinising advice to Ministers for constitutional accuracy.

Similarly, not understanding differences between **how jurisdictions work** can cause problems - for example unrealistic expectations about how quickly decisions can be achieved.

- Good informal contacts between officials is the single most important way is dealt with. But again including this in training can help.

Poor knowledge of the issue under debate is also an obstacle to effective problem-solving.

- Staff turnover in key posts at critical times is one obvious risk factor.
- Equally, the knowledge needed may be knowledge about the aspects of an issue for which the other side is responsible. It is always worth exploring whether a problem is based on a technical misunderstanding on either side which can be easily resolved.

2.3.4 *Difficult or distant relations between Minister and officials*

Practitioners report that where relationships between a Minister and officials within a department are poor this can be a serious barrier to effective intergovernmental relations. It makes it more difficult for officials to predict their Minister's likely position on an issue and therefore to negotiate on the Minister's behalf. It also means that they may be less confident about their freedom to share information. Similar problems can happen where officials are simply distant from their Ministers.

- Officials in other jurisdictions cannot do anything about this, but should at least be aware of the problem if it exists. In these cases it may sometimes help to make more use of Ministers' political staff as lines of communication between governments, at least for some issues or a period.

2.3.5 *Attitudes*

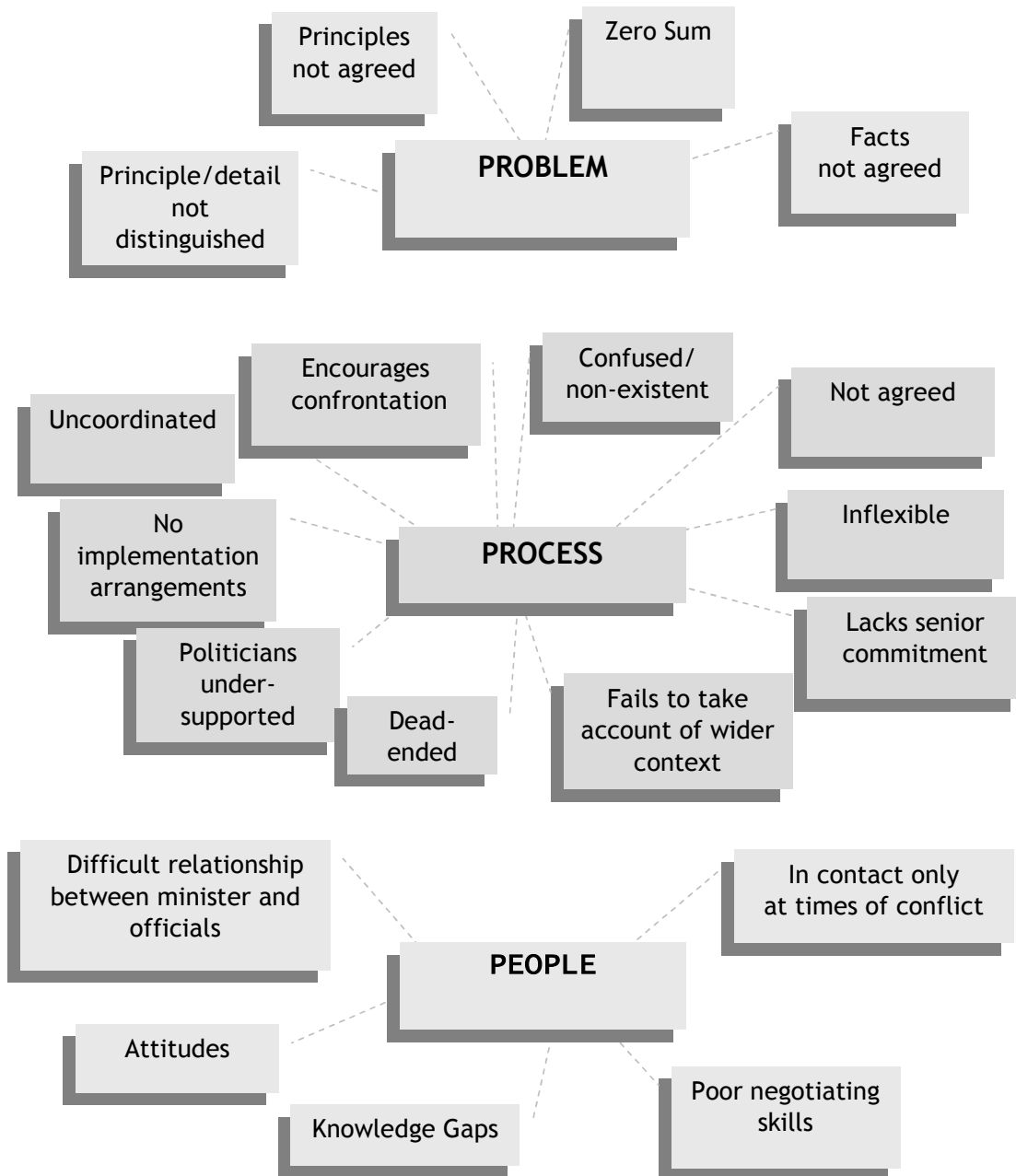
Practitioners consistently reported that there were wide variations in the how well departments related to their counterparts in other jurisdictions. These variations could only sometimes be explained by how inevitably contentious the subject material was. Sometimes they had almost nothing to do this. Poor relationships were often attributed to the attitudes of individuals and "departmental character". Officials were felt to be as responsible for this as Ministers.

Individual civil servants will have different attitudes - towards general things, such as the value of consultation, and specific ones - such as the legitimacy of another government's involvement in their business. They need to be aware that those attitudes can have an extremely powerful effect on how harmonious or disputatious

the relationship of their government is with other governments in their own field of business. This is particularly true in the most senior posts, which have the largest influence on departmental and government culture. In the countries studied, some senior officials in particular departments did appear take the view that their government did not stand to gain much in policy terms by co-operating with others. Interestingly, though, this attitude was only ever reported by interviewees of other people: it was not one interviewees ever wanted to defend for themselves. Nevertheless it is a choice which can be made. In that case, though, it should not become a self-reinforcing decision - if a department's leadership decides not to work co-operatively, then it will tend to become involved in more disputes.

- It should never be taken for granted that a high level of disputes is proof that co-operation is not possible in a particular field - it may equally be evidence that opportunities for co-operation are being missed.

Dispute Diagnosis: Summary Chart



The more of this you recognise in a particular case, the more trouble you are likely to have. But you may only need to put a few of these problems right to significantly improve your chances of getting a conflict to a conclusion - or at least of making it more manageable. Many of these problems can be tackled by officials at some level, to some degree.

Section 3

Internal Co-ordination

The *internal* organisation of each administration plays an important part in how well intergovernmental machinery works. Governments which enter intergovernmental negotiations with serious unresolved internal conflicts, or which allow contradictory intergovernmental agreements to be negotiated independently by different parts, cause problems not only for themselves but also for their opposite numbers. The difficulties due to poor internal co-ordination are not unique to intergovernmental relations. However, the need to work with other governments tests the strength of a government's internal organisation in a particularly powerful way. In Australia, the desire to improve intergovernmental working has been a main factor in promoting a more "whole of government" attitude to policy-making (the same is true for Canada).

3.1 Some reasons good internal co-ordination is needed

3.1.1 *Inter-departmental conflict within governments*

"The provinces did win the battle not because of their effectiveness in intergovernmental bargaining but because the internal conflict crippled the federal government as an effective negotiator" : the assessment of a detailed Canadian case study.

If a government has internal struggles over an issue:

- Its representatives at meetings with other governments will not have clear and consistent aims
- It will be difficult to reach agreements which allow any real progress
- Deals made at one stage may be unpicked at a later date, causing accusations of bad faith
- The negotiation will be more vulnerable to unpredictable pressures from players outside government
- Other participants will lose patience, resent wasted work and may feel misled
- Other participants may try to exploit the internal differences

A variation on this:

The Leaders' Forum in Australia allows state premiers to meet separately from the Commonwealth, resolve differences and reach a common position on issues, often transcending party political divisions.

3.1.2 Need for a clear negotiating mandate

Failure to establish clear and quick internal processes for clearing positions, whether at the start of a negotiation and as it evolves - leaves representatives unable to commit their governments in meetings. Unclear delegations and consequent over-reliance on seeking repeated formal Cabinet approvals denies governments flexibility in negotiations.

Example: Ministerial Councils, Australia

The "Broad Protocols" for Australian Ministerial Councils open with rules for participating governments include:

Representation of Constituent Governments

It is the responsibility of Ministers to ensure they are in a position to appropriately represent their governments at Council meetings. This is of particular importance where Council resolutions require commitment, especially financial commitment, from respective governments.

Issues with cross-portfolio or whole-of-government implications or of a highly controversial nature may require prior consideration by governments at Cabinet level.

Where new issues or alternative proposals arise at meetings on which a Minister believes further consideration by Cabinet is required, it is the responsibility of that Minister to make this position clear to the Council.

<http://www.dpmc.gov.au/briefing/doc/Compendium.pdf>

3.1.3 Bonds between policy specialists in different jurisdictions

A common feature of the countries studied in this research has been the emergence of strong cross-boundary links between policy specialists in particular fields. If these links are not counter-balanced in some way understandings reached between individual departments in different governments risk:

- fitting badly with broader government policy (possibly for all governments concerned)
- constraining activity in other policy areas
- acting as a barrier to reforms and changes in a particular area or, at least, encouraging inertia round problems which are hard to solve
- setting unwelcome precedents
- Generating internal pressure for these deals to be “unmade”

Example: Tied Grants

A high proportion of the funding received by the states from the Australian Commonwealth (on some counts 40%+) is “tied” - that is, conditional. Although the number and scale of tied grants increased particularly in the mid-1970’s, it is not clear that in general this has been co-ordinated Commonwealth policy - there are signs indeed that the Treasury opposed it - so much as the result of a series of discrete decisions in different policy areas which have cumulatively recast the financial landscape

3.1.4 Intergovernmental Process Problems

Generic problems will emerge which cut across departments - for example, over consultation processes for legislation or for international negotiating positions. If governments do not have the mechanisms to compile information and take action about such problems:

- various parts of the organisation may simultaneously be caught up in essentially the same argument without any coherent strategy for dealing with it
- is difficult for central agencies to get an overview of any poor practice within their own governments.

Example: Treaty Arrangements in Australia

One result of the revised arrangements for scrutiny of treaties in Australia has been the creation of a Joint Standing Committee on Treaties (JSCOT) - a joint committee of both Houses of the Australian Parliament. The Committee takes a particular interest in the consultation undertaken by Commonwealth departments, with the states and others. The reports produced by departments for hearings, and the hearings themselves, give the Commonwealth government an overview of consultation practice across government.

<http://www.aph.gov.au/house/committee/jsct/>

3.2 Issues for Central Agencies

All these potential problems increase the risk of disputes breaking out between governments or of disputes remaining unresolved for long periods.

The parts of a government which have responsibility for co-ordination between departments and for issues concerning the whole of government are sometimes known as “central agencies”. They have to play an active part in managing the overall, long-term relationship between their own government and others. They face 3 critical obstacles:

- The sheer volume of activity and the need to be highly selective about when and where to become involved
- gaining acceptance by departmental policy specialists of the agency’s entitlement to be involved in a particular area
- having the authority to enforce particular processes or solutions.

Although none of these obstacles is unique to intergovernmental working, the need to work with other governments gives them an added salience.

3.2.1 Selectivity

Selectivity is both a necessary survival technique for central agencies and a way in which they seek to exercise authority - the more selective central agencies are about their involvement in issues, the more seriously they hope that their interventions will be taken.

In the context of intergovernmental issues, the criteria used to identify issues where central involvement is a priority include cases where:

- several departments have a strong interest, particularly where these are likely to conflict
- agreement of a funding package is involved, particularly if the funds will be granted on condition that they are spent in specific ways
- there is strong personal interest by the Head of Government
- an individual department/sectoral council has been unable to make progress on an issue for a long period
- there are legislative implications
- unusual use of powers by either government is involved
- there is an international dimension

- achievement of change has been identified as a key measure of government success.

How? Central agencies rely on departments knowing when to bring them in. So the most important way that these criteria function is by being embedded in government culture, with all that implies for the informal guidance and induction given to staff and the role of senior managers in departments. Central agencies can also use Cabinet handbooks or specific guidance on intergovernmental negotiating to reinforce their interest in particular types of issue. But they cannot track the detailed business: even if the resources to do that were there, central staff would still depend heavily on specialists for their information.

3.2.2 *Gaining Acceptance*

Although central agencies need formal authority behind them, the task of co-ordination cannot be done simply by exerting power: In practice, it requires acceptance by policy and operational specialists in departments. If specialists in departments do not accept and understand the case for co-ordinating what they do with other departments, formal guidance and monitoring systems won't work. So departments have to be persuaded to bring the centre in on intergovernmental business at appropriate times and to work with it constructively on intergovernmental issues. The most obvious way central agencies can achieve this is by clearly being seen to "add value".

Central agencies can add value in the form of:

- **Communication.** The central agency can: report to departments on the wider intergovernmental position, drawing both on its links across departments and its connections with central agencies in other governments; report the Head of Government's likely views on an issue; give tactical advice in the light of that knowledge; advise on specific relevant developments and initiatives the department may not be aware of; act as a place departments can bring their own intergovernmental information and problems.

How? A combination of good formal and informal communication, with departmental head meetings and "contact groups" for some issues providing a formal core for good personal relations. Cabinet liaison officers in individual departments. Central agencies designating certain posts or branches as being the principle link to a department or group of departments and the relevant post/branch taking the lead for the centre on any close working needed with a particular department. Developing good personal links between central agency staff in different jurisdictions.

- **Expertise in the machinery of government.** Central agencies can offer guidance: on specific intergovernmental processes; on practical and legal aspects of the constitutional position, including correcting errors in advice; on how to get timely decisions made by Cabinet.

How? Formal guidance and handbooks - including for example Frequently Asked Questions formats, and the processes for Cabinet submission clearance, plus good informal contacts - phone/email directories should give clear, up-to-date points of reference.

- **Leadership.** Central agencies can be advocates for policies at the heart of government; they are often asked to intervene informally when relations or processes between departments in different governments break down - central agencies at both levels may act together informally; they may take direct responsibility for some cross-departmental policies.

How? By their role in providing briefing direct to the Head of Government; by informal contacts; by having specialist teams embedded in the central agency.

- **Expertise in policy.** Central agencies can gain credibility by being more than process specialists and developing expertise in a handful of substantial policy areas - often ones which have a strong "whole of government" dimension and where no single department has the obvious lead role. This also gives them reasons to develop constructive links with departments, through work on joint projects.

How? By structuring the agency so that some teams within it have a specialist policy role; by bringing in policy specialists on short-term secondment.

Example: Deregulation in New South Wales

Deregulation has been a principal element of internal economic reform in Australia and therefore a major intergovernmental issue. In New South Wales, Cabinet Office staff have responsibility for overseeing the state's deregulation initiatives, issuing guidance, managing consultations on the general framework, monitoring activity, checking compliance and managing any "whole of government" intergovernmental discussions.

3.2.3 Authority

A central agency's political power derives from its ministerial head. Cabinet Offices in Australia, for example, tend to form part of a Department of Prime Minister (or Premier) and Cabinet and, if not, still to have a reporting line to the head of government. They also tend to be formally headed by the most senior official in the bureaucracy - even if most day to day responsibility is sometimes assigned to a specific Cabinet Office head. They can exercise authority by:

- Acting as the gate-keeper to the Cabinet

- Intervening in department-level intergovernmental discussions which are not making progress (usually in conjunction with central agencies in other governments)
- Becoming the lead department for a period for certain policies.

How? By setting up high-level reporting requirements for departmental processes, at official and political level; by attending intergovernmental meetings on specific policies; by checking cabinet submissions and if necessary requiring further work on any which do not take adequate account of intergovernmental dimensions; by having flexible structures and bringing in specialists on secondment if necessary; by working in partnership with central agencies in other jurisdictions.

3.3 Principles

This suggests some principles for central agency structures, including that they should:

- encourage good relations with departments
- have clear political and official authority behind them
- aim for some compatibility with central agency structures in other governments, to facilitate cross-government links
- be flexible enough to allow the agency sometimes to be the “lead department” on a few particular policy areas.

It also suggests, though, that co-ordination is about more than central agency structures. To work, co-ordination has to be an accepted part of the culture across government departments.

Conclusion

Whether disputes happen and how well they are handled is not just a question of external relations. The machinery and culture of internal co-ordination also exerts a powerful influence.

Section 4: Final Observations

This section considers some final practical points to consider in managing conflicts and potential conflicts.

4.1 Bilateral or Multilateral?

Intergovernmental discussions are usually made up of a mix of bilateral and multilateral contacts.

Example

Australia makes extensive use of multilateral forums. But bilateral contacts are still used in particular for:

- specific implementation issues - for example, the detailed content of each state's Regional Forest Agreement.
- Individual casework - for example, the designation of individual World Heritage Sites; most contacts related to inward investment.

More use is made of bilateral contacts in Spain, where multilateral structures are less developed.

Practitioners report that much the same skills and techniques are relevant to multilateral and bilateral dealing. But it is worth being aware that bilateral working tends to be:

- more ad hoc and informal
- more politically-driven, including more likely to make use of officials in politically-appointed posts.

Bilaterals therefore have to be carefully watched for whether:

- politicians/politically-appointed officials involved have enough support and information
- there is a mutual understanding of how decisions taken at meetings will be followed through
- whether and how there will be feedback to other governments not present at a meeting.

4.2 Constructive Meetings

There is a tension between the need to attend meetings before issues became controversial and the risk of calling meetings which people would be tempted to miss (already referred to - see para 2.3.1). Getting the right agenda for a meeting cuts across the questions of defining the problem, constructing the process and building relationships.

- Where there is a substantial conflict emerging, use meetings to agree processes. This is more neutral than wrangling over negotiating positions.
- Consider early which issues could benefit from some inter-governmental contact. Think about the scope for defining certain issues as shared public policy problems. If other governments can be involved relatively early in consideration of an issue it will be easier to identify the difficulty as being, for example, how to improve food safety, rather than the other government's reaction to a particular set of proposals.
- Put up a range of options up for consideration to keep discussions open-ended and less likely to become confrontational.

Example: Micro-Economic Reform, Australia

When the Australian Commonwealth government decided to start a radical overhaul of Australia's economy in the early 1990's, it was concerned that internal trade barriers and practices in Australia created more restrictions on internal trade than barriers within the EU and that this and other factors were harming the country's international competitiveness. The Commonwealth's initial approach to the states and territories was therefore based on the presentation of a general problem facing all governments. Over the next few years the Commonwealth, State and Territory governments developed and implemented jointly a huge agenda of "micro-economic reform", characterised by extensive shared work on option development and appraisal.

4.3 Diversity/Compatibility/Consistency/Uniformity

It is important to be clear about the distinctions between uniformity, consistency and compatibility - both in terms of content and timing. Uniformity will always be the most difficult position to achieve - but it is simply the end of a scale. It is always worth considering how far along that scale an agreement needs to go to achieve each side's most important objectives.

- Where an intergovernmental negotiation needs implementing legislation on both sides, it is particularly critical to be clear about these distinctions.

Example: Australian Legislative Models

Australia has experimented with various models of joint legislation, with the main approaches:

- Centre legislates on behalf of all, with agreement of the states (requires the approval of state parliaments)
- Centre legislates on core provisions, states legislate on remaining issues (i) in identical terms; (ii) with liaison on drafting, but not necessarily identical provisions
- States pass all legislation - as before possibly in identical terms, but possibly also simply with some liaison on drafting.

4.4 Creating Safe Space for Negotiations: Implementation vs Policy

In Australia, a common response to questions about how officials manage the political sensitivities around particular discussions is to point to a difference between “policy” and “implementation”. “Policy” is used to mean the high-level, political discussions, where principles are considered and frameworks agreed, often in the form of intergovernmental agreements. “Implementation” is used to mean the detailed discussions officials have once basic principles have been agreed. This can be an arbitrary division and sometimes questions which have been labelled for a while as “implementation” issues can suddenly become controversial again - and be taken back into the political arena.

But Australian experience suggests that trying to make the distinction does help. Australia reveals that governments can collectively decide that a whole area of potential conflict will be regarded as second order in political terms, and stand by that view over long periods and changes of political control. The ability to find agreement on how a contentious policy area can be disentangled into the key political issues, and the rest, becomes a significant skill.

Section 5: Training and Development

The experience of other countries is that training for devolution should be at least as much about generic skills as specific knowledge.

5.1 Formal knowledge and skills

The key skills will be:

- Negotiating skills

The negotiating model which was advocated in the countries studied was **interest-based** negotiation. *Getting to Yes* (Roger Fisher and William Ury: Penguin, 1983) and *Getting Past No* (William Ury, Bantam, 1993) give brief and practical guidance on this approach.

The literature on **Alternative Dispute Resolution (ADR)** also covers interest-based negotiation. A growing number of higher education institutions (especially in North America) run ADR courses and have developed materials to support these.

Improving civil service negotiating skills is not exclusively a devolution issue. Negotiation should be tackled as a basic, generic skill.

- Policy management skills

Policy management is already a well-accepted area for training in the civil service. Devolution simply underlines the importance of developing this skill.

The key areas of knowledge will be:

- the legal basics of the new UK settlement

- the government/parliamentary structures used in other UK jurisdictions.

It is obvious that the formal framework of devolution, and its particular implications in particular fields, will need to be as widely understood as possible - in much the same way as the ECHR.

It is less obvious, but also important, that officials are given some basic grounding in the parliamentary and government processes used in the *other* UK jurisdictions. Some of this will come from informal briefings from colleagues in other administrations. However, embedding this as essential knowledge will help to reduce misunderstandings and unrealistic expectations about how business can be taken forward.

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5.2 Posting/Staff Development Strategies

- **Development:** experience of having worked on an issue with a devolution dimension should be as broadly spread as possible across governments. It should not simply be seen as a specialism in its own right, but thought of in a similar terms to European issues or finance - something that as many people as possible should have some exposure to during their careers.
- **Posting:** some posts however will have a particularly strong intergovernmental aspect - particularly those in central agencies. The experience and negotiating skills of staff placed in these posts should be given very careful attention. Managers also need to be very sensitive to the risks of bad timing in the turnover of these posts.

5.3 Exchanging Experience

Experience in other countries is that it is very difficult to set up and maintain extensive **secondment and interchange** schemes - these are only likely to happen on a small scale, very often driven by individuals. The critical issue is to ensure that institutional barriers to movement between administrations - temporary or permanent - are kept to a minimum. It is therefore worth directing organisational energy at making sure pension arrangements, grading/progression and appraisal systems do not discourage moves by staff. More generally, opportunities for staff to spend time in other jurisdictions should be taken up wherever possible.

Joint training has proved much easier to make work and can be particularly valuable in specific policy areas.

Example: Joint training in Spain

Over the last few years, the National Institute of Public Administration (INAP) has begun to run courses for small joint groups of State and regional officials - around 30 at a time - with the deliberate aim of developing networks across jurisdictions. Regional officials also make particular use of INAP's European affairs courses.

<http://www.inap.map.es>

5.4 Guidance

In a few specific areas written guidance may be helpful, particularly:

Internal co-ordination: identifying "whole of government" issues (**Section 3**)

Managing bilateral contacts (**Section 4.1**)

5.5 Support for senior officials

Senior officials play a pivotal role in setting the tone and form of intergovernmental negotiations. Making sure that the training and development opportunities offered to senior officials address the skills and areas of knowledge identified in this section should therefore be a priority.

ANNEX Comparative issues and background to main case studies

This annex provides more detailed background on the two main case studies, Australia and Spain. It also considers briefly the structure of intergovernmental relationships in three other potential comparators - Germany, Canada and the USA - and explains why these were not examined in detail for this research. It also suggests further reading and references.

1. AUSTRALIA

Constitutional type: Federation

Established: 1901, from voluntary union of existing state governments.

Basis: Written constitution

Form: Commonwealth government covers whole of country, which is further divided into 6 states and 2 territories.

Division of Powers:

Constitution sets out the scope of Commonwealth powers in general terms, with emphasis on trade and foreign relations, and prohibits states from limited range of activities. Constitution drafted to address preoccupations of 1901 and therefore does not provide clear allocation of powers for some policy areas which have since become significant - for example, the environment. In many areas powers are held to be "concurrent": within the scope of both types of government. Constitution also however provides that "when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid" (section 109). High Court has ruled that once the Commonwealth has legislated for a particular issue it "occupies the field", enabling the Commonwealth to establish exclusive jurisdiction over many areas the States might also have been able to claim. Territories have similar responsibilities to states, but Commonwealth powers to legislate for territories not limited by the Constitution.

Intergovernmental mechanisms:

High Court hears constitutional cases. Limited constitutional provisions for intergovernmental liaison largely unused.

Machinery for intergovernmental working based wholly in convention, except where specific joint bodies have been established by statute. The Senate was originally conceived as a "states' house" but in practice plays no real part in intergovernmental working.

Finance

Steady source of contention. States depend significantly on Commonwealth transfers for funding (although significant reforms are due to take effect from 2000 which will alter the way state funding is packaged). Present position leaves the states with a mixture of taxes to exploit, principally taxes on payroll, property, gambling, insurance and vehicles. As a typical example, Commonwealth grants made up 39% of the revenue funding of the state of Victoria in 1999-2000, state taxation 45% and other sources 16%.

Discussion

Powers

1.1 At a formal level, Australia's constitutional settlement separates it from the UK, above all by the limitations it sets on the powers of the Commonwealth. The Commonwealth always has to find a constitutional basis for any action. In practice, however, the limits set on Commonwealth powers are less rigid than they first appear.

1.2 In many cases where at first sight the Commonwealth is powerless, it can patch together the powers it needs: its officials will refer to the theoretical ability to do "75%" or "80 - 90%" of what they want in many instances. Key constitutional provisions widen the Commonwealth scope for action - the "corporations power" (section 51(xx)) and the "external affairs power" (section 51(xxix)). The external affairs power gives the Commonwealth the power to take whatever action is *necessary* to implement international treaty obligations. The Commonwealth has the right to enter into treaties on whatever issues it chooses, so the power makes possible Commonwealth intervention in areas where otherwise it could not act. However, this patching together is problematic. It leads to complex legal drafting and the possibility of legal challenge and means that the end package simply may not do exactly what is wanted. So the Commonwealth will generally choose to attempt an agreement with the states, entailing co-operative use of both sides' legislative powers. Observers also tend to refer to the political cost of using these powers, particularly in respect of the most electorally significant states, and they appear rarely to be used against state wishes. State and Commonwealth officials have varying perceptions of the significance of their *threatened* use, explicit or implicit. Commonwealth unilateral action is also limited by its reliance on the states for the *implementation* of policies. Officials perceive states' possession of the expertise in key services and control of the local machinery for their delivery as a crucial influence on the balance of power in practice.

1.3 The Commonwealth has unlimited power to legislate in relation to the territories. It has rarely used its powers to overturn their legislation, however. The only recent case - overturning a euthanasia law introduced in Northern Territory - was highly controversial. Vehicle was a private member's bill in national parliament, with voting treated as a conscience issue. Both party leaders voted for the bill, but the government and opposition front benches split. All senators from both territories voted as a block against the bill. State premiers were generally critical of the move, regardless of their position on euthanasia or their party affiliation.

Structures

1.4 From day to day, the relations between governments are mediated through a series of bodies which have no legal or constitutional status. This is a **critical similarity with the UK**, from which flows a series of highly relevant observations about how these structures can be maintained, developed and made to work well.

Central-State Politics

1.5 Australia is often observed to be unusually homogenous, compared with other federations - and undoubtedly this is true. There is no Australian equivalent to Quebec or the Basque Country. There are important differences between the states. Public servants at both state and Commonwealth level will point to differences in economic interests of the states, rather than party political differences, as providing the best and most abiding predictor of the position a state will take on a given matter - often more so than party control.

1.6 There are also persistent differences in attitudes towards the federation between the states. In particular Queensland and Western Australia have tended to take a more sceptical line towards the Commonwealth in general. Western Australia was the last state to agree to join the federation; in 1933 the state voted by around 2 to 1 for secession - although the vote had symbolic rather than practical impact. As recently as 1994, the Premier of Western Australia published "Rebuilding the Federation: An Audit and History of State Powers and Responsibilities Usurped by the Commonwealth in the Years Since Federation". The state has simply chosen not to become involved in a number of intergovernmental arrangements, or at least to delay its involvement.

1.7 The relative homogeneity of Australia does not remove the scope for serious disputes within the federation: the intergovernmental machinery in Australia regularly faces real tests and Australia provides plenty of cases of intergovernmental friction.

Suggested sources

Websites

The Federal Government's Commonwealth-State Relations Secretariat
<http://www.dpmc.gov.au/comm%5Fstate%5Findex.html>

The Queensland Government, for an archive of intergovernmental material
<http://www.premiers.qld.gov.au/about/igr/index.htm>

The Federal-State Relations Committee of the Parliament of Victoria, for a series of useful reports, including comparative summaries of arrangements in other countries, archived at <http://www.parliament.vic.gov.au/fsrc/default.htm>

Reading

There is a reasonable range of published material, although most concentrates on political rather than administrative behaviour.

For a short general overview:

Summers, J. (1997) "Federalism and Commonwealth-State Relations" in Woodward, D., Parkin, A. and Summers, J. (eds) *Government, Power and Policy in Australia* (6th ed) Longman, Melbourne

For a more detailed analysis of cases:

Painter, M. (1998) *Collaborative Federalism: Economic Reform in Australia in the 1990s* Cambridge University Press, Cambridge

Carroll, P. and Painter, M. (eds) (1995) *Microeconomic Reform and Federalism* Federal Research Centre, Canberra (Chapters: by Henderson and Edwards on COAG; Hamilton on environmental policy; Kellow on water; Robinson on environmental policy)

Galligan B, Hughes O and Walsh C (eds) (1991) *Intergovernmental Relations and Public Policy* Allen and Unwin, Sydney

Handmer, J. W., Dorsey A. H. J. and Smith D. I. (eds) (1991) *Negotiating Water: Conflict Resolution in Australian Water* Centre for Resource and Environment Studies, Australian National University, Canberra (Chapters by: Crabb; Dorsey)

Parkin, Andrew (ed) (1996a) *South Australia, Federalism and Public Policy* Federal Research Centre, Canberra

For a consultancy report into the operation of COAG:

Weller, P. (1995) *Commonwealth-State Reform Processes: A Policy Management Review* Department of Prime Minister and Cabinet, Canberra

For an insight into Commonwealth-State political relations, the first diary published by an Australian Cabinet Minister:

Blewett, N. (1999) *A Cabinet Diary* Wakefield Press, Kent Town

2. SPAIN

Constitutional type: Formally a "State of Autonomies", sometimes described as "quasi-federal"

Established: Constitution adopted 1978, creating two-tier democratic system out of an unelected highly centralised state.

Basis: Written constitution

Form: State government covers whole of country, which is divided into 17 autonomous communities or regions.

Division of Powers:

The settlement is complicated, as the product of delicate negotiations around the transition to democracy, within which the place of the regions was a critical and divisive issue. The constitution sets out the powers the regions may hold, as well the powers which are exclusive to the State, but deliberately in loosely defined terms. Some powers not included in either list and may be assumed by the regions with the national parliament's approval. The State's laws prevail over regional laws in the case of any conflict between them. The constitution also sets out the basic provisions for some subjects, for example, education, and also gives the State certain powers to make "basic laws". This system creates a considerable amount of shared or split powers between tiers in individual policy areas. The precise powers each region holds depend on which part of the constitution the region's government was originally established under, plus whatever powers have subsequently been assumed by negotiation with the centre. This creates a certain amount of asymmetry, although efforts have been made periodically to reduce the variation between regions.

Intergovernmental mechanisms:

The constitutional tribunal hears constitutional cases and has been extensively used by both the state and the regions, particularly in the 1980's. However, cases have been subject to long delays - usually of several years. A reduction in court cases in recent years has taken place in parallel with a growth in other intergovernmental machinery. The constitution did not establish any basis for intergovernmental liaison, which has been influential in slowing the development of contact machinery: Spain follows the continental tradition of expecting administrative actions to be regulated by detailed law. The basic legal framework has developed over time, but in practice the machinery operates largely on the basis of convention. As in Australia, the Senate was originally conceived as a forum for the regions, who nominate a

proportion of the members, but in practice plays no real part in intergovernmental working.

Finance

Most regions are dependent on a mixture of locally-raised revenue and central government fund transfers. Two (the Basque Country and Navarra) however raise their own taxes and remit a contribution to the centre.

Discussion

Powers

2.2 As in Australia, the powers of the Spanish State are limited by the constitution; the State's actions as well as those of the regions have been challenged often in the Constitutional Tribunal. In practice the regions (including well known cases such as Catalonia) tend not to use their primary legislative powers extensively. Their activity is far more focused on giving policies a distinctive character through Executive powers ie lower level legislation or administrative actions. In general, the Spanish regions, including the most empowered, therefore exercise powers in a way as similar to Wales as Scotland. Spain is often described as comparable to the UK because of its asymmetry. However, differences in powers between regions should not be overestimated, especially since the revisions of the last decade. At least as interesting an area for drawing comparison between Spain and the UK is EU business, where there have been extensive debates about the relationship between the State, as the EU member, and the regions, with their extensive implementation responsibilities.

Structures

2.3 Intergovernmental relations in Spain are relatively politically-driven, with more emphasis on bilaterals and with party politics playing a larger role than in Australia. This is partly due to the history of the settlement, with the current political parties emerging more or less in parallel with the establishment of the new democratic settlement. Also, individual parties have tended to hold office for relatively long periods, both nationally and within regions. This has led to a close association between the institutions of government and individual parties, which some observers argue has tended to prevent the emergence of multilateral structures. This bilateralism has also been encouraged by the requirement for individual regions to negotiate in detail the transfer of central services from Madrid control, after the new constitution was put in place. Some of these negotiations, covering property, funding and staff, lasted several years, creating a bilateral dynamic from the start. Asymmetry creates a further pressure for bilateralism: however, this does not explain why the large number of regions which do have very similar powers do not function at all as a group. Asymmetry alone does not explain the relatively fragmented state of relationships.

Central-Regional Politics

2.4 Questions about the position of the Basque Country and Catalonia, in particular, have played a major part in Spanish politics for decades. For these 2 regions especially to maintain special status has been a priority - but the approach taken by each has been distinct. The Catalan governing party has forged a loose alliance in the national parliament with each of the main parties in turn, to create a majority for key votes, in return for a certain amount of special recognition. There continues to be a huge amount of routine contact between Catalan and State officials across a wide range of issues. The relationship between the Basque and central governments has been more confrontational, by comparison. However, Basques officials are still involved in a large number of formal and informal contacts with central government from day to day. Other parts of Spain have also sought recognition of special characteristics, including Galicia, Navarra, the Balearics and Valencia. Andalusia as a large region with significant economic problems also pursues a distinctive agenda. Intergovernmental politics in Spain is therefore about much more than the Basque or Catalan questions.

Suggested sources

There is very little recent material available in English on the detailed working of Spanish intergovernmental machinery.

Colomer, J. M. "The Spanish "State of Autonomies": Non-institutional Federalism" in *West European Politics* Vol 21 (4) 1998 pp 40-52.

Aja, E (1999) *El Estado Autonómico: Federalismo y Hechos Diferenciales* Alianza Editorial, Madrid (most detailed contemporary study and lively critique)

Moreno, L (1997) *La federalización de España: Poder político y territorio* Siglo XXI de España Editores, Madrid (For the development of the Spanish settlement)

The Ministry of Public Administration in Madrid (Ministerio de Administraciones Públicas) publishes a quarterly bulletin of Constitutional Tribunal statistics (*Conflictividad entre el Estado y las Comunidades Autónomas - Boletín Informativo*), as well as longer studies which include copies of key agreements, including:

La participación de las Comunidades Autónomas en los asuntos comunitarios europeos (1995)

Puesta en práctica de los Acuerdos Autonómicos de 1992 y sus efectos sobre el Estado Autonómico (1996)

3. GERMANY

3.1 The German federal constitution in its current form was established in 1948. The constitution divides responsibilities between the federal government and the sixteen Länder. In intergovernmental relations, the most significant feature of the German settlement is the role of the Bundesrat, the national upper chamber. The

Bundesrat is composed of representatives of the Lander governments - it is an overtly intergovernmental forum. Relations between the tiers are therefore mediated to a considerable extent through relations between the upper and lower chambers of Parliament, with an important role for party groups in each and an inter-chamber dispute resolution machinery. Germany therefore differs in a critical respect from settlements where intergovernmental relations are extra-parliamentary and based on administrative conventions. In terms of the division of responsibilities, the legislative powers of the German Lander are relatively limited: their freedom resides mainly in the implementation of policy with a basic legislative framework. In addition, the national government employs relatively few officials compared to the Lander, whose administrative machinery is used extensively to deliver national programmes. These differences make direct comparisons with Germany difficult in the area of intergovernmental relations, particularly at the level of the detailed strategies used to handle contentious issues. Germany has therefore not been a major source for this study. The German model has however been influential in the design of aspects of the Spanish settlement, in particular the machinery for dealing with European business.

Suggested sources

Jeffery, Charles *Memorandum submitted to Select Committee on Scottish Affairs*, 17 February 1998 (<http://www.parliament.uk/commons/hsecom.htm>)

Leonardy, Uwe *Memorandum submitted to Select Committee on Scottish Affairs*, 17 February 1998 (<http://www.parliament.uk/commons/hsecom.htm>)

Jeffery, Charlie (ed) (1999) *Recasting German Federalism: the Legacies of Unification*, Pinter, London

Sharpf, Fritz (1988) "The Joint Decision Trap: lessons from German Integration" in *Public Administration* Vol 66 pp 239-278 (now classic critique of weaknesses of German negotiating model)

4. CANADA

4.1 The Canadian federation was created in 1867. The constitution contains separate lists of powers for the federal government and the ten provinces and three territories. Canadian intergovernmental relations have been characterised over recent decades by a relatively high degree of tension. Quebec is most often referred to in this context. However, relations with other provinces have also periodically been difficult. Compared to other federations, Canada is relatively decentralised and the provinces relatively autonomous. There is a degree of asymmetry in the distribution of powers across the provinces, most notably, but not only, in relation to Quebec. In terms of the machinery of intergovernmental relations, as in Spain and Australia, the upper chamber has a nominal but weak role. Unlike Australia, separate, well-established intergovernmental affairs departments play a significant role both in the central governments and the provinces.

4.2 Reflecting the prominence inter-governmental relations have had in Canada for decades, the country has the most useful and extensive literature in English on the detailed practice of intergovernmental relations, from a UK perspective: “the only country where you can buy a book about federal-provincial relations at an airport”, on one description.

4.3 No fieldwork was undertaken in Canada for this study. This was partly due to limits on time and resources - there is far more scope to research Canadian experience through the literature, compared to Australia. However, a starting assumption was also made that the far more formalised departmental structure for inter-governmental relations in Canada might make the lessons for administrative practice less easily transferable to the UK. In practice, the literature provided strong support for many of the conclusions here, as did informal contacts with Canadian practitioners and academic observers.

Suggested sources

Websites

Department of Intergovernmental Affairs, Government of Canada
<http://www.pco-bcp.gc.ca/aia/>

Reading

Kernaghan, Kenneth and Siegel, David (1987) *Public Administration in Canada: A Text*, Toronto, Methuen (esp Chapter 17, Intergovernmental Relations)

Olling R D and Westmacott, M W (1988) *Perspectives on Canadian Federalism*, Scarborough, Prentice-Hall Canada Inc (esp chapters by Gordon Robertson on the role of interministerial conferences and J Stefan Dupre on executive federalism)

Schultz, Richard J (1980) *Federalism, Bureaucracy and Public Policy: The Politics of Highway Regulation*, Montreal, The Institute of Public Administration in Canada, McGill-Queen's University Press, Montreal (One of the most perceptive and detailed external analyses available of the handling of an intergovernmental conflict.)

Simeon, R (ed) (1985) *Division of Powers and Public Policy*, Toronto, University of Toronto Press (esp Frederick J and Wallace, Donald C “Federal-Provincial Relations and the Making of Public Policy in Canada: A Review of Case Studies” for a good overview of practical aspects of conflict management)

Simeon, Richard (ed) (1985) *Intergovernmental Relations*, Toronto, University of Toronto Press (esp chapter by Kenneth McRoberts on unilateralism, bilateralism and multilateralism)

5. USA

5.1 The USA has a number of distinctive features which make comparisons in the areas examined in this report particularly problematic. These include its size (50 states), its structure (not least the politics of the Senate), the relationship between executives and legislatures, and the large number of politically-appointed officials. This study has therefore made only very limited use of US material. There is a large literature on US intergovernmental relations. However, much of this is focussed on quite specific aspects of federal-city government relationships, in the context of the funding and delivery of federal programmes.

Suggested sources

Wright, Deil S (1991) "The United States" in *Intergovernmental Relations and Public Policy* Galligan B, Hughes O, Walsh C (eds) Allen and Unwin, Sydney

Wright, Deil S (1983) "Managing the Intergovernmental Scene: The Changing Drama of Federalism, Intergovernmental Relations and Intergovernmental Management" in *The Handbook of Organisation Management* Eddy W (ed) Marcel Dekker Inc, New York

6. General material on the detailed operation of multi-layered states

Most of the literature which deals with comparisons between different decentralised structures, the nature of federalism and so on, does not get beyond the constitutional and political aspects of intergovernmental relations. Relatively little attention is paid to the relevance of different types of settlement for the administrative machinery below. In particular, little work appears to have been done on what factors might be taken into account in considering how relevant the operational experiences of one decentralised jurisdiction might be to another.

Suggested sources

Bomberg, Elizabeth and Peterson, John (1998) "European Union Decision Making: the Role of Sub-National Authorities" in *Political Studies* Vol 46(2) pp 219-235

Burgess, Michael and Gagnon, Alain (eds) (1993) *Comparative Federalism and Federation: Competing Traditions and Future Directions*, Harvester Wheatsheaf, London (esp chapters by Burgess and Gagnon)

Papers presented to the Forum of Federations Conference, Quebec, 5 - 8 October 1999 covered a wide range of issues in comparative terms, including the management of disagreements. Previously on <http://www.ciff.on.ca>, but not at present published.

The Association of Centers for Federal Studies (IACFS) - <http://www.iacfs.org/> - brings together centres and institutes throughout the world with interests in independent research and publication about political, constitutional, legal, administrative, fiscal and other issues relevant to political systems which have federal features.

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