

# New Cooperation Mechanisms Within the State of Autonomies

L.A. Gálvez and J.G. Ruiz

**Abstract** The absence of a system of intergovernmental relations within the State of Autonomies has resulted in limited multilateral cooperation. However, in recent years, there has been a consistent tendency to incorporate into the Spanish political practice new cooperation mechanisms characteristic of cooperative federalism, both in the relations between central State and Autonomous Communities (vertical dimension) and among the Autonomous Communities themselves (horizontal dimension).

Thus, in the field of vertical cooperation, the Conference of Presidents was constituted in 2004 for the Head of the Spanish Government and the presidents of all the regional governments to discuss problems that concern the State in general. On the other hand, in 2008, the Autonomous Communities which that had passed statutory reforms created the forum *Meetings between Autonomous Communities for the development of the Statutes of Autonomy*, with a view to implementing harmonically their new powers. After seven meetings and the inclusion of the governments of other Autonomous Communities which that had not reformed their Statutes of Autonomy, the Conference of the Autonomous-Community Governments was constituted in 2010, with the aim of promoting collaboration and cooperation among Autonomous Communities, as well as improving the functioning of the so called State of Autonomies.

This paper focuses on studying these new bodies and analysing the results achieved by them until present.

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## Intergovernmental Cooperation Within the State of Autonomies

After recognising the right to autonomy of the nationalities and regions making up the Spanish nation, the Spanish Constitution (hereafter referred to as SC) designed an open and flexible territorial model with regard to both access to self-governance and distribution of powers. The latter is based on the willingness of each Autonomous Community to take on competences, limited by the matters and competences allotted to the State by Article 149 of the SC. This process of political decentralisation has brought about the creation of seventeen Autonomous Communities of similar nature, which, by way of their Statutes of Autonomy, are legally entitled to broad legislative, administrative, and financial powers.

The complexity of the State of Autonomies contrasts with the lack of constitutional provision of a system of collaboration between the Autonomous Communities and the State—vertical cooperation—even though the model for the distribution of powers, as laid down in the SC, stems from the need for cooperation between the various territorial bodies, given that the most part of the powers are allocated on a shared power basis.

The only specific mention that the Constitutional Text makes of cooperation refers to horizontal cooperation, that is, collaboration among Autonomous Communities. In particular, Article 145 envisages the possibility of the Autonomous Communities establishing agreements with one another for cooperatively implementing their powers, though the wording does not specially favour cooperation and instead strengthens the prominence of the *Cortes Generales* (Parliament). In particular, this provision states that

The Statutes may provide for the circumstances, requirements, and terms under which the Autonomous Communities may reach agreements amongst themselves for management and the rendering of services in matters pertaining to them, as well as the nature and effects of the consequent communication to the Cortes Generales. In all other cases, cooperation agreements between the Autonomous Communities shall require the authorisation of the Cortes Generales.

Cooperative relations are inherent in any model of political decentralisation. That is the reason the Constitutional Court has repeatedly proclaimed that the principle of partnership, though not explicitly spelled out in the SC, is an essential part of the State of Autonomies. Thus, as is clear from the Constitutional Court ruling STC 106/1987, of 25 June, there is a reciprocal and general duty within the State of Autonomies—both at the vertical and horizontal level—made manifest in the non-abusive exercise of each body's powers, which should not hinder the exercise of the other bodies' powers. This duty derives from the fact that every public authority is bound to the Constitution and the legal system, as laid down in Article 9.1 of the SC.

This normative framework, which does not particularly promote cooperation, along with a non-existent cooperative tradition, has brought about scarce cooperative relations within the State of Autonomies, unlike in other federally organised countries in our setting. For a long time, the Sectoral Conferences have been the

sole mechanisms for multilateral cooperation, while no other systems—legally regulated or not—govern institutional relations.

However, there appears to be a change of trend after the last statutory reforms. The new Statutes of Autonomy include, without exception, the principle of mutual institutional loyalty, as well as the principles of collaboration, partnership, solidarity, and mutual assistance. Furthermore, they formalise bilateralism in the relations with the State and recognise multilateralism, though in the latter case not pointing at any particular means of formalisation.

In the same vein, and coinciding with the new reform drive of the State of Autonomies we have pointed at, new cooperation mechanisms have been introduced by way of the political praxis, both between the central State and the Autonomous Communities and amongst the latter. We are referring to the Conference of Presidents and the Conference of the Autonomous-Community Governments.

The main purpose of this paper is to describe the main characteristics of these new cooperation instruments and examine the results obtained through them.

## **The Conference of Presidents: A New Mechanism for Vertical Cooperation**

One of the most significant weaknesses of the institutional model of vertical cooperation within the State of Autonomies has been the absence of a mechanism that allows for political dialogue at the highest level between the various public authorities, enabling the coherent functioning of the State. This situation is compounded by the fact that the current Senate, though defined by Article 69 of the SC as the House of territorial representation, does not fulfil this role in its composition or in its powers. Rather, it is a replica of the Congress of Deputies, with its legislative powers limited to second reading and supervision of the Government, but with no specific powers regarding regional organisation.

Therefore, in line with the onset of the process of statutory reforms, and with the aim of establishing a new channel for cooperation within the State of Autonomies, the First Conference of Presidents of regional governments was convened on 28 October 2004, at the initiative of the Head of the Spanish Government. This institution, though not typical of the Spanish legal and political traditions, plays an important role in federal states. The Conference of Presidents, recently created and with an uncertain future, includes among its members the Head of the Spanish Government and the Presidents of the Autonomous Communities. It was intended to create a new forum for discussion and decision-making with regard to major issues concerning the Spanish system of regional autonomies, as well as guarantee equality, solidarity, and a smooth functioning of the State.

Since then and until the present day, the Conference has been held four times, during the last of which the Internal Rules were adopted.<sup>1</sup> We will now examine the main characteristics of this body as laid out in the latter.

The key feature of the Conference of Presidents is its eminently political orientation; its objective is not making legally binding decisions. Rather, Article 1 of the Internal Rules defines the Conference as the highest body for political cooperation between the Spanish Government and the governments of the Autonomous Communities, subject to the principle of mutual institutional loyalty.

The political orientation of the Conference of Presidents results in a number of legal consequences, the first of which being that its implementation does not require a Constitutional reform. Second, its functioning does not require strict regulation, given that there are no legal consequences attached to its actions. Last, its functioning must rely on consensus.

As for its scope, according to its Internal Rules, the Conference of Presidents has the following purposes:

1. Discussing the broad public, sectoral, and territorial State policy guidelines, joint actions of a strategic nature, as well as relevant issues for the State of Autonomies which that may affect both the State and the Autonomous Communities' areas of responsibility;
2. Fostering partnership between the State and the Autonomous Communities.
3. Encouraging and guiding the activity of the Sectoral Conferences and other multilateral cooperation bodies.

In keeping with its political nature, every act that the Conference of Presidents adopts is considered a political agreement that does not give rise to direct legal consequences. To that effect, Article 6 of its Internal Rules establishes that, based on the degree of consensus achieved, the Conference of Presidents may adopt two kinds of acts: agreements and recommendations. Agreements are political decisions supported by the consensus of all the members present at the Conference, provided that two-thirds of the Presidents of the Autonomous Communities attend. Recommendations, on the other hand, are political statements that may be adopted by the Head of the Spanish Government and two-thirds of the Presidents of the Autonomous Communities attending the conference, committing only those members who endorse it.

Regarding its membership, the Conference of Presidents is composed of the Head of the Spanish Government, who presides over it, and the Presidents of the Autonomous Communities and the Cities of Ceuta and Melilla. The minister responsible in the field of territorial cooperation will attend the meetings as Secretary.

In its almost 7 years of existence, the Conference of Presidents has been held four times. The issues discussed have been of varied nature, and in the course of the

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<sup>1</sup> Decree TER/3409/2009, of 18 December, establishing the publication of the Internal Rules of the Conference of Presidents.

first two meetings, important agreements were reached in the fields of health funding as well as research, technological development, and innovation. However, no agreements were reached in the last meeting, held in December 2009, where the discussion focused on employment, sustainable economy, agriculture, livestock, fisheries, and water.<sup>2</sup> Since then, no other meeting has been convened.

## **The Commitment of the Autonomous Communities to Horizontal Multilateral Cooperation**

Upon reading the recently reformed Statutes of Autonomy, it may be concluded that inter-regional cooperation must still be addressed within the State of Autonomies, for there has been no significant progress in the establishment of cooperative relations when compared with the previous Statutes. In practice, we observe that there has been a change of trend in the field of horizontal cooperation in Spain, which coincides in time with the process of statutory reforms.

On the one hand, the agreements between Autonomous Communities, almost unheard of in the Spanish political praxis, have significantly grown in number since 2006. On the other hand, a particularly relevant and novel event in the field of horizontal cooperation took place in 2008: We are referring to the meeting held in Saragossa among those Autonomous Communities which had reformed their Statutes, and that resulted in the initiative *Meetings between the Autonomous Communities for the Development of the Statutes of Autonomy*, the origin of the current Conference of the Autonomous-Community Governments.<sup>3</sup>

### ***The Autonomous-Community Meetings***

On 9 July 2008, following an initiative of the Government of Aragon, the highest representatives of the Governments of Valencian Community, Catalonia, Balearic Islands, Andalusia, Castile and León, and of course Aragon, the host community, gathered in Zaragoza with the aim of expanding the relations among the Autonomous Communities and deepening the process of transfer of new autonomous powers. In this gathering, it was agreed to continue holding such Meetings, in order to move ahead with regional development. Thus, the State of Autonomies

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<sup>2</sup>The issues dealt with during the meetings of the Conference of Presidents can be accessed on the website [http://www.mpt.gob.es/areas/politica\\_autonomica/coop\\_multilateral\\_ccaa\\_ue/Confer\\_Presidentes](http://www.mpt.gob.es/areas/politica_autonomica/coop_multilateral_ccaa_ue/Confer_Presidentes).

<sup>3</sup>The Conference of Autonomous-Community Governments has a comprehensive Internet website from which we have gathered a significant part of the information included in this paper. Available at <http://comunidadesautonomas.org>.

is provided with an institution for multilateral horizontal cooperation similar to the existing ones in other decentralised States in our sociopolitical environment, such as the *Ministerpräsidentenkonferenz*, or meeting of the Presidents of the *Länder*, in Germany, or the National Governors Association, in the United States.

Surprisingly for many, it did not take long for the Meetings to give their first results. In the 3rd Autonomous-Community Meeting, held in Valladolid on 23 February 2009, the first two agreements, as well as the Operating Rules, were adopted.

According to the aforesaid Operating Rules, the Meetings are shaped as a political instrument, just as the Conference of Presidents is. This is the reason the agreements, which have to be adopted unanimously, are not legally binding. They only commit the corresponding Autonomous Communities to start the procedures, by the means determined by the applicable rules, until, once they are over, they may be signed by all of the regions. In addition to the agreements, the possibility is envisaged of political statements being adopted in the Meetings.

Since their creation in 2008, eight Meetings have been held, during which six statements have been adopted and eleven agreements or protocols have been signed. By means of these instruments, a result of the voluntary horizontal cooperation among Autonomous Communities, it has been possible to reach joint positions in such important matters as the effects of setting a State basis in the system of distribution of powers, the participation of the Autonomous Communities in shaping the positions of the State towards European Union issues, the function of the Senate, or the impact of the State subsidies in the system of distribution of powers. Likewise, with the aim of improving the provision of Public Services to its citizens, protocols and agreements in several areas have been promoted.

Although the Meetings between the Autonomous Communities arise at the initiative of the six Communities with new Statutes of Autonomy, their members expressed from the outset their will of all of the regions progressively joining the Meetings. Once sixteen Autonomous Communities were part of them and having reached, in a record time, stability as an inter-regional cooperation mechanism, the member regions agreed in the 7th Meeting, held in Santiago de Compostela on 25 October 2010, to give the Meetings greater institutional representation by creating the Conference of Autonomous-Community Governments.

### ***The Conference of Autonomous-Community Governments***

The Communities taking part in the Meetings agreed to establish in 2010 the Conference of Autonomous-Community Governments, with a view to holding a Conference of Presidents of the Autonomous Communities. This was done with the aim of consolidating an institutional and regulatory framework that would promote political and administrative cooperation and collaboration among the Autonomous Communities. In its constitutive meeting, its Organization and Operation Rules were adopted.

The Conference was created as an instrument for voluntary political and administrative cooperation in the field of regional powers, and as a forum for dialogue among the autonomous regions, in order to improve the functioning of the State of Autonomies for the benefit of the citizens. To this end, the main objectives of the Conference were set as follows:

1. Promoting the collaboration among the Autonomous Communities in their respective areas of responsibility;
2. Promoting the collaboration between the Autonomous-Community Governments and the Government of Spain;
3. Promoting political actions concerning State affairs;
4. Expediting the celebration of a Conference of Presidents of the Autonomous Communities.

According to this duality, as forum for dialogue and cooperation instrument, the Conference of Autonomous-Community Governments allows for Communities to both discuss political questions of general interest and adopt agreements. Such agreements may, in turn, consist of political statements or aim at encouraging the conclusion of agreements or collaboration protocols. Political statements need to be endorsed by at least fifteen Autonomous Communities, whereas the promotion of agreements and protocols generally requires unanimity; these may also be approved by a majority agreement, although in this case they will only be effective for the Communities involved.

In any case, given their political nature, the agreements adopted at the Conference of Autonomous-Community Governments have no legal implications; they merely constitute political engagements for each region to carry out—according to each Autonomous Community regional Law—the appropriate actions in order for the agreements to be effective.

As for the relations of the Conference of the Autonomous-Community Governments with the State, the Organization and Operation Rules envisage the possibility of inviting the Government of Spain to the Meetings, and commit to duly inform the latter of the results. Furthermore, they clearly express the will of the Conference to promote partnership through vertical cooperation mechanisms. This is an essential aspect since it denotes the willingness of the Autonomous Communities to promote a real intergovernmental cooperation system within the State of Autonomies.

The Conference of Autonomous-Community Governments held its constitutive meeting on 21 March 2011 in Santander. An Institutional Statement was then approved, which defended the soundness of the model of regional autonomy as a forward-looking instrument, highlighting its co-starring role, along with the State, in the Spanish social and economic development. Also, in this first meeting of the Conference of Autonomous-Community Governments, its members expressed their will to continue with the line of inter-regional cooperation that had characterised the Autonomous-Community Meetings, and several collaboration agreements and protocols on the subject of fisheries, industry, research, and transport, among others, were approved.

## **By Way of Summary, Has a New Stage for Cooperation Within the State of Autonomies Been Launched?**

As a consequence of the absence of an efficient system for multilateral cooperation in a highly decentralised State as Spain, real cooperation has been developed in practice in an informal way, bilaterally articulated through meetings between the Head of the Spanish Government and the Presidents of the Autonomous Communities, or by way of negotiations between the leadership of the two major national parties. Thus, institutionalised cooperation—especially that of a multilateral nature developed through Sectoral Conferences—is circumscribed to matters of lesser importance and, in any case, sectorial.

Although very useful to consolidate the model of regional autonomies, this system does not favour at all an appropriate and coherent functioning of the State: in many cases, it elicits a feeling of infringement of the principles of equality and partnership among the different Autonomous Communities which constitute the foundation of the constitutional loyalty that should govern the actions of the regional authorities in any complex State.

There is no doubt that both the Conference of Presidents and the Conference of Autonomous-Community Governments have covered a gap in the Spanish system for institutional cooperation. In matters of collaboration between the central State and the Autonomous Communities, and among the latter, the first step has been taken with their institutionalisation, maybe the most difficult and important one.

As mentioned before, the Conference of Presidents has been held only four times in its almost 7 years of existence, and the agreements reached in its last gatherings were few. The consolidation of the Conference of Presidents is, in our view, remarkably difficult due to the fact that it is a vertical initiative and not an instrument arising from a need on the part of the Autonomous Communities—as it happened originally in Germany or the United States—as well as the temptation of infusing the Conference with partisan positions.

The situation of the Conference of Autonomous-Community Governments is different. This institution arose from the wish of cooperation of the Autonomous Communities which had reformed their Statutes of Autonomy in 2008, deriving in the initiative known as the Autonomous-Community Meeting. Since its creation, there has been a progressive increase in the number of member regions, as well as in the number and importance of the agreements and protocols signed and the issues dealt with in the meetings.

Thus, the State of Autonomies now relies on two new cooperation instruments that begin to take their first steps, although at a different pace. There is no doubt that a new stage for intergovernmental cooperation in Spain has been launched. Nonetheless, what is necessary for the consolidation of these new cooperative mechanisms?

Said newly introduced cooperation instruments, both on their horizontal and vertical dimensions, prove that, although regulations—constitutional, statutory, and legal—could be significantly improved in order to promote intergovernmental



collaboration, this is not an essential obstacle to encouraging cooperation within the State of Autonomies, especially that of a multilateral nature.

Doubtless, to have a constitutional framework that enshrines the principle of partnership and removes the obstacles for the collaboration among the different territorial powers would help to consolidate these new cooperation mechanisms, especially in a country like Spain, where a culture of political cooperation has yet to take root. It might also be useful to have a Law regulating the coordination among the different territorial powers. It is also true that the recent reforms of the Statutes of Autonomy have been a missed opportunity for giving multilateral cooperation an unprecedented impetus.

Nevertheless, though all of these circumstances, upon occurring, would promote the consolidation of these new cooperation mechanisms, it is truly essential for their strengthening that both the central State and the Autonomous Communities overcome their historical distrust and understand the duty of cooperation as a product of the principle of constitutional loyalty that, far from limiting their powers, may allow them to implement them with greater efficiency for the benefit of their citizens. This aspect is currently of paramount importance since, as a consequence of the economical crisis in which Spain is immersed, there is a widespread public debate on the inefficiencies of the State of Autonomies. In our view, cooperation needs nowadays more support than ever in order to avoid gaps between the different territorial authorities, which may provoke duplication of functions, squandering, and ultimately, social discredit of the territorial model of the State itself.

The statement of support for the State of Autonomies, adopted at the 1st Conference of the Autonomous-Community Governments, is a step in the right direction. The soundness of the State of Autonomies as a forward-looking instrument was defended there, although specific emphasis was placed on the need for acting in the name of constitutional loyalty and cooperation among Autonomous Communities, as well as between the latter and the Government of the Spanish nation.