

# **The Stability of Self-Governance Arrangements**

## The Role of External Agents

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## I. INTRODUCTION

This paper presents a research agenda for analyzing the viability and stability of self-governance regimes and other arrangements to manage or prevent ethnic conflicts. It has two parts, and makes two main arguments. First, it shows that the existing theories (or ‘schools’) of institutional design in ethnically divided societies are useful to only a limited extent when addressing these issues and the rich variety of arrangements found in empirical cases, because they place too much emphasis on the nature and coherence of the general, macro-level political structures, and focus too narrowly on certain individual incentives. Second, we outline suggestions for a framework to analyze these individual incentives, which promises to better account for the empirically observed arrangements, and can be a starting point for developing a more comprehensive theory.

The democratic governance of ethnically divided societies poses particular challenges, especially in cases in which territorially concentrated groups demand to exercise their right to self-determination. While the international community is generally reluctant to accept unilateral declarations of independence, there is a significantly greater degree of enthusiasm to promote regimes of self-governance, that is, is the legally entrenched power of territorial entities to exercise public policy functions (legislative, executive and adjudicative) independently of other sources of authority in the state, but subject to the overall legal order of the state and any relevant international obligations. Self-governance as a strategy of preventing and settling ethnic conflict, thus, must be based on the recognition of group-specific concerns alongside and on par with concerns of individuals (independent of their ethnic identity) and the state.<sup>1</sup>

The promotion of self-governance by the international community normally goes hand-in-hand with the promotion of other mechanisms of conflict resolution, including power sharing, human and minority rights legislation, specific participation rights for members of minority groups, etc. As such, recent conflict resolution practice has manifested itself in institutional designs of a certain complexity that combine a range of mechanisms that are treated separately in most of the existing academic literature on the subject and some of which are rejected as morally unacceptable by some, while others are considered unfeasible to deal with the realities of self-determination conflicts.

A situation, thus, exists in which conflict resolution practice is substantially different from significant parts of traditional conflict resolution theory. Examining three main schools of conflict resolution—integrative and consociational power sharing and power dividing—and contrasting their analysis and recommendations with current policy to resolve self-determination conflicts, we question the ability of these theories to explain adequately when and why self-governance regimes can work effectively and how external agents (broadly defined) can contribute to this.

Our argument is that in order to understand better the conditions under which self-governance regimes can prove stable, the micro-level incentives embedded in the macro-models suggested by existing theories have to be studied more carefully. We do not claim

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<sup>1</sup> The definition of self-governance has been adapted from Wolff and Weller (2005).

that micro-level incentives have not received some attention already—as most ‘macro models’ are based on an underlying ‘micro logic’ derived from assumed actors’ incentives—but rather that these should be analyzed more extensively.

This argument is presented here in several steps: building on existing rational choice literature on institutions and institutional stability, we examine the meaning and requirements of stability in the context of self-governance regimes. This, we argue, means starting from certain assumptions, such as a focus on elites, self-interest, etc., and identifying the factors that influence the incentives of actors involved in the negotiation, implementation and operation of a self-governance regime. Being aware of these factors can then help us to determine the possible effects of external agents on actors’ incentives. Throughout the paper, we illustrate our arguments with evidence from conflict resolution arrangements and the involvement of external agents in the Balkans and some parts of the former Soviet Union (FSU) since the 1990s.

## II. INSTITUTIONAL DESIGN IN EXISTING THEORIES OF CONFLICT RESOLUTION

Existing theories of conflict resolution generally acknowledge the importance and usefulness of institutional design in conflict resolution, but offer rather different prescriptions as to the most appropriate models to achieve stable conflict settlements. Three such theories are of particular significance: the two different schools of thought on power sharing—consociationalism and integrationism—and the more recent theory of power dividing. We will discuss the main tenets of these three sets of theories in turn, focusing on their recommendations in three main areas of institutional design, which are introduced in section II.1. This discussion will necessarily be brief and, to an extent, generalizing and does not aim at a comprehensive examination of these theories. Nor do we attempt an assessment of how practically feasible or morally justifiable they are.

### *II.1. Main areas of institutional design*

As far as conflict resolution in divided societies is concerned, institutional design of these macro-level structures needs to address three broad sets of issues. These include (1) the composition and powers of the executive, legislative and judicial branches of government and the relationship between them; (2) the structure and organization of the state as a whole; and (3) the relationship between individual citizens, identity groups and the state. All these provisions ideally require robust legal entrenchment to ensure their durability and thus the predictability of the political process to which (former) conflict parties agree.

The key aspects of institutional design in area (1) relate, first, to the nature of the government system, i.e., whether it is a parliamentary, presidential or semi-presidential system. A second dimension is the issue of whether executive power sharing is mandatory, and if so, what the extent of prescribed inclusiveness is. Inclusiveness, at the same time, is also an important feature of legislative design and is primarily realized through the choice of an electoral system. Power sharing features and inclusiveness may also extend into the judicial branch, primarily in relation to provisions for the appointment of judges and prosecutors. A final issue in this regard is the overall relationship between the three institutions of government, that is, the degree of separation

of powers between them. While this partially relates to the choice of government system, it is also about the degree of independence of the judicial branch and its powers of legislative and executive oversight. Institutional design not only has certain outcomes in relation to the composition of the executive, legislative and judicial branches of government and the structure and organization of the state as a whole, but also entrenches them in different ways from hard international law to domestic legislation.

The most important institutional design challenge in area (2) has to do with the territorial organization of the state. While the principal choice is generally between unitary and federal systems, there is a great deal of variation within these two main categories, and there are a number of hybrid forms. The most important institutional design decision is about the number of layers of authority with substantive decision-making competences and the extent of these competences. Several further decisions follow from this. The first one relates to the structural and functional symmetry of the political-territorial organisation of the overall state. At one end of the spectrum is a state organized territorially in a completely symmetric fashion with all territorial entities enjoying the exact same degree of functional competences and an identical set of local political institutions (e.g., German or US federalism, the French regionalized state, or strictly unitary states). However, the nature of institutional design in divided societies may take a different approach. The competences enjoyed by different self-governing entities may differ, and/or they may exercise them through different sets of political institutions. For example, where territorial sub-state entities comprise ethnic groups distinct from that of the majority population, they may be granted additional competences to address the particular needs of their communities. In cases in which these sub-state entities are ethnically heterogeneous, executive power sharing, reflecting local ethnic and political demographics, might be an additional feature of designs aimed at conflict resolution. A second element of institutional design as far as the structure and organisation of the state as a whole are concerned relates to coordination mechanisms, including dispute resolution arrangements, between different layers of authority. This is primarily related to the different types of such mechanisms (e.g., cooptation, joint committees, judicial review) and their leverage (consultative vs. legally binding).

Institutional design in area (3) is about the recognition and protection of different identities by the state. On the one hand, this relates to human and minority rights legislation, that is, the degree to which every citizen's individual human rights are protected, including civil and political rights, as well as the extent to which the rights of different identity groups are recognized and protected. While there may be a certain degree of tension between them, such as between a human rights prerogative of equality and non-discrimination and a minority rights approach emphasizing differential treatment and affirmative action, the two need not be contradictory but may complement each other in ways that reflect the diversity of divided societies. Secondly, the relationship between individuals, groups and the state is about the degree to which institutional design favours particular groups and excludes others. This is related to whether different groups are given different status (e.g., constituent nations vs. minorities) and the political, economic and resource implications of this (e.g., mandatory inclusion in government, participation in proportional public sector job allocation, reception of public funding, etc.). In other

words, the question here is about the degree to which specific group identities are recognized and protected and how this manifests itself in the way in which the boundaries of authority are shaped by territory or population groups.

## *II.2. Liberal Consociationalism*

Consociational power sharing is most closely associated with the work of Arend Lijphart, who identified four structural features shared by consociational systems: a grand coalition government (between parties from different segments of society), segmental autonomy (in the cultural sector), proportionality (in the voting system and in public sector employment) and minority veto (Lijphart 1977: 25-52). Consociationalism has been developed further as a possible mechanism of interethnic accommodation in Lijphart's own later writings on the subject (e.g., Lijphart 1995, 2002), but more especially by John McGarry and Brendan O'Leary (McGarry 2006; McGarry and O'Leary 2004a,b; O'Leary 2005a,b; also Wolff 2003, 2004 and Weller and Wolff 2005). The most important modification of Lijphart's original theory is O'Leary's contention that 'grand coalition' (in the sense of an executive encompassing all leaders of all significant parties of all significant communities) is not a necessary criterion. Rather, O'Leary demonstrates that what matters for a democratic consociation "is meaningful cross-community executive power sharing in which each significant segment is represented in the government with at least plurality levels of support within its segment" (O'Leary 2005a: 13).<sup>2</sup>

The scholarly literature on consociationalism distinguishes between corporate and liberal consociational power sharing, the latter now the more common policy prescription among consociationalists.<sup>3</sup> The main difference between the two is that a "corporate consociation accommodates groups according to ascriptive criteria, and rests on the assumption that group identities are fixed, and that groups are both internally homogeneous and externally bounded," while "liberal ... consociation ... rewards whatever salient political identities emerge in democratic elections, whether these are based on ethnic groups, or on sub-group or trans-group identities" (McGarry 2006: 3; also Lijphart 1995, O'Leary 2005a).

Territorial self-governance is a significant feature within the liberal consociational approach which, in this context, emphasizes that the self-governing territory should define itself from the bottom up.<sup>4</sup> Liberal consociationalists suggest arrangements in

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<sup>2</sup> On this basis, O'Leary (2005a: 12-13) distinguishes between three sub-types of democratic (i.e., competitively elected) consociation: complete (executive composed of all leaders of all significant segments), concurrent (all significant segments represented, and executive has at least majority support in all of them), and weak (all significant segments represented, and executive has at least one segmental leadership with only plurality support).

<sup>3</sup> Corporate consociationalism, however, is still evident to some extent in political practice: for example, Bosnia and Herzegovina, under the original Dayton Accords, Northern Ireland under the 1998 Agreement, Lebanon under the National Pact and under the 1989 Ta'if Accord, Cyprus under the 1960 constitution and proposed (but rejected) Annan Plan display features of pre-determined arrangements based on ascriptive identities.

<sup>4</sup> In the context of Iraq, McGarry (2006: 6-7) explains how this process has been enshrined in the Iraqi constitution: "Kirkuk can choose to join Kurdistan if its people want. Governorates in other parts of the country are permitted to amalgamate, forming regions, if there is democratic support in each governorate. In this case, a twin democratic threshold is proposed: a vote within a governorate's assembly and a

which there are more than two, and ideally even more than three, self-governing entities within a given state, as this increases the chances of state survival. In contrast to integrationists, however, liberal consociationalists reject the idea of partitioning existing sub-state entities against the wishes of the local population to create, artificially, a greater number of such entities. Moreover, liberal consociationalists equally support the principle of asymmetric devolution of powers, i.e., the possibility for some self-governing entities to enjoy more (or fewer) competences than others, depending on the preferences of their populations (cf. McGarry 2007).

Self-governance is complemented with what liberal consociationalists term ‘shared rule’, i.e., the exercise of power at and by the centre across the state as a whole. While the other three key features of Lijphartian consociationalism (grand coalitions, proportionality, and minority veto rights) continue to be favoured, the emphasis for liberal consociationalists is on cooperation and consensus among democratically legitimized elites, regardless whether they emerge on the basis of group identities, ideology or another common interest. For example, they tend to favour parliamentary systems,<sup>5</sup> proportional (PR list) or proportional preferential (STV) electoral systems, decision-making procedures that require qualified and/or concurrent majorities (cf. Lijphart 2004, O’Leary 2005a, O’Leary et al 2005; also Wolff 2003). Thus, liberal consociationalists prefer what O’Leary refers to as ‘pluralist federations’ in which co-sovereign sub-state and central governments have mostly clearly defined exclusive competences whose assignment to either level of authority is constitutionally and, ideally, internationally, protected, in which decision-making at the centre is consensual (between self-governing entities and the centre, and among elites representing different interest groups), and which recognize, and protect the presence of different identities (O’Leary 2005b).

In order to protect individuals against the abuse of powers by majorities at the state level or the level of self-governing entities, liberal consociationalism offers two remedies—the replication of its core institutional prescriptions within the self-governing entity,<sup>6</sup> and the establishment and enforcement of strong human and minority rights regimes both at the state and sub-state levels. In addition, the rights of communities—minorities and majorities alike—are best protected in a liberal consociational system if its key provisions are enshrined in the constitution and if the interpretation and upholding of the constitution is left to an independent and representative constitutional court whose decisions are binding on executive and legislature (cf. O’Leary 2005b: 55-8).

### *II.3. Integrative Power Sharing*

Integrative power sharing emphasises that rather than designing rigid institutions in which elected representatives have to work together *after* elections, “intergroup political

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referendum. ... It is also possible for Shi’a dominated governorates that do not accept SCIRI’s vision to remain separate, and, indeed for any governorate that may be, or may become, dominated by secularists to avoid inclusion in a sharia-ruled Shiastan or Sunnistan.”

<sup>5</sup> Note, however, that, empirically, collective presidential systems are as widespread in existing functioning consociations than parliamentary ones. Cf. O’Leary (unpublished).

<sup>6</sup> On regional consociations, see Wolff (2004).

accommodation” is achieved by “electoral systems that provide incentives for parties to form coalitions across group lines or in other ways moderate their ethnocentric political behaviour” (Horowitz 2004: 507-8). This school of thought is most prominently associated with the work of Donald Horowitz (1985[2000], 1990, 1991, 2002), and more lately with that of Timothy Sisk (1996), Benjamin Reilly (2001) and Andreas Wimmer (2003). While Horowitz’s remains the standard-setting integrationist work, Reilly’s theory of centripetalism tries to encourage, among others, “*electoral incentives* for campaigning politicians to reach out to and attract votes from a range of ethnic groups other than their own...; (ii) *arenas of bargaining*, under which political actors from different groups have an incentive to come together to negotiate and bargain in the search for cross-partisan and cross-ethnic vote-pooling deals...; and (iii) *centrist, aggregative political parties* or coalitions which seek multi-ethnic support” (Reilly 2001: 11; emphasis in original). This is partially echoed by Wimmer in his proposals for the Iraqi constitution to introduce “an electoral system that fosters moderation and accommodation across the ethnic divides,” including a requirement for the “most powerful elected official ... to be the choice not only of a majority of the population, but of states or provinces of the country, too,” the use of the alternative vote procedure, and a political party law demanding that “all parties contesting elections ... be organised in a minimum number of provinces” (Wimmer 2003). In addition, Wimmer (2003: 123-5) advocates non-ethnic federalism, at least in the sense that there should be more federal entities than ethnic groups, even if a majority of those entities would be more or less ethnically homogeneous or be dominated by one ethnic group. Furthermore, “a strong minority rights regime at the central level, a powerful independent judiciary system and effective enforcement mechanisms are needed” (Wimmer 2003: 125).

In what remains a classic work in the field of ethnic conflict and conflict resolution theories, Donald Horowitz (1985 [2000]) discusses a range of structural techniques and preferential policies to reduce ethnic conflict. Among them, he emphasizes that “the most potent way to assure that federalism or autonomy will not become just a step to secession is to reinforce those specific interests that groups have in the undivided state” (Horowitz 1985 [2000]: 628). Horowitz also makes an explicit case for territorial self-governance (i.e., federalism) in his proposals for constitutional design in post-apartheid South Africa (Horowitz 1991: 214-226) and argues, not dissimilar to power dividing advocates, for federalism based on ethnically heterogeneous entities. Furthermore, Horowitz emphasizes the usefulness of electoral systems that are most likely to produce a Condorcet winner, i.e., a candidate who would have been victorious in a two-way contest with every other candidate in a given constituency. The most prominent such electoral systems are the alternative vote and the Coombs rule, both of which are preferential majoritarian electoral systems, which are said to induce moderation among parties and their candidates as they require electoral support from beyond their own ethnic group in heterogeneous, single-seat constituencies (Horowitz 2003: 122-125).

#### *II.4. Power Dividing*

In the context of conflict resolution, the theory of power dividing has been put forward most comprehensively by Philip Roeder and Donald Rothchild (2005). They see power

dividing as “an overlooked alternative to majoritarian democracy and power sharing” as institutional options in ethnically divided societies (Rothchild and Roeder 2005: 6). Three strategies that are said to be central to power-dividing – civil liberties, multiple majorities, and checks and balances – in practice result in an allocation of power between government and civil society such that “strong, enforceable civil liberties ... take many responsibilities out of the hands of government,” while those that are left there are distributed “among separate, independent organs that represent alternative, cross-cutting majorities.” As a result, “[f]or the most important issues that divide the ethnic groups, but must be decided by a government common to all ethnic groups, power-dividing institutions balance one decisionmaking centre against another so as to check each majority” (Rothchild and Roeder 2005: 15).

The key institutional instruments by which power dividing is meant to be realized are, first of all, extensive human rights bills that are meant to leave “key decisions to the private sphere and civil society” (Rothchild and Roeder 2005: 15). Second, separation of powers between the branches of government and a range of specialized agencies dealing with specific, and clearly delimited, policy areas are to create multiple and changing majorities, thus “increas[ing] the likelihood that members of ethnic minorities will be parts of political majorities on some issues and members of any ethnic majority will be members of political minorities on some issues” (Rothchild and Roeder 2005: 17). Third, checks and balances are needed “to keep each of these decisionmaking centres that represents a specific majority from overreaching its authority” (ibid.). Thus, the power dividing approach favours presidential over parliamentary systems, bicameral over unicameral legislatures, and independent judiciaries with powers of judicial review extending to acts of both legislative and executive branches. As a general rule, power dividing as a strategy to keep the peace in ethnically divided societies requires “decisions [that] can threaten the stability of the constitutional order, such as amendments to peace settlements” be made by “concurrent approval by multiple organs empowering different majorities” (Rothchild and Roeder 2005: 17).

### *II.5. The Different Theories Compared*

The institutional arrangements recommended by the three main theories of conflict resolution are summarized in Table 1. We can derive various conclusions about the current academic and policy debates about how to establish sustainable institutional settlements in cases of self-determination conflicts from this. Most generally, it demonstrates that while there are fundamental differences in the underlying assumptions about how such settlements can succeed, the institutional arrangements that complement the basic prescriptions of each approach show many similarities, although there are some a few significant differences. The high degree of similarity is surprising, given the sometimes stark and confrontational nature of the debates between the different theories, as exemplified by Roeder and Rothchild’s (2005) case against power sharing approaches, and the disagreement between Lijphart (1985) and Horowitz (1991) about the appropriate constitutional design for a post-apartheid South Africa. It is useful to highlight some specific similarities and differences in the recommendations of the three theories, especially in the first two areas introduced in section II.1.



Table 1: Main Institutional Arrangements Recommended by Different Theories of Conflict Resolution

	<b>Integrationist Power sharing</b>	<b>Liberal Consociational Power sharing</b>	<b>Power dividing</b>
<b>Principle recommendation</b>	Interethnic cooperation and moderation induced by electoral system design	Interethnic cooperation at elite level induced by institutional structure requiring jointness of executive decision making	Cooperation between different, changing coalitions of interest induced by separation of powers
<b>Government system</b>	Presidential	Parliamentary or Collective/Rotating Presidential system	Presidential
<b>Executive power sharing</b>	Yes: voluntary	Yes: guaranteed	No, except in initial transition phase after civil wars
<b>Electoral system</b>	Plurality preferential	PR list or PR preferential	Plurality
<b>Independent judicial branch</b>	Yes	Yes	Yes
<b>Unitary vs. federal territorial organisation</b>	Federal: heterogeneous units	Federal: units based on self-determining communities	Federal: heterogeneous units
<b>Structural symmetry</b>	Yes	Possible, but not necessary	Yes
<b>Functional symmetry</b>	Yes	Possible, but not necessary	Yes
<b>Individual vs. group rights</b>	Emphasis on individual rights	Emphasis on combination of individual and group rights	Emphasis on individual rights
<b>Recognition of distinct identities</b>	Yes, but primarily as private matter	Yes, but as private and public matter	Yes, but primarily as private matter
<b>Legal entrenchment</b>	Yes	Yes	Yes

First, in the case of area (1), the nature of the government system, all three approaches favour independent judicial systems. However, a key difference between consociationalists on the one hand, and integrationists and power-dividers, on the other, is their disagreement over the utility of parliamentary or presidential systems, i.e., whether the chief executive of the government should be directly elected or emerge from within parliament. However, while Lijphart favours parliamentary systems, McGarry and O'Leary are open to collective or rotating presidential systems, assuming that what is crucial for consociation is not whether powers are fused or divided, but whether the

different communities are represented in core institutions. Empirically, among our cases, this is borne out in Bosnia and Herzegovina. On the issue of the legal entrenchment of conflict settlements, all three theories of conflict resolution emphasise the importance of judicial institutions and enforcement mechanisms to uphold the letter and spirit of settlements. It should be noted, however, that while they all recognize the role of external actors and guarantees, they are divided on the usefulness of international intervention: power-dividers see a limited, transitional role for them; advocates of both consociational and integrative power sharing embrace them more readily as facilitators and guarantors of settlements. The difference between the two theories of power sharing, however, is an important one. Integrationists think that their institutions will be self-sustaining after they are set up with outsiders help, and that consociational institutions will need to be constantly propped up by outsiders; whereas consociationalists think that their preferred arrangements are much more likely to be acceptable to local elites and therefore less dependent on external imposition than integrative institutions.

Second, on the issue of the structure and organization of the state (area 2), it is worth noting that both varieties of power sharing, albeit to differing degrees, allow for asymmetric structures and functions. While liberal consociational power sharing is principally in favour of territorial configurations reflecting the expressed wishes of self-defined communities (whatever the basis of such self-definition), integrative power sharing is not opposed to the use of territorial self-governance arrangements in either symmetric (federalism) or asymmetric (autonomy) forms. However, crucially in this respect, integrationists and advocates of power dividing tend to agree in their preference for territorial self-governance to be based on 'administrative' rather than 'ethnic' criteria, in an effort to prevent the institutionalisation of group identities and enable coalitions of interest based on policy rather than identity (integrationists) or multiple and changing majorities (power dividers).

None of the three theories of conflict resolution discussed above offers much specific guidance on this issue of power allocation to different vertical layers of authority. Some inferences can nevertheless be made. Power-dividers, who express a certain preference for the American model of federalism (e.g., Roeder 2005), favour strong central governments and are thus likely to opt for residual authority to remain with the central government. A similar tendency can be observed for advocates of integrationist power sharing (cf., for example, Wimmer 2003). For the consociational school of power sharing, it is important that power sharing is a more attractive option to conflict parties than recourse to violence, hence its advocates should be interested in substantive powers assigned to territorial self-government entities, which is best done either by way of assigning residual authority to these entities or by drawing up specific lists which clearly distribute powers between central and sub-state governments. The three theories of conflict resolution also offer some limited guidance on how they see the issue of coordination between different layers of authority best addressed. All three generally emphasize the importance of a law-based system and thus of the role played by independent judicial institutions. Consociationalists further allow for additional coordination mechanisms. In fact, a key characteristic of "regional consociations" is the presence of such coordination mechanisms (cf. Wolff 2004). Integrationists, on the other

hand, even where they explicitly discuss federal-type arrangements (e.g., Horowitz 1991: 214-226, Wimmer 2003), say very little on how policy be best coordinated in multi-layered systems of authority.

Before investigating the nature of conflict settlements in practice, it is useful to reflect briefly on the nature and underlying assumptions shared by the three theories. Advocating the resolution of self-determination conflicts through institutional design assumes that such conflicts can be resolved through an institutional bargain that establishes macro-level structures through which micro-level incentives are provided to elites (and their supporters). This essentially follows a rational choice approach to institutions that presumes that institutions are chosen and will be stable when the actors involved in them have—and will continue to have—an incentive to adhere to them and, thus, ‘reproduce’ them. Thus, one needs to distinguish between incentive structures, i.e., the macro-level frameworks that allow for incentives to be enjoyed by elites and their supporters in a predictable and repetitive way, and the incentives themselves. From this perspective, self-governance and other conflict resolution mechanisms are the macro-level structures which provide incentives such as power, status, security, economic gain, etc. As discussed in much more detail in section IV, the stability of these macro-level structures, from a rational choice perspective, depends on both the general desirability of the incentives they provide and whether these incentives can be gained through alternative arrangements. The three discussed theories, however, primarily focus on a limited number of incentives, namely, political power and status, and the recognition of identity. We will argue in section IV that it is necessary to consider a broader range of incentives.

### III. THE REALITY OF INSTITUTIONAL DESIGN: SOME BALKAN AND FSU CASES

What do institutions aimed at conflict resolution look like in practice? How do they compare to the recommendations made by the three main theories of conflict resolution? In this section, we compare and contrast a number of relevant cases: Bosnia and Herzegovina, Crimea/Ukraine, Gagauzia/Moldova, and Macedonia.<sup>7</sup> The comparative analysis is structured according to the various dimensions of areas of institutional design introduced in section II: the composition and powers of the executive, legislative and judicial branches of government and the relationship between them (focusing on the nature of the government system and the choice of the electoral system, the sharing of powers, and legal entrenchment); the structure and organisation of the state as a whole (focusing on symmetry and asymmetry in institutional design, distribution and separation of powers, and coordination mechanisms); and the relationship between individual citizens, identity groups and the state (focusing on human and minority rights provisions, and recognition and protection of identities). The four cases differ in their nature and

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<sup>7</sup> Our analysis is mostly based on the following documents: “General Framework Agreement for Peace in Bosnia and Herzegovina” ([www.intstudies.cam.ac.uk/centre/cps/documents\\_bosnia\\_dayton.html](http://www.intstudies.cam.ac.uk/centre/cps/documents_bosnia_dayton.html)), “The Constitution of Ukraine” ([www.rada.kiev.ua/const/conengl.htm](http://www.rada.kiev.ua/const/conengl.htm)), “The Constitution of the Autonomous Republic of Crimea” ([www.rada.crimea.ua/index\\_konstit.html](http://www.rada.crimea.ua/index_konstit.html)), “The Law on the Special Legal Status of Gagauzia (Gagauz Yeri)” ([www.intstudies.cam.ac.uk/centre/cps/documents\\_moldova\\_law.html](http://www.intstudies.cam.ac.uk/centre/cps/documents_moldova_law.html)), “Framework Agreement” ([www.intstudies.cam.ac.uk/centre/cps/documents\\_macedonia\\_frame.html](http://www.intstudies.cam.ac.uk/centre/cps/documents_macedonia_frame.html)), “Law on Local Self-government of the Republic of Macedonia” ([www.urban.org/PDF/mcd\\_locgov.pdf](http://www.urban.org/PDF/mcd_locgov.pdf)).

complexity, but they clearly demonstrate that actual institutional designs are more complex than anticipated and recommended by any of the three theories, and combine and mix features that these theories would consider to be inconsistent or incompatible.

*III.1. The Composition and Powers of the Executive, Legislative and Judicial Branches of Government and the Relationship between Them*

In line with the suggestions shared by the three theories, all cases considered here have independent judicial systems, at least in the structural sense that a formal judicial branch of government exists alongside the executive and legislature. As we saw earlier, however, the theories disagreed over the utility of parliamentary or presidential systems, i.e., whether the chief executive of the government should be directly elected or emerge from within parliament. These differences are indeed reflected in the practical aspects of the conflict settlements discussed here (see Table 2).

Table 2: Parliamentary vs. Presidential Systems

<b>Central parliamentary system</b>	<b>Central presidential system</b>	<b>Sub-state parliamentary system</b>	<b>Sub-state presidential system</b>
	Bosnia and Herzegovina*	Federation of Bosnia and Herzegovina	
Macedonia			
Moldova			Gagauzia
	Ukraine*	Crimea	

\*Denotes semi-presidential system

Of the parliamentary systems, Crimea is the only one to use plurality electoral systems. All others rely on PR systems for the election of members of their respective parliaments. In presidential systems, both at central and sub-state levels of government, the method of electing presidents is by simple majority vote with a second-round run-off between the two candidates topping the first-round ballot. The lower chambers of parliament at the central level in these systems are elected by either parallel mixed systems (Ukraine) or List PR (BiH). At sub-state level, the electoral system for parliament in Gagauzia is plurality in single-member districts.

On the issue of the sharing of powers, constitutional engineers have developed complex and innovative ways to combine traditional structures of horizontal power sharing and vertical power dividing. All the cases examined here are examples of state structures characterised by multiple vertical layers of authority and, in all but one of them, formal horizontal structures of power sharing exist as well (see Table 3). Furthermore, the case of Macedonia demonstrates that the absence of formal structures of power sharing at the centre does not preclude power nevertheless being shared to some extent. This appears to result from Macedonia’s demographic balances, structure of the party system and electoral formula, which combine in a way that make the formation of government

coalitions between ethnic Macedonian and ethnic Albanian parties likely.

Table 3: Horizontal Executive Power Sharing at Central and Sub-State Levels of Authority

<b>No horizontal power sharing</b>	<b>Horizontal power sharing at the centre</b>	<b>Horizontal power sharing at sub-state level only</b>	<b>Horizontal power sharing at the centre and sub-state level</b>
	Macedonia <sup>8</sup> Moldova <sup>9</sup>	Crimea <sup>10</sup>	BiH/Federation of BiH <sup>11</sup>

Horizontal power sharing at the sub-state level exists in all those cases where there is significant ethnic or other diversity within the region, i.e., where mere devolution of powers to a lower level of authority would simply replicate the conflict at the state level. This is clearly the case in Bosnia and Herzegovina (Federation level), which, more specifically, can also be described as a “nested consociation”, that is consociational structures exist at both the federation and state level, and in some cases even at levels below the federation structure. In contrast to the ‘abundance’ of power sharing arrangements in the case of Bosnia, mandatory state and sub-state horizontal power sharing mechanisms are lacking in Macedonia, but their absence can be explained with reference to the same territorial, demographic and political factors. The territorial concentration of ethnic Albanians, the range of powers devolved to the municipal level and the opportunity for citizens to establish a further layer of authority at the neighbourhood level addresses a wide range of self-government concerns among ethnic Albanians. In addition, the numerical strength of ethnic Albanians in the Macedonian polity and the structure of its party and electoral systems guarantee significant representation of ethnic Albanian parties in the Macedonian parliament and make their participation in a coalition government at least highly likely. This strength of Albanians, which allows them to benefit fully from the implementation of local autonomy as foreseen in the Ohrid Agreement, is another explanation for the absence of horizontal power sharing: the geographical concentration and size of the minority make a solution based on substantive regional autonomy less attractive for ethnic Macedonians, as it could be construed as a first step to the partition of the country. Thus, under certain conditions a vertical division of powers can function as a useful substitute for formal structures of horizontal power sharing both at central and sub-state level. The fact that

<sup>8</sup> Even though there is no mandatory power sharing at any level in Macedonia, the power balance of national politics makes coalitions at the centre between ethnic Macedonian and ethnic Albanian parties highly likely (Friedman 2005). In fact, so far ethnic Albanian parties have been present in all coalition governments since Macedonia’s independence, except for the 1990-1992 “government of experts”, which was not structured around political parties, but also included three ethnic Albanians.

<sup>9</sup> To the extent that members of the executive committee of Gagauzia are co-opted into the corresponding structures of the central government, there is a certain degree of power sharing at the centre.

<sup>10</sup> Power sharing at regional level is not mandatory, but a likely outcome of the regional demographic and power balances.

<sup>11</sup> Mandatory power sharing at regional level only applies to the federation and cantons within it.

this can work only under specific conditions is highlighted by the example of Bosnia, where despite wide-ranging devolution, horizontal power sharing remains mandatory at the level of state institutions and at the level of the Bosnian-Croat Federation.

It is important to note that the absence of formal power sharing structures, i.e., the lack of a consociational requirement for a cross-community representative executive, should not be equated with either the absence of power sharing at all, or the derogation of communal identities from the public to the private sphere. Furthermore, voluntary executive power sharing arrangements that emerge do not necessarily do so on the basis of a specific electoral system. Integrationists' favourite AV model is absent in all relevant cases—deputies to the Crimean Supreme Council are, since 1998, elected on the basis of a single-seat non-preferential majoritarian system, and Macedonia's members of parliament are elected by a parallel mixed system.

The legal entrenchment of institutional structures of horizontal and vertical power sharing and power dividing is important to prevent the arbitrary abrogation of devolved powers and thus to ensure conflict parties of the relative permanence of the institutions they agreed upon. In principle, guarantees can be either international or domestic, and in the latter case they can be part of a country's constitution or other legislation (see Table 4). Reflecting the complexity of many conflicts, guarantees often exist at more than one level. In addition, international guarantees can take the form of hard guarantees (international treaties) or of 'soft' guarantees (non-binding standards and norms, declarations of intent, etc.).

Table 4: Guarantees of Self-Governance Institutions

<b>International Guarantees</b>		<b>Domestic Guarantees</b>	
<b>'Hard'</b>	<b>'Soft'</b>	<b>Constitutional Guarantees</b>	<b>Guarantees in Specific Laws</b>
BiH	Macedonia	BiH Crimea Gagauzia Macedonia	Crimea Gagauzia Macedonia

Table 4 illustrates that there is great variance across the cases considered here. In terms of the strength of the protection that they afford established horizontal and vertical power sharing and power dividing structures, hard international guarantees are preferable over other forms of guarantees, provided there is significant commitment of the international community to uphold its guarantees. In Bosnia and Herzegovina this commitment is unquestionable with the presence of peacekeeping forces in both territories and with the investment that has been made over the past years by the international community in order to foster economic development, and institution-building and reform. Here, an international body with a clear mandate (the multi-national Peace Implementation Council) exists for this purpose.

Soft international guarantees primarily manifest themselves in the form of the involvement of international organisations in the negotiation, implementation, and (potentially) operation of a particular peace agreement. While not of the same legally binding and thus potentially enforceable status as hard international guarantees, a significant presence of international agents is often instrumental in shaping preference and opportunity structures for the conflict parties. In the case studies, this has taken different forms. Most prominently, in Bosnia and Macedonia, an international troop presence, as well as the involvement of various international governmental and non-governmental organisations on an unprecedented scale, have, for better or worse, been instrumental in the implementation and operation of the respective agreements thus far.

At the level of domestic guarantees, constitutional guarantees are more entrenched than those which have their source in normal legislation. Incorporation of specific provisions of peace agreements into constitutions is a common way of realising constitutional guarantees and has occurred in Bosnia, Crimea, and Macedonia. In the case of Gagauzia, the constitution of Moldova specifically allows for territorial autonomy and makes specific mention of Gagauzia while an organic law provides details for the realisation of Gagauzia’s autonomous status. This organic law is ‘special’ in the sense that a three-fifths majority in the Moldovan parliament is required for any amendments. Finally, guarantees through specific laws exist in the cases of Crimea, Gagauzia, and Macedonia.

### *III.2. The Structure and Organisation of the State as a Whole*

The first issue to consider are questions about symmetry and asymmetry of institutional design, starting with the number of layers of authority that actually exist across the four case studies (Table 5).<sup>12</sup>

Table 5: Variation in the Vertical Layering of Authority

<b>Two-layered Structures</b>	<b>Three-layered Structures</b>	<b>Multi-layered Structures</b>
Macedonia	Crimea	BiH Gagauzia

Table 5 illustrates that self-governance regimes rely predominantly on more than two layers of authority. In the case of Crimea, these three layers are central, sub-state and local government. In Macedonia, on the other hand, the middle level of government – the region – is missing, reducing the levels of government to two, which are both prescribed in the constitution and whose functions and powers are detailed there and in relevant legislation. There also exists a legally guaranteed opportunity for citizens to develop a further layer of government at the level of neighbourhoods, but this is regulated by by-laws of the individual local governments and thus a matter of local decision-making

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<sup>12</sup> McGarry (2007) provides an excellent discussion of the usefulness of asymmetric designs for conflict resolution.

rather than of state construction. In the cases of Bosnia and Herzegovina and Gagauzia more than three levels of government exist. In Bosnia and Herzegovina, this is a result of the interplay of domestic (i.e., state and sub-state), regional and international factors in the process of state creation at Dayton, leading to a complex federal-confederal structure of the state. In Gagauzia, a pre-existing three-layered structure was amended to accommodate the creation of the Territorial Autonomous Unit of Gagauzia.

Another way of looking at structural types of vertically layered authority is to examine the degree to which these cases represent institutions that are structurally and/or functionally symmetric or asymmetric (Tables 6-8),<sup>13</sup> as this perspective provides a more comprehensive picture of the structure of the entire polity concerned and the place and status of territorial self-governance institutions within it.

Table 6: Structural Symmetry and Asymmetry of Institutions

Structural Symmetry	Structural Asymmetry	
	Single Asymmetry	Multiple Asymmetry
Macedonia	Crimea	BiH Gagauzia <sup>14</sup>

Table 7: Functional Symmetry and Asymmetry of Institutions

Functional Symmetry	Functional Asymmetry
Macedonia	BiH Crimea Gagauzia

Tables 6 to 8 indicate that there is no clear-cut predominance of symmetric or asymmetric forms of institutional structures across the case studies, but that from a functional perspective, i.e., the way in which powers and functions are distributed horizontally at the relevant levels of government in a polity, asymmetry is more frequent than symmetry. In other words, the vertical layering of authority, regardless whether it is structurally ‘coherent’ across a given state or not, facilitates asymmetric distribution of powers and functions, thus enabling central governments and specific regions to create a special

<sup>13</sup> Structural asymmetry is meant to signify the existence of territorial entities that do not ‘fit’ the overall construction of the state, i.e., an autonomous territory in an otherwise unitary state as is the case with Crimea. Functional asymmetry is meant to signify that some territorial entities enjoy a different measure of competences, e.g., have wider legislative powers than others. “Multiple asymmetry” simply means that more than one such structural and/or functional asymmetry exists, and that the asymmetric entities in themselves are different from one another in terms of territorial status and/or competences.

<sup>14</sup> This presumes a future reintegration of Transnistria into the Moldovan polity which would give this entity a similar status, but more competences than Gagauzia.



relationship in the sense that more powers and functions or parts thereof are devolved to a particular region, which thereby acquires greater autonomy in a wider range of policy areas compared to other territorial entities in the same country.

Table 8: Structural and Functional Symmetry and Asymmetry of Institutions Compared

	Structures			Functions	
	Symmetric	Single asymmetric	Multiple asymmetric	Symmetric	Asymmetric
<b>BiH</b>			X		X
<b>Crimea</b>		X			X
<b>Gagauzia</b>			X		X
<b>Macedonia</b>	X			X	

One of the key questions to ask of any self-governance regime is where powers rest; i.e., how different competences are allocated to different layers of authority and whether they are their exclusive domain or have to be shared between different layers of authority. As with other dimensions in this analysis, there is a certain degree of context-dependent variation across the cases under examination. Variation exists primarily with regard to the way in which powers are allocated and the degree of flexibility concerning new fields of policy-making not relevant or not included at the time a specific agreement was concluded.

The principle mechanism to handle the distribution of powers is the drawing up of lists that enumerate precisely which powers are allocated to which levels of authority and/or which are to be shared between different such levels. These lists can be very specific for each layer of authority (the list of cases examined in this paper, however, did not provide empirical evidence for this) or they can be specific for one or more layers and ‘open-ended’ for others (as in the four cases considered here). The key difference in the latter case is which layer of authority has an ‘open-ended’ list, i.e., which layer retains residual authority for any partly devolved power or any other policy area not explicitly allocated elsewhere (see Table 9).

Table 9: Power Allocation in Self-governance Regimes

Specific Lists	Combination of Specific and ‘Open-ended’ Lists	
	Open-ended list at centre	Specific list at centre
	Crimea Gagauzia Macedonia	BiH

In Crimea, Gagauzia, and Macedonia, the centre holds residual authority over all matters not expressly devolved to the lower layers of authority, while in Bosnia and Herzegovina the two entities retain all the competences not explicitly delegated to the centre (with the qualification that in the case of Bosnia and Herzegovina, the Federation cantonal institutions assume most of these powers from the Federation entity).

Finally, the distribution and separation of powers, horizontally and vertically, in complex power sharing systems requires mechanisms for the coordination of law and policy-making. This is generally an important issue in the operation of any multi-layered system of government, but in the context of self-determination conflicts it assumes additional significance as coordination failures not only have an impact on the effectiveness of government but also have repercussions for the perception of the usefulness of a particular institutional structure to resolve a conflict. The cases studied in this analysis suggest that, although there is a wide spectrum of individual coordination mechanisms, these can be grouped into four distinct categories: co-optation, joint committees and implementation bodies, judicial review and arbitration processes, and direct intervention by the international community (see Table 10).

Table 10: Coordination Mechanisms in Self-governance Regimes

<b>Co-optation</b>	<b>Joint Cttees. and Implementation Bodies (including ad-hoc bodies sponsored by international organisations)</b>	<b>Judicial Review and Arbitration</b>	<b>Direct Intervention by the International Community</b>
Gagauzia	Gagauzia Macedonia	BiH Crimea Gagauzia Macedonia	BiH

As Table 10 indicates, with the exception of Crimea, all the cases exhibit at least two different coordination mechanisms, with one of them always (in the case of Crimea, the only one) being judicial review and arbitration processes. This suggests that there is a strong reliance upon the legal regulation of the relationships between different layers of public authority and an emphasis on the separation of powers between the different branches of government, creating an independent judiciary. This is similar to any other country which has adopted the rule of law as a basic principle of running its own affairs. It is therefore more interesting to consider the other three types of coordination mechanisms in greater detail with a view to examining the degree to which they are the specific results of adopting self-governance regimes as settlements for self-determination conflicts.

Co-optation, as adopted in Moldova, is a mechanism to ensure the representation of sub-state level officials (from Gagauzia) at the centre. Sub-state level officials are *ex officio* members of relevant central government departments. This arrangement is symbolic and emphasizes the special relationship between central government and autonomous region. In the case of Gagauzia, it is also necessary as the autonomous entity is an artificial construction from an administrative-territorial point of view and does not fit into the pre-existing structures of authority in Moldova. Co-optation thus becomes a potential mechanism to deal with this kind of irregularity and ensure that the special circumstances of the autonomous regions are borne in mind in the process of state-level law and policy-making. Co-optation is notably absent in the similar case of Crimea where the Representative Office of the President of Ukraine acts, in part, as a coordination mechanism with oversight, but without executive powers.

In the context of coordination between different vertical layers of authority in self-governance regimes, the need for joint committees and implementation bodies often arises from two sources – to find common interpretations for specific aspects of agreements and regulations and to coordinate the implementation of specific policies at state and sub-state levels. An example of the former is Gagauzia, while the latter can be found in Macedonia (inter-ethnic relations). Unique to Bosnia and Herzegovina is the direct intervention of the international community as a mechanism to coordinate law and policy-making. Here, powerful international officials retain significant powers enabling them to intervene directly into the political processes of the two entities. This results primarily from the unprecedented involvement of the international community in the process of resolving the underlying three-way self-determination conflict and the responsibility that international agents thereby assumed for post-conflict state construction, as well as from the particularly bitter nature of the disputes concerned.

### *III.3. The Relationship between Individual Citizens, Identity Groups and the State*

Relevant human and minority rights provisions exist in all cases included in this analysis, albeit to differing degrees. Applicable law includes international and regional standards and more specific state-wide, and in some cases local, human and minority rights legislation, as summarised in Tables 11-13.

This is not the place to examine in detail the legal provisions contained in any of these documents, nor the degree to which law translates into policy and is enforced in the countries covered by this comparative analysis. The general trend in legal provisions for human and minority rights, however, is obvious in that constitutional human rights provisions are universally present and in that all countries are states parties to the key international conventions. There is a slight emphasis on individual human rights over (group-specific) minority rights, which is consistent with recommendations of power dividers and integrationists. Consociationalists, too, appreciate the value of individual human rights provisions, but their recommendations do not caution against the parallel use of minority rights provisions, which is consistent with their generally more pronounced emphasis on the recognition and protection of (self-determined) group identities.

Table 11: International Human and Minority Rights Instruments<sup>15</sup>

	UN Membership	Convention on the Prevention and Punishment of the Crime of Genocide	International Convention on the Elimination of All Forms of Racial Discrimination	International Covenant on Economic, Social, and Cultural Rights	International Covenant on Civil and Political Rights	Optional Protocol to the International Covenant on Civil and Political Rights	UNESCO Membership	UNESCO Convention against Discrimination in Education
<b>BiH</b>	Yes	1992	1993	1993	1993	1995	Yes	1993
<b>Macedonia</b>	Yes	1994	1994	1994	1994	1994	Yes	1997
<b>Moldova</b>	Yes	1993	1993	1993	1993	2005	Yes	1993
<b>Ukraine</b>	Yes	1954	1969	1973	1973	1991	Yes	1962

Table 12: Regional Human and Minority Rights Instruments: Europe<sup>16</sup>

	Council of Europe Membership	(European) Convention for the Protection of Human Rights and Fundamental Freedoms	(European) Framework Convention for the Protection of National Minorities	European Charter for Regional or Minority Languages
<b>BiH</b>	Yes	2002	2000	(2005)*
<b>Macedonia</b>	Yes	1997	1998	(1996)*
<b>Moldova</b>	Yes	1997	1998	(2002)*

<sup>15</sup> The table reflects the status as of 1 November 2006, and is based on information available at [www.ohchr.org](http://www.ohchr.org). With the exception of Moldova, the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions had not been signed by any of the countries concerned by 18 December 2006.

<sup>16</sup> Unless indicated otherwise, dates in the columns indicate entry into force

<b>Ukraine</b>	Yes	1997	1998	2006
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\*: Not yet ratified

Table 13: Domestic and Local Human and Minority Rights Provisions

	Constitutional Human Rights Provisions	Constitutional Minority Rights Provisions	State-wide Minority Rights Legislation	Local Human Rights Legislation	Local Minority Rights Legislation
<b>BiH</b>	Yes	Yes	Yes	Yes	Yes
<b>Macedonia</b>	Yes	Yes	Yes	N.A.	N.A.
<b>Moldova</b>	Yes	Yes	No	Yes	No
<b>Ukraine</b>	Yes	Yes	Yes	Yes	No

Authority as the legitimate exercise of political power has two boundaries – it is normally limited to a specific territory and/or a defined group of people. The degree to which both of these categories shape the boundaries of authority of specific institutions of government contributes to an assessment of the degree to which group identities are institutionally recognised and protected.

A central government has the authority to exercise its power within the territorial confines of the state it is governing and over the residents of this territory (with the exception of foreign diplomats for example). Some elements of a central government’s authority may also extend beyond the territorial boundaries of its state, but then they will normally be limited to that particular state’s citizens, for example in the field of tax collection. In terms of self-governance regimes, the extent of these two limitations placed on the exercise of authority is similar. Territorial self-governance regimes are spatially confined. The powers devolved to them only apply within the territorial boundaries of the region and, by extension, only to (permanent) residents of the region. An analogue to authority extending beyond territorial boundaries are instances of personal autonomy in which the autonomous body has authority over all individuals belonging to it no matter where they live in the territory of the state or region concerned.<sup>17</sup>

<sup>17</sup> In reverse, this means that all members of the ethnic group concerned can enjoy the rights accorded to them in the autonomy arrangement anywhere in the territory of the relevant state. This form of autonomy is

These observations are particularly relevant for Gagauzia whose boundaries were determined by a referendum at the local level, giving the population an opportunity to express in a free vote whether they want to live under the authority of a newly created sub-state government or want to continue being governed within the existing structure of vertically layered institutions. The result was that the autonomous territory thus created is not in fact a contiguous area, but is made up of a number of patches of territory. Early indications suggest that this is not necessarily detrimental to the exercise of authority at the level of the autonomous territory. The case of Gagauzia also suggests that there is an additional degree of differentiation available that goes beyond the traditional territorial delimitation of authority in that it incorporates a public consultation process for the definition of the territorial boundaries of the autonomous area. If combined with levels of personal autonomy in specific policy areas, the range of authority that a self-governance entity enjoys can be tailored to the specific demographic and geographic situation, taking account of settlement patterns and ethnic, religious, cultural and other types of heterogeneity. While such 'fine-tuning' increases the complexity of self-governance regimes, it may also make them more suitable to particular contexts and thus more acceptable. In other words, careful territorial and personal delimitation of self-governance potentially may increase the belief in the authority of the institutions established among those governed by them and thereby contribute to greater stability of these same institutions and the political process of which they are part.

However, what is striking about the arrangements in Gagauzia is the fact that while the relevant local government units can decide in a referendum on whether they want to belong to the newly created autonomous entity, there seems to be no provision for the reverse process, i.e., units leaving the autonomous entity. In case of significant changes in the population balance in one or more such units, a new minority would be created within the autonomous entity (whose demands would have to be accommodated). Demographic developments always have implications for security perceptions and the stability of settlements of complex self-determination conflicts, but it is reasonable to assume that their implications would be even more severe in cases where territorial (re)arrangements are recent, precisely because they will imply a degree of fluidity which is threatening to majorities and minorities at the same time. On the other hand, rationally acting political elites may be constructively address significant demographic shifts could not be addressed constructively. Macedonia is also worth mentioning in this context, as devolution of significant powers to the local layer of authority was accompanied by boundary revisions to take better account of ethnic settlement patterns.

In half of the cases considered in this comparative analysis, thus, the recognition and protection of group identities went beyond the application of mere territorial principles. This is not to say that in the other cases identities are not institutionally recognised or protected. After all, self-governance in all cases is applied to territories inhabited, wholly or in part, by ethnically or otherwise distinct groups. Furthermore, in most cases, power

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particularly useful in instances where groups are more dispersed. It is also used to complement territorial forms of autonomy in specific policy areas (culture, religious affairs, education, etc.) when autonomous territories are ethnically heterogeneous.

sharing arrangements exist that explicitly recognize group identities and afford them a measure of institutional protection precisely because of the inclusiveness of resulting governance arrangements at various levels. What is important, though, is to recognize that among some of the complex power sharing arrangements discussed here the recognition and protection of group identities extends beyond the application of these principles, and establishes territorial entities, or adjusts pre-existing ones, to facilitate the inclusion of the maximum possible number of members of one particular ethnic group into self-governance regimes, without, of course, engaging in their (involuntary) resettlement. The recent use of local referenda, moreover, means that there is no automatic, predetermined equivalence of identity and territory.

This issue of privileging group identities is one in which liberal consociationalist views dominate in conflict resolution practice – territorial boundaries of self-governing entities are self-defined by their populations. The resultant ‘ethnic’ entities run counter to recommendations made by either integrationists or power-dividers, both of whom generally prefer administrative, heterogeneous entities to ethnically self-defined ones with particular group majorities or pluralities.

#### *III.4. Concluding remarks*

A detailed analysis and comparison of these cases, and of the exact extent to which they match or differ from the recommendations provided by theories of conflict resolution, is beyond the scope of this paper. The empirical overview provided in this section, however, provides one important conclusion: the reality of institutional design differs significantly from the focus and prescriptions of the theories. This discrepancy has two main manifestations. First, the actual institutional designs implemented in each of these cases are considerably more complex than is recognized by the theories, in ways that are consequential for their functioning. Second, the actual designs combine features recommended by different theories, even though these theories appear to suggest that this would lead to incompatibilities. For example, in Macedonia there is no mandatory power sharing, but all governments since the country’s independence have been power sharing governments, based on pre-election arrangements between the relevant Albanian and Macedonian parties. While this appears to be very much in line with integrationist power sharing, the electoral system on which it is based is a parallel mixed PR system, and not as Horowitz and others would advocate, the Alternative Vote. At the same time, Macedonia is a unitary state but has high levels of devolution to local authorities. A unitary state would not be in line with recommendations by consociationalists, but McGarry and O’Leary’s point that power should be devolved to self-defined communities is borne out in Macedonia in the sense that prior to devolution, several local referenda were held to determine the boundaries of local authorities, resulting in ethnically far more homogeneous entities—a notion that integrationists and power dividers would strongly reject.

#### IV. AN ALTERNATIVE FRAMEWORK

What should we conclude from this disjunction between existing institutional frameworks

intended to prevent or manage conflicts involving ethnic minorities and the theoretical work on conflict resolution discussed in section II? One possible response is to argue that the empirically observed designs are likely to be unsuccessful or unviable in the longer term, because they combine inconsistent institutional features. However, while there is undoubtedly variation in the viability of existing conflict management attempts, some appear to have made positive contributions to the settlement of conflicts. We, therefore, suggest a different response. Our contention is that this disjunction indicates a shortcoming in these theoretical schools. In particular, we argue that the range of concerns and incentives of involved political actors considered by these theories – the political power and status and the identity recognition of groups – is too narrow. We believe that a wider set of concerns needs to be considered.

To do this, we do not present a new, alternative macro-framework. Instead, we propose a simple framework focused on the actual concerns and incentives of relevant political actors. We first outline the main features of this framework, which we aim to develop further in future work, and then discuss its implications for the possible effects of external agents on the functioning and viability of particular institutional arrangements for self-governance.

#### *IV.1. Basic Structure*

Consistent with the underlying assumptions of the existing theories (see section II.4), this framework draws on the rational choice approach to institutions.<sup>18</sup> This approach treats institutions as a set of incentives, i.e., rules, regulations and norms that provide individual actors with incentives to behave in particular ways. Institutional stability – which is what we are ultimately most interested in here – results if the actors' behaviour induced by the incentives provided by particular arrangements is such that these actors will mostly adhere to these arrangements. As Weingast (2002: 690) states, “to survive, institutions must be self-enforcing in the sense that relevant actors have incentives to abide by them.” As indicated below, this approach has been used to analyze, among other things, the stability of democracy, the rule of law and federalism. These analyses serve as inspiration for the framework presented here.

The primary actors in this framework are the elites of ethnic minority groups and of their 'host states'. These will mostly be political elites, but may also include economic elites (although these often overlap in practice). This is not to say that non-elite members of the population never play a relevant role. In some situations, mobilization from below, either within the ethnic minority group or the majority population, may be politically important. And differences between political elites and the people they claim to represent can sometimes be an important part of the dynamics we are interested in. However, adherence of elites to institutional arrangements seems the most crucial factor in their stability. Elites typically have the possibility and capacity to undermine arrangements, so their adherence is essentially a necessary condition for institutional choice and stability.<sup>19</sup> Moreover, despite being part of – at least nominally – democratic political systems,

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<sup>18</sup> See Weingast (2002) for an overview of this approach.

<sup>19</sup> In other words, elites are the most important potential 'spoilers' (Stedman 1997) of such arrangements.



politics tends to be mostly elite-driven in the cases in the Balkans and the former Soviet Union that were discussed in section III.

The political elites are assumed to be primarily self-interested. This may include several desires: to remain a leader and elite member of one's group or the state as a whole; to obtain, consolidate and increase one's own political power and – in many situations – that of one's group or institution (which can be a region, autonomous entity, or the central state); and to gain economic benefits. The exact combination of these desires will vary from case to case, but all are likely to be present. While this assumption of self-interest may be challenged by some, we believe that empirical observations from ethnic conflicts around the world strongly support the claim that most political leaders involved in these situations are largely driven by self-interested motivations.

The basic challenge for the viability of institutions aiming to manage or resolve ethnic conflicts can now be restated as follows. In the simplest and most stylized situation, we assume two actors: the host state, and an ethnic group or territory representing an ethnic group (or, to be more specific, the leaders and political elites on both sides). For a self-governance arrangement to be viable, the host state must have incentives not to encroach on any rights or powers of the ethnic group or territory, and feel that its own powers (and the positions of their leaders) are not likely to be endangered. The ethnic group or territory must have an incentive not to 'secede' from the arrangement, and will, thus, need to have – and continue to have – some kind of stake in the arrangement and the host state. And its leaders must perceive that the arrangement is unlikely to undermine their positions.

The formulation of this basic challenge is related to and inspired by analyses of the stability of democracy and political institutions (e.g., Calvert 1995, Weingast 1997, Przeworski 2005) and federalism and political decentralization (e.g., Riker 1964, Weingast 1995, De Figueiredo and Weingast 2005, Bednar et al 2001, Filippov et al 2004). Especially the latter analyses directly inform the framework presented here. In the case of federalism or decentralization, the basic dilemma is to have a structure in which actors active at 'national' or 'federal' level of government refrain from encroaching on or confiscating the powers of subnational units, while actors at the subnational level refrain from undermining the federal state and trying to secede from it. If arrangements for ethnic minorities take a territorial form, a similar situation exists. It can, however, also be applied to non-territorial self-governance arrangements, which gives rise to the more general formulation above. The analyses of federalist institutions have pointed to constitutions (Weingast 1995), courts and norms of justice (Hechter 2000, Bednar et al 2001) and political parties (Riker 1964, Filippov et al 2004) as possible factors inducing the incentives for actors that provide institutional stability. These factors are also relevant for our framework. However, given the empirical importance of external agents in the establishment and functioning of arrangements for ethnic minorities in conflict or post-conflict situations, we focus here mostly on the possible role of these agents.

Political actors in this framework – elites and leaders of the host state and ethnic minorities – will have incentives to abide by a particular arrangement if it serves, on

balance, their manifold interests and if there are no alternatives available that would offer a better balance of interests attainable. (Inversely, if an arrangement does not serve most of these interests, then there are no incentives for political actors to adhere to it.) This can be analyzed by looking at the effects of a particular self-governance arrangement on specific interests of political actors. In other words, which specific benefits and costs do actors derive from an arrangement, and which incentives does this induce?

A first issue to consider are *security* concerns and interests. Political leaders will be concerned about their own security and the security of the people they lead (at least to the extent that their own power depends on the security of the larger population). This is particularly important for the ethnic minority group members, who are likely to have concerns about their physical security as well as what can be termed their ‘identity security’ (the security to express one’s own identity in some form or another without direct repercussion). If a particular arrangement provides – and guarantees to continue to provide – security, political leaders of the minority are more likely to adhere to the arrangement. Such security can potentially be provided through various means. Examples would be minority representation and integration in armed and police forces, and autonomy over language and other cultural expressions of identity (to guarantee ‘identity security’).<sup>20</sup> Similarly, leaders of the host state will be looking for guarantees against violent insurrections and other actions by ethnic or other groups that might undermine the security of the host state population and its leaders.

Second, a particular arrangement will have implications for the *political status and power* of political actors. This is the area most directly related to the theories of conflict resolution discussed in section II, as the different designs are mostly concerned with providing status and powers such that an arrangement can be stable. This area encompasses a variety of issues. What are the guarantees for forms of self-governance for the ethnic group or territory? How much autonomy does the group or territory have? What are the political ties with the host state? Does the central state have the possibility to control or shape policies of the ethnic group or territory? What are the implications of an arrangement for the position of the leading political actors at the central state and subnational levels? Does it strengthen their position? These issues all feature into the incentives of the relevant political actors to adhere or undermine an arrangement. In fact, the complexity and multifaceted nature of these incentives is one of the reasons that a more micro-level focus is more useful than the more general approach provided by existing theories.

Third, the relevant political actors are likely to have *economic* interests, and will be concerned about the economic implications and viability of a particular self-governance arrangement. This dimension is essentially ignored by the existing theories of ethnic conflict resolution. Economic interests include the personal economic and financial stakes that political leaders have in an arrangement. For example, territorial autonomy arrangements may be pursued or maintained largely because of the financial benefits these provide for ruling elites (Kemp 2005). Thus, we need to ask whether political actors

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<sup>20</sup> Another possibility is that an external party provides security. However, the possible role of external agents is discussed specifically in the next subsection, so is not mentioned in the examples given here.

perceive that they can economically benefit from an arrangement, or can benefit more than under any feasible alternative situation. More broadly, what are the economic prospects of the state, and especially of any autonomous units that might be established by a self-governance arrangement? Are there incentives to construct a functioning system of public finance and public good provision? As was the case for political status incentives, these economic issues and incentives are manifold, and will need to be studied on a case by case basis.

This list of possible benefits and incentives can provide guidance for analyzing particular arrangements regulating ethnic relations in a state. It obviously does not yet provide a *theory* of ethnic conflict regulation. More detailed empirical and theoretical investigations of various combinations of incentives may provide the building blocks for such a theory. While it is not certain yet that such a theory will emerge, we believe that this micro-level (or ‘bottom-up’), is a promising route to take.

Three further aspects or implications of this framework require discussion. First, given the myriad of different aspects of a particular self-governance arrangement, and thus the different incentives induced by them, the acceptance and stability of an arrangement occurs when the balance of these incentives is such that arrangements are adhered to or ‘reproduced’, and not only when arrangements only provide ‘positive’ incentives for all actors. The latter is clearly unrealistic and empirically inaccurate, as not each sign of protest or dissatisfaction implies that an institution or arrangement is unstable.<sup>21</sup> In other words, political actors will accept the establishment of a particular arrangement when they have sufficient incentives to do so.

The second implication is that there is a temporal and future-oriented aspect to all of this. Political actors do not only want security, political or economic benefits at a particular point in time (when a self-governance arrangement is established, or already functioning), but also guarantees that these benefits will continue and remain available.<sup>22</sup> This is arguably the most important, and most difficult, condition for the viability of an arrangement. It may be very difficult for the involved actors to credibly promise (that is, to be believed by others) that they will continue to adhere to the established rules and norms. In other words, there is a commitment problem, which somehow needs to be overcome for an arrangement to be stable. This issue of commitment, therefore, needs to play an important role in the analysis of conflict resolution arrangements. Commitment problems have been identified before in relation to, for example, the outbreak of ethnic conflict (Fearon 1998, Van Houten 1998, Laitin 2001), the settlement of civil wars (Walter 2002), and the stability of federalist arrangements (Weingast 1995, Hechter 2000). Several of these authors have pointed to the importance of third actors in overcoming these problems (e.g., Van Houten 1998, Walter 2002), which provides a

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<sup>21</sup> The challenge for empirical research is, of course, how to distinguish between ‘contested but stable’ and ‘contested and unstable’ arrangements. This will need to receive specific attention in future research.

<sup>22</sup> There is another temporal issue related to many of these arrangements, namely, that measures that are necessary for the establishment of conflict resolution in the short term may not be conducive to the longer-term prospects for peace and good governance (Rothchild and Roeder 2005). This is also an important issue, which needs to be included in a more developed version of this framework.

further impetus for our focus on external agents below.

The final comment is that the acceptability and stability of particular institutions or arrangements depend not only on the direct benefits provided by them, but also on the availability of alternative courses of actions that might lead to higher benefits (i.e., not only on the ‘absolute’ but also on the ‘relative’ benefits of an arrangement). This is a rather self-evident observation, but it has implications for assessing the relevance of conditions that make arrangements more or less stable. In particular, it has implications for analyzing the possible effects and strategies of agents external to the direct conflict situation, to which we turn now.

#### *IV.2. The Role of External Agents*

The role of external agents is obviously not the only factor and condition relevant for the viability and stability of autonomy regimes and other self-governance arrangements in ethnically divided societies. However, considering the importance of external actors in ethnic and civil conflict, the extensive empirical involvement of the international community in attempts at conflict management and prevention (and the many calls to become even more involved), the suggested theoretical importance of third parties in overcoming commitment problems (see above), and the relative lack of systematic research on the role of external actors in these situations, this is a particularly fruitful aspect to explore in some depth.

External agents can play various roles in ethnic conflict management. The most direct involvement includes military intervention and security provision, and involvement in decision-making and implementation of policies. The latter is most clearly the case in Macedonia and Bosnia and Herzegovina. Slightly less direct involvement results from ‘conditionality’ policies, in which external agents do not directly make ‘internal’ decisions (i.e., decisions made within the political systems of the state or autonomous unit) but make aid flows and other forms of support conditional on the nature of the decisions made by the ‘local’ political actors. The World Bank and IMF frequently use such policies in relation to the economic policies of states, and occasionally – in the case of the World Bank – make loans conditional on political conditions and the implementation of post-conflict commitments. The European Union (EU) makes ample use of conditionality measures in its foreign policy and its relations with candidate accession states. The EU has used such policies, usually in relation to its financial aid, as part of its participation in the international governance of Bosnia and Herzegovina, and conditionality is intended to be the main ‘mechanism’ to steer the Western Balkan states towards possible EU membership in the years to come. Other forms of influence, which may have effects on the functioning of particular arrangements, are the effect of various kinds of financial and political aid which, for example, Moldova receives from the EU.

In addition, international organisations have also become more directly involved in negotiating specific settlements. The OSCE, for example, has been active in the negotiation of the 1994 Gagauz autonomy arrangements, the EU and NATO have been directly involved in the negotiations that led to the Ohrid agreement for Macedonia in

2001.

One potential effect, and a possible strategy for international organizations and other external agents, is worth mentioning here. In the framework proposed in section IV.1, we implicitly assumed that the relevant political actors are given and constant. This is obviously not the case in reality, as some political leaders disappear (because of death, replacement, or loss of power in other ways) and others emerge. Actions and policies of external agents can play a role in this. Sometimes such effects are intentional and direct (or, at least, intended to be direct), for example, when the Office of High Representative (OHR) in Bosnia dismisses certain local officials, or when external actors support particular politicians or political parties. More indirect effects can occur if the presence or particular policies of external agents affect election outcomes or power struggles. In case of heavy international involvement, as in Bosnia and Herzegovina, one effect appears to be that this involvement gives indigenous political actors a convenient ‘scapegoat’, and may – unintentionally – make it easier for them to stay in power.

This last example makes it clear that the effects of the actions and policies of external agents are complex, and may include various unintended consequences. Influencing the functioning and outcomes of particular arrangements for ethnically divided societies is, therefore, not an easy task, as should be clear from the many difficulties and disappointments that the international community has experienced over the years. Even in the untypical case of direct international involvement and authority, as in Bosnia and Herzegovina, it is far from straightforward to create viable and stable arrangements. This may be because – as some would contend – the policies of the international community have been incompetent and poorly designed for the circumstances in which they need to be implemented. More importantly, however, the support of local leaders and politicians is essential for the short- and long-term viability of arrangements even in these cases, and direct imposition of policies and officials by no means guarantees such support. Bosnia since the Dayton agreement shows the full range of international actor involvement (see also sections III.1 and III.2), but the results have been mixed. After initially trying to persuade local elites to buy into the ‘spirit of Dayton’, the so-called Bonn powers gave the OHR direct powers, which were used extensively by Paddy Ashdown in particular. But even in this period, these powers were used only in extreme cases (although the threat of using them was much more prevalent), and extensive attempts were constantly made to get the local elites to agree to particular policies and actions without using these powers.<sup>23</sup> More recently, Bonn powers have been used much less frequently (ICG 2007), and there is an attempt to shift the emphasis to conditionality policies, with the EU as the main international actor. This complexity and hazardous nature of many actions and policy instruments makes it even more imperative to investigate the incentives for local political actors that their actions and instruments generate.

External agents can affect all three kinds of benefits or incentives discussed in section IV.1, as the discussion and examples so far have already indicated. It should be emphasized again that external agents can have these effects by either providing benefits or by making alternative, potentially more attractive (for certain political elites) options

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<sup>23</sup> Interview with former OHR official, Washington DC, September 2006.

less appealing or feasible.

The *security* dimension is perhaps the most straightforward. As Walter (2002) argues, third party intervention in a civil war can be an important or even necessary condition for a peace agreement to be successful. In the absence of such intervention, the directly involved parties are unable to credibly commit to the agreement. In particular, insurgents may not want to demobilize out of fear for a future recurrence of the conflict. It appears that this logic can be extended to attempts at conflict prevention. Furthermore, external agents can help with the training of armed forces and police, potentially making local elites feel more secure. In addition, external agent involvement can be important for refugee return policies, which are often attempted in post-conflict situations, and which can help to give a community more ‘identity security’ in the longer term, but usually create serious security risks in the short term.

For the *political* dimension, the question is whether political elites perceive that they have a stake in an existing self-governance arrangement and the overall state, and are therefore willing to adhere to it and defend it. One important way in which external agents may influence this perception is by making other possibilities more difficult or unattainable. For example, if external agents credibly argue that secession by an autonomous unit will not be accepted internationally, this will increase the incentives of local leaders to work within the framework of the host state. Furthermore, supporting and guaranteeing constitutional arrangements that give minority groups veto rights – or any of the other measures suggested by the theories discussed in section II – will affect incentives and outcomes. Conditionality policies, aid policies, and support for particular policies or politicians will also have effects on intra-elite dynamics, for example, in a power struggle between ‘moderate’ and ‘extreme’ forces. These effects on elite incentives and the outcomes of particular policies and arrangements are hard to predict in general terms, but closer analysis may suggest some general patterns.

As indicated before, the *economic* dimension has probably received the least attention in the conflict regulation literature, but is undeniably important. In the case of an actual conflict or crisis, direct economic and financial aid by external agents can be an important factor in stabilizing the situation and making political arrangements possible. Aid, support and policy advice may also be crucial for these arrangements to work in the short term. Creating the long-term economic conditions and incentives for institutional stability is much more complicated. Given that economic crises and lack of development appear to be contributing factors to civil and ethnic conflict (World Bank 2003), it is imperative to consider this dimension. One challenge is to generate economic growth and employment, which is an issue in many cases (including Bosnia and Herzegovina, and Macedonia). Another challenge results from the fact that institutional designs in conflict-prone situation often involve autonomy arrangements or other multi-level political structures. This creates a challenge for the establishment of public finance systems, as the literature on fiscal federalism demonstrates. This literature also provides suggestions on how to meet these challenges, but these are rarely unambiguous and usually difficult to implement. Bosnia, again, provides a good example of this. The Dayton agreement implied a highly decentralized system of public finance, and more centralization was seen

to be needed to generate more incentives to keep the Bosnian state. The international community has attempted to do this, with some success (especially in relation to the establishment of a national VAT), but this has not been easy. External agents certainly have a potential impact on such public finance issues, but this impact needs to be investigated much more closely before we can reach clearer conclusions.

Two further issues related to the role of external agents are worth mentioning. First, given the simultaneous involvement of many external agents in most cases (something which is very clear in Bosnia and Herzegovina, but also applies to some extent to most other cases), the coordination between their actions – or lack thereof – has received much attention. The discussion here suggests, however, that coordination as such is not the crucial issue, but rather whether the actions of external agents induce similar incentives for domestic political elites. Thus, *coherence* of policies and actions is more important than coordination. Coordination may facilitate coherence, but there is no reason to believe that it is a necessary or sufficient condition for it.

Second, the discussion of the possible role of external agent was not intended to suggest that all these effects were intentional, or that international organizations and other external agents deliberately design their policies with incentive effects in mind. It is an open question whether this is the case or not. International organizations do not appear to have clearly formulated general principles for their engagement with ethnic conflict and ethnically divided societies (Van Houten and Wolff 2005), but this does not rule out the possibility that they pursue coherent policies in particular cases.<sup>24</sup> The developments in Bosnia since the Dayton agreement do suggest that international representatives there became increasingly conscious of incentive effects, and engaged in detailed, micro-level attempts and negotiations to shape these incentives. But this needs to be investigated in more detail, and may not apply to the same extent to other cases. The general question here is what exactly motivates the actions of external agents. What are their interests? In the case of international organizations, do they act as unitary and/or autonomous actors? Or are there intra-organizational rivalries and restrictions on international organizations by their principals (the member states) (Hawkins et al 2006)? These are questions that we will pursue in the larger project that this paper originates from.

## V. CONCLUSION

This paper has provided a critique of existing theories of institutional design in ethnically divided societies, and has given some suggestions for an alternative framework to analyze the stability of self-governance arrangements in such societies. We do not claim that this framework is entirely novel, as it has some similarities or overlap with the existing work on conflict resolution. However, it takes a different, micro-level (or ‘bottom-up’) approach, and focuses more directly on the concerns and incentives of the main political elites involved in institutional designs to manage, prevent or resolve ethnic conflicts.

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<sup>24</sup> Preliminary interviews with representatives of international organizations in Bosnia and Macedonia give a mixed picture of the extent to which these representatives think about the implications of policies for the incentives of political elites in the country (interviews in Sarajevo and Skopje, February 2007).

In formulating this framework, our aim is to move away beyond the more general – and often contentious – debates between the different ‘conflict resolution schools’ discussed in section II, and to provide analyses that are more attuned to and more relevant for the complex empirical reality of ethnic conflict management. This raises various theoretical and empirical challenges, which we plan to tackle in future work. Theoretically, a more coherent account of the various incentives and the factors influencing them is required. Empirically, we need to develop indicators that dovetail with our emphasis on micro-level incentives,<sup>25</sup> and attempt to isolate the effects of external agents on the dynamics of (post-)conflict situations. This is ambitious, but – given the continued importance of civil and ethnic conflicts in many parts of the world and the frequent attempts by external agents to manage these conflicts – necessary.

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<sup>25</sup> Possible indicators for the stability of an institutional arrangement include the absence of violent conflict and/or absence of non-violent conflict about the arrangements (macro-level structures) *per se*, no violations of specific aspects of arrangements, absence of political parties opposed to the arrangements (‘weighed’ by the popularity of these parties), and evidence available from relevant public opinion surveys.



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