

Título: "Bayern in der Welt": an analysis of the external relations of the Free State of Bavaria

Nome e apelido do autor: Christoph R. Schreinmoser

Teléfono de contacto: 0034/623172315

Correo electrónico: christoph.schreinmoser@udc.gal

Filiación institucional: Universidade da Coruña

CV: Licenciado en Dereito pola Universidade de Passau en Alemaña. Mestrado en Seguridade, Paz e Conflitos Internacionais na Universidade de Santiago de Compostela. Actualmente doutorando en Dereito Internacional Público na Universidade da Coruña.

“Bayern in der Welt”: an analysis of the external relations of the Free State of Bavaria

Resumo: Este artigo analiza as relacións internacionais do Estado Libre da Baviera, os seus fundamentos constitucionais, os seus diversos formatos e os seus obxectivos. Na actualidade, a Baviera mantén unha rede global de relacións con outros Estados e rexións. A preservación da súa condición de Estado, pero tamén obxectivos pragmáticos como o fomento do comercio exterior en particular, son os puntos centrais das actividades do Estado Libre a nivel internacional. Porén, a pesar destas actividades de gran alcance, actualmente non se pode falar da existencia dunha política exterior bávara autónoma.

Palabras chave: Baviera, Alemaña, acción exterior, relacións internacionais, federalismo, paradiplomacia rexional.

Resumen: Este artículo analiza las relaciones exteriores del Estado Libre de Baviera, sus fundamentos constitucionales, sus diversos formatos y sus objetivos. En la actualidad, Baviera mantiene una red global de relaciones con otros Estados y regiones. La preservación de su condición de Estado, pero también objetivos pragmáticos como el fomento del comercio exterior en particular, son los puntos centrales de las actividades del Estado Libre a nivel internacional. No obstante, a pesar de estas relaciones de gran alcance, actualmente no se puede hablar de la existencia de una política exterior bávara autónoma.

Palabras clave: Baviera, Alemania, acción exterior, relaciones internacionales, federalismo, paradiplomacia regional.

Abstract: This article analyses the external relations of the Free State of Bavaria, their constitutional foundations, diverse formats and objectives. Today, Bavaria maintains a global network of relations with other States and regions. The preservation of statehood, but also pragmatic goals such as the promotion of foreign trade in particular, are the focal points of the Free State's activities at the international level. However, despite these far-reaching relations, one cannot currently speak of the existence of an autonomous Bavarian foreign policy.

Keywords: Bavaria, Germany, external action, international relations, federalism, regional paradiplomacy.

1. Introduction

The Free State of Bavaria is one of the 16 federated States that together make up the Federal Republic of Germany. Not only is it the largest *Land* in terms of area and the second most populous, but thanks to its long history and tradition as a political entity, its distinguishable cultural (and, some might say, national) identity and, today, its economic strength, it is also the most concerned with preserving its political autonomy. The protection of the *Eigenstaatlichkeit* (statehood) of Bavaria and the commitment to a federalist order in Germany and Europe has been a fundamental principle of Bavaria's *raison d'état*, not only since the founding of the Federal Republic. An important part of Bavaria's strategy for maintaining its statehood is to exert influence on foreign affairs. It does this, on the one hand, through its participation in federal and EU bodies. On the other hand, based on its self-understanding as a State in its own right, Bavaria has always maintained its own

international relations with other States and regions. More than probably any other *Land*, Bavaria is actively engaged in the international arena.

The aim of the present article is to examine these foreign relations of the Free State, their constitutional foundations, various forms and objectives. In so doing, we will first provide a brief overview of the historical development of Bavarian foreign relations since the founding of Bavaria as a modern State. Subsequently, we will outline the constitutional foundations and the institutional framework of the Free State's actions abroad. In the following chapters, we will then analyse the various forms that this activity takes, before going on to discuss its objectives and focal points. Finally, as a mode of conclusion, we will answer the question of whether the Free States activities at the international level can be considered an autonomous Bavarian foreign policy.

2. Historic overview

While the history of Bavaria as a distinct political entity goes back more than a thousand years, the modern State of Bavaria – and with it its foreign policy in a modern sense – came into being at the beginning of the 19th century. Since the Peace of Westphalia of 1648, the then Electorate of Bavaria has been a quasi-sovereign State within the realm of the Holy Roman Empire (see Ziegler, 2007, p. 143) and on 1 January 1806, in the wake of the Napoleonic reorganisation of Europe and the decay of the Holy Roman Empire, this sovereignty was consolidated by the proclamation of Maximilian I Joseph as king and the establishment of the Kingdom of Bavaria (*Königreich Baiern*).

Maintaining and stabilizing the newly won sovereignty became the primordial political leitmotiv of the young kingdom (Körner, 2006, pp. 32-33). Next to far-reaching reforms and the promotion of a Bavarian national consciousness on the domestic level, foreign policy played a pivotal role in achieving this goal. Accordingly, the Ministry of Foreign Affairs, whose roots go back to 1762, equipped with a professional diplomatic service and a network of permanent representations encompassing almost all major European and German States, occupied a prominent position in the governmental structure (Ott, 2006; Ott, 2007). At the same time, the diplomatic corps at the residence city Munich grew considerably as more and more European and international powers – like Spain in 1818 or Mexico in 1864 – sent their emissaries to represent their home States (Weigl, 2006). Thus, throughout the 19th century, the Kingdom of Bavaria was an active member of the international community. As a Central European middle State with around 3.8 million inhabitants, however, its primary sphere of action remained effectively limited to the realm of the German Confederation (*Deutscher Bund*), a confederation of 39 sovereign German States (Körner, 2006, p. 89). Only with the installation of a Wittelsbacher on the Greek royal throne from 1832-1862 did Bavaria temporarily, if ultimately unsuccessfully, succeed in making the leap to the level of high European politics.

With regard to Germany, Bavarian foreign policy was shaped by the dualism of the two great powers, Austria and Prussia, as well as the German national movement, which was gaining increasing popularity, especially among the liberal bourgeoisie. Within this constellation, Bavaria aimed to establish itself as the leading power of a “third Germany” as a counterbalance to the two great powers. The preservation of its sovereignty, however, remained the linchpin of the kingdom's foreign politics (Körner, 2006, pp. 122-124). Ultimately, however, the efforts to maintain political independence were unsuccessful: with the demise of the German

Confederation in 1866, Bavaria fell increasingly into dependence on Prussia, and in 1870 it had to participate in the Franco-Prussian War, at the end of which the German Empire (*Deutsches Reich*) was proclaimed. Deprived of all political alternatives for action, Bavaria agreed to join the *Reich*, and on 21 January 1871, after heated debate, the *Landtag* finally approved the relevant treaties, thus putting an end to the existence of the Kingdom as a sovereign State (see Körner, 2006, pp. 128-138; Treml, 2020, pp. 98-104).

While with the accession to the German Empire Bavaria ceased to be an independent State, this did not bring a full stop of its foreign activity. As a member state of the *Reich*, Bavaria continued to retain the *ius legationis*, i.e., the right to establish legations in other states and to receive envoys itself. To a considerable extent, the Kingdom made use of this right: in addition to representations to the other German federated states and to the *Reich*, in 1914 it still maintained missions in France, Russia, Italy, Austria-Hungary, Switzerland and with the Holy See (Benz, 1969, p. 964). Several foreign States, including France, England, Russia and Austria-Hungary, likewise continued to maintain legations in Munich (Weigl, 2006). In addition, the constitution of the Empire granted Bavaria the chairmanship of the *Bundesrat* Committee for Foreign Affairs. As Benz (1969) shows, however, the practical benefits of these possibilities for action remained limited:

Ultimately, the exercise of the right of legation (...) was nothing more than a decoration intended to make the claim for statehood conspicuous and to disguise the substantial loss of sovereignty of the kingdom. In practice, Bavaria was almost afraid to exhaust the constitutional possibilities of the right of legation – since 1871 there was no longer a Bavarian foreign policy in the true sense of the word. (p. 966)

Rather than an effective foreign policy in its own right, Bavarian foreign relations in the *Reich* consequently had a primarily symbolic character, which was intended to emphasise the State character of the kingdom and strengthen its role as the guardian of federalism.

After the First World War, a further reduction in Bavarian foreign relations took place. In November 1918, the last King Ludwig III was forced to leave the country and after a brief revolutionary interlude, Bavaria – now as a *Freistaat* (republic) – formed part of the newly founded Weimar Republic. Although the Weimar Republic was still a federal State, it exhibited strong unitarist and centralist tendencies and severely restricted the ability of the *Länder* to conduct their own foreign relations. According to its constitution, relations with foreign States as well as legislative powers in foreign affairs fell under the exclusive competence of the *Reich*. This meant the end for almost all representations that the federated States still maintained. By 1920, Bavaria also had closed its remaining representations (Ott, 2006). Only the representations to the Holy See, which was not a *State*, and to Prussia, which was not a *foreign* State, were not impacted and were supplemented a few years later by a reopened delegation in Stuttgart (Benz, 1969, pp. 990-992; Ott, 2006). Analogous to the closure of their own legations, the foreign missions accredited in Munich – with the exception of the papal nunciature – were also closed. Interestingly, however, France decided to reopen its pre-war delegation in Munich in 1920, despite resistance from the *Reich* and the Bavarian government, partly with the aim of encouraging secessionist tendencies (see Müller, 2010). Whilst the Bavarian government was not enthusiastic about this step and had previously also refused to accredit the Belgian envoy to the *Reich* for Bavaria as well, citing the allocation of

competences in the Weimar Constitution (Benz, 1969, pp. 986-987), it did not contemplate renouncing all external relations altogether. Particularly in the context of the persistent federalism question, in which Bavaria consistently advocated for strengthening the position of the *Länder*, maintaining at least a minimum of relations with foreign entities was an important symbolic factor in Bavaria's assertion of its statehood. Consequently, until 1933, the Free State continued to retain its own Foreign Ministry, at least nominally. Although there were plans to transform it into a state chancellery, this step was not carried out because of the symbolic implications such a restructuring would represent (Ott, 2007). Furthermore, the conclusion of a Concordat between Bavaria and the Holy See on 29 March 1924 likewise pursued the goal of consolidating the political status of Bavaria (see Löhnig & Preisner, 2011, pp. 226-231).

If during the Weimar years Bavaria succeeded in asserting its statehood and maintaining a remnant of foreign policy activities, the triumph of the National Socialists eventually brought an (temporary) end to this. With the process of *Gleichschaltung* of the *Länder*, that was culminated by the Law for the Reconstruction of the *Reich* (*Gesetz über den Neuaufbau des Reiches*) from 30 January 1934, the last sovereign rights of the federated States were transferred to the *Reich*, effectively eliminating their statehood. As a consequence, the last remaining official relations with foreign entities were terminated and the *Freistaat* ceased to exist. It was only after more than ten years of National Socialist tyranny and the destruction wrought by the Second World War that Bavaria was to re-emerge as a State.

3. Constitutional foundations and institutional framework

Today, the Free State of Bavaria is a federated State of the German Federal Republic (*Bundesrepublik Deutschland*). As such, it is a State in its own right and possesses the constitutive elements of a State (population, territory, and government). It is, however, not a sovereign State. Instead, sovereignty rests inwardly with the Federation (*Bund*) and the *Länder* jointly, and outwardly with the Federation alone (Lindner, 2019, pp. 26-27). Nonetheless, the lack of sovereignty does not mean that the *Länder* are deprived from any capacity to interact externally with other States or entities. In contrast to most federal states, in Germany foreign relations powers are not assigned to the federal level exclusively. Instead, competences in foreign affairs are shared between the Federation and the *Länder* (Fassbender, 2016, p. 280). To the extent of the competences conferred upon them, the *Länder* therefore possess a separate, albeit derived and partial, international legal personality (von Arnould, 2019, p. 38; Herdegen, 2021, p. 95). This means, in other words, that Bavaria – within the framework of its limited international legal personality and at least in relation to States that recognise its status (see Geiger, 2018, p. 42) – is an autonomous member of the international community with the ability to maintain international legal relations with other subjects of international law (see Fassbender, 2016, p. 282).

To determine the constitutional foundations of Bavaria's external activities, we have to take into account two documents: the constitution of the Federal Republic of Germany, the so-called Basic Law (*Grundgesetz*)¹ from 24 May 1949, on the one

¹ An English translation of the Basic Law can be found at https://www.gesetze-im-internet.de/englisch_gg/.

hand, and the Bavarian Constitution (*Bayerische Verfassung*)² from 8 December 1946, on the other.

The Basic Law regulates the allocation of competences between the Federation and the federated States. In so doing, it starts from the principle that a matter falls within the competences of the *Länder*, if it does not establish otherwise (Art 30). It then, however, goes on to attribute (exclusive or concurrent) powers to the Federation in a wide array of subjects. This is, naturally, also the case for foreign relations. Art 32(1) establishes that “[r]elations with foreign states shall be conducted by the Federation.” Despite its wording, the provision is to be interpreted broadly, so that it covers not only relations with States, but also with other subjects of international law, such as international organisations. The only exception, for historical reasons, is the Holy See. Although the Holy See is a subject of international law, the prevailing opinion is that relations with it do not fall under Art 32(1) (Geiger, 2018, pp. 111-112). According to this constitutional provision, the main responsibility and competence in foreign policy clearly rests in the Federation. The following paragraphs of Art 32, however, contain exceptions to this general principle, which guarantee a limited autonomous role of the *Länder* in foreign affairs. Pursuant to Art 32(2), “[b]efore the conclusion of a treaty affecting the special circumstances of a *Land*, that *Land* shall be consulted in timely fashion.” More importantly, Art 32(3), establishes that “[i]nsofar as the *Länder* have power to legislate, they may conclude treaties with foreign states with the consent of the Federal Government.” While Art 32(2) makes sure, that a *Land*’s political position is taken into account if its interests are affected by a treaty, paragraph 3 of the Article 32 confers, within their legislative competences, a treaty-making power to the federated States. Naturally, this authorisation also includes all actions required in the context of the preparation and execution of the treaties (Geiger, 2018, p. 113). Importantly, however, a treaty concluded pursuant to Art 32(3) will need the consent of the Federal Government. Accordingly, the Federation can prevent the conclusion of any treaty by the *Länder* and thereby assert its primacy in foreign policy matters. The only exception to this is, once again, the conclusion of concordats with the Holy See. Even though these constitute international treaties, the Federal Constitutional Court has recognised that they do not fall under Art 32 and can therefore be concluded by the *Länder* without the consent of the Federation. Beyond this, it is disputed whether Article 32(3) is to be interpreted to the effect that in matters that fall within the exclusive legislative competence of the *Länder*, the Federation may also conclude international treaties, or whether this is solely a competence of the *Länder*. This difference of opinion, in which the *Länder* and the Federation hold opposing views, has not been settled to this day, but in 1957 a practical solution was brought about within the framework of the so-called Lindau Agreement. The Agreement records the differing views of the Federation and the *Länder*, but at the same time allows the Federation to conclude international treaties on behalf of the *Länder* even in areas of exclusive competence of the *Länder*, provided that the latter are involved in the negotiation and, in particular, have given their consent before the conclusion of the treaty (for details see Gunlicks, 2003, pp. 374-375).

Since 1992, the newly inserted Art 24(1a) of the Basic Law also allows the *Länder*, insofar as they are competent to exercise state powers and to perform State

² Translations of the Bavarian Constitution into English, French and Spanish can be found at <https://www.bayern.landtag.de/en/dokumente/rechtsgrundlagen/constitution-of-the-free-state-of-bavaria/>.

functions, to transfer sovereign powers to transfrontier institutions in neighbouring regions. The federal government must agree to such a transfer of sovereign powers. This provision is intended to facilitate cross-border regional and municipal cooperation (Geiger, 2018, p. 113).

Not explicitly stated in the Basic Law, but recognised by virtue of its nature, is also the right of the *Länder* to maintain contacts with other subjects of international law within their sphere of competence that are not of an international law nature (Lindner, 2019, p. 61). Also permissible, within the framework of Art 30, are relations with sub-state entities which are not subjects of international law, since Article 32 does not apply in such cases. Contacts of these sort may include official visits by Minister-Presidents or State Ministers, cooperation at the ministerial level, the conclusion of memoranda of understanding or even the establishment of representations abroad. However, these representations are informal in nature and do not have diplomatic status. The *Länder* of the Federal Republic have neither an active nor a passive right of legation; the *ius legationis* belongs exclusively to the Federation (Geiger, 2018, p. 113). Only in relation to the Holy See is it discussed whether the *Länder* are entitled to their own right of legation. In favour of an affirmative answer to this question is the fact that – as mentioned above – it is generally recognised that relations with the Holy See do not fall under Art 32(1) and thus under the foreign policy primacy of the Federation. It therefore seems only consistent to also grant the *Länder* the possibility of maintaining their own diplomatic contacts with the entity. So far, however, none of the *Länder* has actually established its own representation with the Holy See.

Within these possibilities for action, the *Länder* can act largely autonomously. However, there are also limits to their external action. The constitutional principle of federal loyalty (*Prinzip der Bundestreue*) acts as a limit to any action of the *Länder* and consequently also to their foreign relations. According to the Federal Constitutional Court, this principle is an immanent norm of the Basic Law and obliges the Federation and the federated States to "cooperate in accordance with the nature of the constitutional 'alliance' that binds them and to contribute to its consolidation and to the safeguarding of the well-understood interests of the Federation and the constituent States" (BVerfGE 6, 309, 237-238). The duty of loyalty of the *Länder* towards the Federation applies particularly in the area of foreign relations, in which the Constitution assigns primary responsibility to the Federation. In their foreign activities, the *Länder* must therefore take into account the foreign policy positions of the Federal Government and may not work against the interests of the Federation. At the same time, however, the Federation also must give consideration to the specific interests of the individual *Länder*.

While the Basic Law regulates the extent to which the *Länder*, and thus Bavaria, can act under international law, the how of this activity is governed by the Bavarian Constitution. According to its Art 47(3), Bavaria is represented externally by the Minister-President. Accordingly, the Minister-President is the central figure of Bavaria's international relations. He determines the general political guidelines of the State Government (see Art 47(2)). His constitutional task of external representation of the Free State includes both intra-German relations and the representation of Bavaria at the European Union as well as foreign relations in general. Furthermore, as the first representative of the State, the Minister-President is also responsible for the conclusion of treaties with other States, the so-called State treaties (*Staatsverträge*). Pursuant to Art 72(2) of the Bavarian Constitution, these are concluded by the Minister-President after prior approval by the Bavarian Parliament, the *Landtag*. In

representing Bavaria externally, the Minister-President is assisted by the State Chancellery. In addition, the position of a State Minister for European and International Affairs was established in January 2021. The Minister, who is integrated into the State Chancellery and maintains official seats in Munich and in Brussels, is responsible for coordinating EU policy and fostering foreign relations.

While the Minister President represents Bavaria externally and sets the policy guidelines, and the State Chancellery with the Minister of State for European and International Affairs is responsible for the overall coordination of the Free State's international relations, the other State Ministries also maintain international links within their respective fields of competence. For example, the State Ministry of Economic Affairs, Regional Development and Energy is in charge of Bavaria's foreign trade and, in keeping with the nature of the matter, acts internationally in this capacity. The *Landtag* is also an active player in Bavaria's international activities. On the one hand, it counts with a permanent Committee on Federal and European Affairs and Interregional Relations. The aim of the Committee is, among other things, to identify Bavarian specific interests and to bring them into the standard-setting process of the EU. In addition, it works to foster relations between the Free State of Bavaria and other States and regions, particularly within Europe, but also beyond. As part of this task, the committee also prepared the Development Policy Guidelines, which were unanimously adopted by Parliament in 2016 and set out the framework conditions for Bavaria's engagement in the field of development cooperation. On the other hand, the *Landtag* also directly maintains a network of partnerships with other parliaments and organisations. Since 1999, for example, it has been connected with the National Assembly of Québec, with which a joint parliamentary group was established in 2002 that meets on a regular basis. Further cooperation agreements exist with the Moscow Oblast Duma or the Czech Chamber of Deputies, and regular exchanges also take place with the South Tyrolean Parliament or the South African Province of Western Cape.

Finally, the actors that Schmöller (2009) calls the "periphery" also play a role in the foreign relations of the Free State that should not be underestimated. These include private organisations, associations, foundations or universities, which act as points of contact and partners for the State Government and support it with their expertise and contacts (pp. 48-49).

4. Shapes of external action

As we have seen above, the constitutional framework allows Bavaria a range of possibilities for action in the international sphere. To a greater extent than other *Länder*, the *Freistaat* also makes use of these possibilities. In this way, up to today, Bavaria has built up a widely ramified network of legal and political relations with other States, regions and organisations. The thematic fields of the Free State's international activities encompass all business areas of the State Government, such as administration, education, security, economy or culture. In doing so, the state government uses a wide variety of diplomatic instruments.

On the one hand, Bavaria has made use of its treaty-making power and international legal personality and concluded bi- and multilateral treaties with foreign States and other entities on several occasions. Especially in the early years of the Federal Republic, the Free State established its own treaty practice, often with the aim of consolidating its political autonomy vis-à-vis the Federation. One example is the *Agreement between the Free State of Bavaria and the Republic of Austria on the*

Application of the Saline Convention of 25 March 1957, which was concluded under the then Minister-President Wilhelm Hoegner. The Agreement represented an amendment to the original Saline Convention of 1829 and served Hoegner as a vehicle to consolidate and demonstrate Bavarian statehood against the resistance of the federal government, which saw its primacy in foreign policy threatened (see Wegmaier, 2011). Also worth mentioning is the *Convention on the Protection of Lake Constance against Pollution of 27 October 1960*, which was concluded between the Land Baden-Württemberg, the Republic of Austria, the Swiss Confederation and Bavaria and established a permanent International Commission for the Protection of Lake Constance. Furthermore, between 1958 and 1988, a series of treaties were concluded with the Holy See aimed at amending the Concordat of 1924 (see Busley, 2009). Finally, also with the aim of consolidating Bavarian statehood, the State Government made attempts in the early 1950s to re-establish the Bavarian legation to the Holy See. To this end, it commissioned a legal opinion which established that a Bavarian legation was permissible under both constitutional and international law. However, the change of the State Government in 1954 brought the project to an end before it could be realised (Wegmaier, 2011, pp. 95-96).

While in the past the establishment of international legal relations with other subjects of international law has certainly played an important role in Bavarian foreign relations, especially with regard to the emphasis on its own statehood, one cannot help but notice that in the present this practice has lost much of its significance. On the one hand, the Lindau Agreement has played a part in this. It is true that the agreement allows the states to maintain their legal status and to ensure their participation in the conclusion of international treaties that concern their exclusive competences. However, it has also led to a treaty practice in which the Länder are mediated by the Federation and hardly ever appear themselves to the outside world as potential treaty partners (Fassbender, 2016, pp. 282-283). Fassbender goes even further and speaks of a "forgetfulness of international law" (*Völkerrechtsvergesslichkeit*) on the part of the Länder. According to him, the Länder rarely conclude their own international treaties (anymore) and no longer realise their international legal personality as an expression of their statehood. Instead of entering into international legal relations with other subjects of international law, the Länder would prefer informal, political relations. (Fassbender, 2016).

Fassbender's observations can certainly be applied to Bavaria as well. If one looks at more recent agreements of the Free State with other States and regions, they mainly take the form of so-called Memorandums of Understanding (MoUs). These are instruments of international relations that are concluded between States or other entities but, unlike treaties, are not intended to create legal obligations (see Aust, 2007, pp. 32-57). They do, however, express a political commitment on the part of the signatories and may well urge the parties to conduct their future behaviour in accordance with the agreement. The Free State has concluded a large number of these MoUs with its international partners. Some of them are of a general nature, such as the Memorandum of Understanding between Bavaria and the Autonomous Community of the Basque Country from June 2021 or the Joint Declaration of Bavaria and Slovenia, also from June 2021, in which both countries commit themselves to a deepening of mutual relations. Other declarations are related to individual subject areas or projects. The Declaration of Intent of Bavaria and the Czech Republic on the promotion of 5G projects from 2020 or the Bavarian-Israeli Declaration of Intent on deepening cooperation in the field of education and historical-political learning in 2011 can be mentioned here. The choice of a MoU

instead of a treaty can have some advantages for the Free State. First, they do not fall under Art 32(3) and therefore do not require the consent of the Federation. This allows Bavaria to proceed more autonomously and is therefore, according to Fassbender (2016), a major reason for this approach (p. 285). Nevertheless, the principle of federal loyalty must be observed also when concluding MoUs. Furthermore, a MoU also gives the State Government greater freedom vis-à-vis the *Landtag*, as it does not constitute a state treaty and can therefore be concluded without the latter's consent. Finally, the choice of a MoU instead of an international treaty also enables agreements to be made with sub-state territorial units that do not possess treaty-making powers of their own (see Aust, 2007, p. 47).

Besides concluding international treaties or memoranda of understanding, Bavaria has also established an international network of representations. The Free State currently has offices in over 30 countries, including Argentina, Brazil, China, South Africa, the USA and Vietnam.³ In organisational terms, the vast majority are integrated into the State Ministry of Economic Affairs and accordingly serve primarily economic purposes, especially the promotion of foreign trade. They act as contact points abroad for Bavarian companies and are in this way intended to support them in opening up new export markets. However, several of the representations are directly assigned to the State Chancellery and are responsible for promoting cross-thematic cooperation between Bavaria and the host country/region. The biggest and, arguably, most important of them is the Representation of the Free State of Bavaria to the European Union in Brussels. The Representation is the successor to the Brussels Information Office of the Free State, founded in 1987, and has been residing in the former Institut Pasteur du Brabant, in the immediate vicinity of the EU Parliament, since 2004. With its 37 staff members, it is supposed to "influence[] the political decision-making process in the European Union, [to] advise[] and assist[] in contacting EU offices and [to] cooperate[] with other European regional representations based in Brussels" (Bayerische Staatsregierung, n.d.-a). It also assists the work of the State Minister for European and International Affairs and organises cultural and political events. In addition to Brussels, the Free State also maintains representations in Québec and, since 2014, in Prague. In 2018, the State Chancellery also established offices in Israel and Ukraine. The latest addition is the Bavarian Africa Office in Addis Ababa, which was opened in April 2019 and is to act as a contact point for Ethiopia and the African Union and play a coordinating role in Bavarian development cooperation.

Over the years, in addition to the foreign representative offices, the Free State has also established several permanent commissions with partner countries and regions, especially from Central and South-Eastern Europe. Some of these have a long tradition, such as the commission with Serbia, which was established in 1970 (Schmöller, 2009, p. 68). Bilateral commissions also exist with Hungary, the Czech Republic, Slovenia, Slovakia, Poland, Bulgaria, Romania, Macedonia and Croatia (Bayerisches Staatsministerium für Umwelt und Verbraucherschutz, n. d.). The commissions, which consist of government officials and are often accompanied by ministers, meet annually or biannually and draw up work programmes in diverse areas of cooperation (Schmöller, 2009, pp. 70-76). At the 31st meeting of the Bavaria-Slovenia Commission, which took place on 14-15 November 2019 in Škofja Loka and was also attended by the then Minister for European Affairs, Florian

³ An overview over the current offices can be found at <https://www.bavariaworldwide.de/>.

Herrmann, the topics included police cooperation and the partnership between the two countries in the fields of business, agriculture and forestry (Bayerische Staatsregierung, 2019). Other subject areas of the commissions are culture, science, justice or environmental protection.

In addition to its bilateral partnerships, Bavaria is also involved in multilateral forums. The main focus is on technical cooperation with neighbouring states and regions in cross-border matters, such as environmental protection, but also cultural, social or economic issues. An example of such engagement is the aforementioned International Commission for the Protection of Lake Constance, which was established in 1960 and in which representatives of the Free State, the *Land* Baden-Württemberg, Austria and Switzerland sit. The commission meets annually and monitors the water status of Lake Constance and recommends measures against possible pollution. Also concerned with the Lake Constance region is the International Lake Constance Conference (IBK), which was initially founded in 1972 as an informal platform of the riparian *Länder* and cantons and was intended to promote an exchange on issues of environmental protection and spatial planning. Today, the Conference is a cooperative association of 9 federated States and cantons as well as the Principality of Liechtenstein with the aim of "maintaining and promoting the Lake Constance region as an attractive living, natural, cultural, scientific and economic area and strengthening regional cohesion and social development" (Internationale Bodensee-Konferenz, 2018, p. 4). Since 1972, Bavaria has also been a founding member of the *Arbeitsgemeinschaft Alpenländer/Comunità di Lavoro delle Regioni Alpine* (ARGE ALP), an association of 10 *Länder*, provinces, regions and cantons in the Alpine region. The aim of ARGE ALP is

to address common concerns of the member countries within the scope of their competences through cross-border cooperation with a minimum of institutionalisation and to represent them vis-à-vis the federal and central governments as well as interregional and international institutions, to raise awareness of the common responsibility for the alpine habitat, to promote contacts between the peoples and citizens, to strengthen the position of the *Länder*, regions, provinces and cantons and to contribute to European integration (Art 1(1) of the Statute of the ARGE ALP)⁴.

The topics covered are wide-ranging and include, among others, sustainable development, preservation of cultural heritage, infrastructure, regional policy, tourism, mountain agriculture and the promotion of European integration. In addition to these regional and neighbourhood forums, Bavaria is also active multilaterally at the global level. The Free State is a member of the Regional Leaders Summit (RLS), a multilateral political forum consisting of the regions of Bavaria, Upper Austria, Georgia (USA), Québec, São Paulo, Shangdong (China) and Western Cape (South Africa). Within the framework of the RLS, which was held for the first time in Bavaria in 2002, the heads of government of the partner regions meet every two years to discuss common concerns. The aim of the forum is to establish global cooperation at the regional level and in this way jointly pursue regional interests that, in some cases, may not be supported by the respective central/federal government (Schmöllner, 2009, p. 114).

⁴ The Statute can be found at https://www.argealp.org/fileadmin/user_upload/Allgemein/Statut_Arge_Alp_neu_de290512.pdf.

Finally, one instrument that has become indispensable in Bavaria's foreign relations and is particularly effective in terms of publicity are the foreign visits of the Minister-President. These trips, which are based on the authority granted to the Minister President by Art 47(3) of the Bavarian Constitution, have a long tradition and have been used on a larger scale by virtually all former office holders. Like their counterparts from other *Länder*, Bavarian Minister-Presidents usually pursue *Land* affairs, such as the promotion of foreign trade or cultural projects, during their trips and meetings with foreign heads of State or government. Frequently, however, they also address foreign policy matters that do not fall within Bavaria's remit, which not infrequently leads to criticism from the Federal Government and the Foreign Office. For example, when then-Prime-Minister Horst Seehofer met with Russian President Vladimir Putin in Moscow in 2016, this sparked considerable criticism because of the strained relationship between Germany and Russia due to the unlawful annexation of Crimea. Among others, the foreign policy spokesperson of the SPD *Bundestag* group felt compelled to clarify that "foreign policy is made in Berlin, not in Munich" and the *Bundestag* group leader of the Green Party accused Seehofer of pursuing a Bavarian "foreign policy on the side" (*Nebenaußenpolitik*) (quoted from "Seehofers Reise zu Putin sorgt für Kritik", 2016). Less controversial, but at least as frequent, are trips abroad by individual State Ministers within the scope of their portfolio. During their trips, the Ministers – like the Minister-President – are often accompanied by political and economic delegations. For example, in March 2018, the then Minister of Economic Affairs, Ilse Aigner, travelled to the Basque Country with a delegation of representatives of Bavarian small and medium-sized enterprises to deepen economic relations between the two regions. Analogously, the Bavarian State Government also regularly receives foreign delegations and heads of State or government in Munich and maintains exchanges with the more than 120 consular representations in Bavaria.

5. Objectives and regional priorities

As for objectives, assertion of its statehood and emphasis of its identity as a distinct political and cultural entity remain a cornerstone of the Free State's external action. As Roth (2000) aptly put it a good 20 years ago, "Bavaria possesses an original and evolved statehood and a corresponding self-confidence" (p. 66). This self-confidence and self-understanding has made Bavaria a consistent and foremost champion of federalism and thus of the statehood (*Eigenstaatlichkeit*) of the *Länder*. In the words of Roth (2000): "Federalism understood as the preservation of one's own statehood in the federal State as well as participation and co-decision-making at the national and increasingly also at the European level is the central, continuously pursued basic concern of Bavarian politics" (p. 302). The international efforts of the Free State are also committed to this overriding political objective. The international undertakings of Bavaria, not only since the founding of the Federal Republic, are also dedicated to this overriding goal. This was particularly evident in the early years of the Free State, when the State Government autonomously entered into international treaties, even against the opposition of the Federal Government, in order to underpin the continued existence of Bavarian statehood. But this is still evident today in the extensive foreign trips and State visits of the Minister-Presidents, during which they self-confidently address classic foreign policy issues, or in the establishment of external representations whose remit goes far beyond the mere promotion of economic cooperation. On its website, too, the State Government (n.d.-b) makes clear the connection between the cultivation of its own foreign relations and Bavarian statehood when it states that

it is in keeping with Bavaria's State and political self-conception to independently represent the interests of the Free State wherever these are affected. The world is becoming increasingly smaller. The pressure of competition is increasing. The Free State wants to actively shape this change and contribute Bavarian interests.

The autonomous representation of its own interests at the international level and thereby the consolidation of its own statehood is a continuity of Bavarian foreign relations that has existed since the foundation of the Reich in 1871 and is still a central concern in the 21st century.

Today, however, the underpinning of statehood is by no means the only goal of Bavarian foreign relations. As Wegmaier (2011) rightly points out, a shift in emphasis has taken place, in the course of which pragmatic concerns have become increasingly important (pp. 99-100). This shift is reflected in Bavaria's many institutionalised external relations – be it through the permanent commissions, multilateral forums or the signing of MoUs – that address specific technical issues, such as cooperation in the field of security, environmental protection or infrastructure. Cross-border cooperation to address common concerns is today a core element of Bavaria's international affairs, particularly with regard to relations with its neighbouring States. A major focus in this context is put on economic and location policy matters (Wegmaier, 2011, p. 99). The reasons for this are obvious. In the decades since the founding of the Federal Republic of Germany, Bavaria has changed from an agricultural State to an economic powerhouse, for whose economic strength in a globalised world international trade and investment flows play a pivotal role. In 2018, the trade volume of the Free State amounted to 376 billion euros, with an export surplus of 4.7 billion euros (Bayerisches Staatsministerium für Wirtschaft, Landesentwicklung und Energie, 2019, p. 2). It is therefore hardly surprising that the majority of Bavarian representations abroad are assigned to the Ministry of Economic Affairs and primarily pursue economic goals. Accordingly, projecting Bavaria abroad as an attractive investment location and supporting Bavarian companies in expanding into foreign markets is a key priority of the State Government. Other initiatives of the Free State with an international projection, such as the business development corporation *Bayern International* and the business location agency *Invest in Bavaria*, are also dedicated to promoting economic interests.

Finally, a cross-thematic focus of Bavarian foreign relations is EU policy. This focus logically results from the considerable importance and influence that the EU has on domestic German relations and thus on the position of the Free State. The Representation of the Free State to the EU expresses this on its homepage as follows:

European policy is domestic policy: More than 50 percent of German domestic politics are determined by European law. In some areas, such as economic, agricultural and environmental policy, it is up to 80 percent. Representing Bavarian interests in Brussels and Strasbourg is therefore just as important as representing interests on the federal level (Bayerische Staatsregierung, n.d.-a).

Accordingly, the State Government engages in various channels – official and unofficial – both in Berlin and in Brussels in order to influence decision-making at the EU level and to play an active role in shaping European integration (see Budich, 2013, pp. 207-215). The importance of European policy for the Free State is also

reflected in the resources of its representation in Brussels: with its 37 staff members and an expenditure of more than 1.7 million (excluding personnel costs) in 2019, it is by far the largest of all Bavarian foreign offices. In its EU policy activities, the Free State is committed to the European project and the goal of an "ever closer union". At the same time, however, the State Government is also concerned with guaranteeing Bavaria's statehood and the participation of sub-state entities in the European decision-making process. At the EU level, too, Bavaria therefore frequently acts as an advocate of federalism (Budich, 2013, p. 215). The guiding principle of the Free State's conduct in this regard is its upholding of the principle of subsidiarity, according to which decisions should always be taken at the smallest possible level and which today, also thanks to Bavaria's interventions, is anchored in Art 5 of the TEU with explicit mention of the regional and local levels. These continuous guidelines of the Free State's efforts at the European level – the commitment to European unification while preserving the autonomy of sub-state units – were even elevated to constitutional status in 1998. According to Art 3a of the Bavarian Constitution

Bavaria declares itself to be part of a unified Europe, which is committed to democratic, social and federal principles governed by the rule of law and the principle of subsidiarity, which safeguards the independence of the regions and ensures their involvement in European decisions. Bavaria shall work together with other European regions.

6. As a mode of conclusion: is there an autonomous Bavarian foreign policy?

Today, the Free State of Bavaria maintains a wide-ranging network of external relations with other States and sub-state entities around the world. In so doing, it draws on a variety of legal and political, formal and informal, bilateral and multilateral, institutionalised and punctual forms of cooperation. As was the case before the founding of the Federal Republic of Germany, a central motivation of these activities lies in the preservation of Bavarian statehood and the presentation of Bavaria as an autonomous actor on the international stage. Additionally, however, pragmatic concerns such as technical cooperation in cross-border issues and, in particular, the international economic projection of the Free State have emerged. Alongside cooperation with neighbouring states and regions, there is a particular geographical focus on relations within the framework of the European Union. In the latter, Bavaria acts as a proactive player that, on the one hand, is committed to European integration but, on the other hand, wants to preserve the autonomy and decision-making competence of sub-state entities.

In view of this panorama, can one speak of an identifiable autonomous Bavarian foreign policy? One will probably have to answer in the negative. The constitutional order of the Federal Republic, above all the principle of federal loyalty, sets narrow limits to an independent conduct of the Free State in the international arena by recognising the primacy of the Federation in foreign policy matters. But the State Government, apart from a few occasional confrontations, also does not seriously question this primacy. On its homepage, it makes it clear that "Bavaria's involvement is understood as complementing and enriching the foreign policy of the Federation" (Bayerische Staatsregierung, n.d.-b). Accordingly, it avoids the term foreign policy (*Außenpolitik*) and speaks instead of foreign relations (*Außenbeziehungen, auswärtige Beziehungen*) or international relations (*internationale Beziehungen*) of the Free State. The preference of political agreements over international treaties and the continued adherence to the self-

limitation within the framework of the Lindau Agreement also fit into this picture. This may allow for a pragmatic and flexible pursuit of Bavarian interests at the international level. However, particularly against the background of the constant pressure for centralisation in Germany, it would be desirable for the Free State to present itself to the outside world not only as a “public service provider” (see Fassbender, 2016, p. 286) but also once again more proactively as a subject of international law in its own right. After all, the international legal personality is a fundamental component of the *Länder's Eigenstaatlichkeit* and thus at the heart of Bavaria's struggle to preserve its political autonomy and identity.

7. Bibliography

AUST, A. (2007). *Modern Treaty Law and Practice*, 2nd edition. Cambridge: Cambridge University Press.

BAYERISCHES STAATSMINISTERIUM FÜR WIRTSCHAFT, LANDESENTWICKLUNG UND ENERGIE. (2019). *Der Außenhandel Bayerns 2018 / Bavaria's Foreign Trade 2018*. Retrieved from: https://www.stmwi.bayern.de/fileadmin/user_upload/stmwi/Publikationen/2019/2019-07-05_Aussenhandel_Bayerns_2018.pdf.

BAYERISCHES STAATSMINISTERIUM FÜR UMWELT UND VERBRAUCHERSCHUTZ. (n.d.). *Verwaltungszusammenarbeit*. Retrieved from: <https://www.stmuv.bayern.de/ministerium/eu/zusammenarbeit/verwaltung.htm>.

BAYERISCHE STAATSREGIERUNG. (n.d.-a). *Bavaria in Brussels*. Retrieved from: <https://www.bayern.de/staatskanzlei/bayern-in-bruessel/bavaria-in-brussels/>.

BAYERISCHE STAATSREGIERUNG. (n.d.-b) *Bayern in der Welt*. Retrieved from: <https://www.bayern.de/staatskanzlei/bayern-in-der-welt/>.

BAYERISCHE STAATSREGIERUNG. (11.11.2019). *Pressemitteilung: Europaminister Dr. Florian Herrmann reist nach Slowenien / Treffen mit Außenminister Dr. Miro Cerar in Škofja Loka*. Landesportal. Retrieved from: <https://www.bayern.de/europaminister-dr-florian-herrmann-reist-nach-slowenien-treffen-mit-aussenminister-dr-miro-cerar-in-skofja-loka/>.

BENZ, W. (1969). Bayerische Auslandsbeziehungen im 20. Jahrhundert: Das Ende der auswärtigen Gesandtschaften Bayern nach dem I. Weltkrieg. *Zeitschrift für bayerische Landesgeschichte*, 32, pp. 962-994.

BUDICH, K. (2013). ‘Lordsiegelbewahrer des Föderalismus’: Bayern im Bund und in Europa. In M. GLAAB & M. WEIGL (Ed.), *Politik und Regieren in Bayern* (pp. 201-217). Wiesbaden: Springer VS.

BUSLEY, H.-J. (2009). Konkordatspolitik (seit 1945). *Historisches Lexikon Bayerns*. Retrieved from: [https://www.historisches-lexikon-bayerns.de/Lexikon/Konkordatspolitik_\(seit_1945\)](https://www.historisches-lexikon-bayerns.de/Lexikon/Konkordatspolitik_(seit_1945)).

FASSBENDER, B. (2016). Völkerrechtsfähigkeit und Völkerrechtsvergesslichkeit der deutschen Länder: Neue Erscheinungsformen des „offenen Bundesstaates“. *JuristenZeitung*, 71 (6), pp. 280-287.

GEIGER, R. (2018). *Staatsrecht III: Bezüge des Grundgesetzes zum Völker- und Europarecht*, 7th edition. München: C. H. Beck.

GUNLICKS, A. (2003). *The Länder and German federalism*. Manchester: Manchester University Press.

HERDEGEN, M. (2021). *Völkerrecht*, 20th edition. München: C. H. Beck.

INTERNATIONALE BODENSEE-KONFERENZ. (2018). *Leitbild und Strategie der Internationalen Bodensee-Konferenz (IBK) für die Bodenseeregion*. Retrieved from: https://www.bodenseekonferenz.org/bausteine.net/f/11071/ibk_leitbildundstrategie_2018_web.pdf?fd=0.

KÖRNER, H.-M. (2006). *Geschichte des Königreichs Bayern*. München: C. H. Beck.

LINDNER, J. F. (2019). *Bayerisches Staatsrecht*, 2nd edition. Stuttgart: Boorberg.

LÖHNIG, M. & PREISNER, M. (2011). "Möglichst viele vollendete Tatsachen schaffen": Zur Geltung und Fortgeltung des Bayerischen Konkordats von 1924. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 97 (1), pp. 219-273.

MÜLLER, A. M. (2010) *Die französische Gesandtschaft in München in den Jahren der Weimarer Republik: Französische Politik im Spiegel der diplomatischen Berichterstattung*. München: Herbert Utz Verlag.

OTT, M. (28.11.2006). Bayerische Gesandtschaften (19./20. Jahrhundert). *Historisches Lexikon Bayerns*. Retrieved from: [https://www.historisches-lexikon-bayerns.de/Lexikon/Bayerische_Gesandtschaften_\(19./20._Jahrhundert\)](https://www.historisches-lexikon-bayerns.de/Lexikon/Bayerische_Gesandtschaften_(19./20._Jahrhundert)).

OTT, M. (10.04.2007). Staatsministerium des Äußern. *Historisches Lexikon Bayerns*. Retrieved from: https://www.historisches-lexikon-bayerns.de/Lexikon/Staatsministerium_des_%C3%84u%C3%9Fern.

ROTH, R. A. (2000). *Politische Landeskunde: Freistaat Bayern*. München: Bayerische Landeszentrale für politische Bildungsarbeit.

SCHMÖLLER, M. (2009). *Regionen weltweit vernetzt: Die regionalen Außenbeziehungen Bayerns*. Marburg: Tectum.

Seehofers Reise zu Putin sorgt für Kritik. (31.01.2016). *Focus Online*. Retrieved from: https://www.focus.de/politik/deutschland/international-seehofer-reise-zu-putin-kritik-auch-in-der-koalition_id_5251282.html.

TREML, M. (2020). Königreich Bayern (1806-1918). In M. TREML (Ed.), *Geschichte des modernen Bayern: Königreich und Freistaat* (pp. 15-184). München: Bayerische Landeszentrale für politische Bildungsarbeit.

VON ARNAULD, A. (2019). *Völkerrecht*, 4nd edition. Heidelberg: C. F. Müller.

WEGMAIER, A. (2011). Außenpolitik im Föderalismus: Die bayerisch-österreichische Salinenkonvention von 1957. Sankt Ottilien: EOS Verlag.

WEIGL, M. (07.08.2006). Auswärtige Gesandtschaften in München. *Historisches Lexikon Bayerns*. Retrieved from: https://www.historisches-lexikon-bayerns.de/Lexikon/Ausw%C3%A4rtige_Gesandtschaften_in_M%C3%BCnchen.

ZIEGLER, K.-H. (2007). *Völkerrechtsgeschichte*, 2nd edition. München: C. H. Beck.

