

## **Resolving Self-determination Conflicts:**

### **The Emerging Practice of Complex Power Sharing**

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#### I. INTRODUCTION

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. The associated self-determination claims, as the concept is used in this chapter, refer to a group's expressed preference for self-government and can range from demands for independent statehood, unification with another state, territorial self-government within an existing state, and non-territorial self-government (or cultural autonomy). The former two demands are also referred to as claims for external self-determination, the latter two as claims for internal self-determination. While the international community is generally reluctant to accept changes to existing state boundaries, there is significantly more enthusiasm to promote regimes of self-governance, that is, is the legally entrenched power of territorial entities to exercise public policy functions independently of other sources of authority in the state, but subject to the overall legal order of the state.<sup>1</sup>

The promotion of self-governance by the international community normally goes hand-in-hand with an endorsement of other mechanisms of conflict resolution, including power sharing (the use of mechanisms that guarantee meaningful participation in

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

decision-making for all significant segments in a divided society, including those who demand self-determination), human and minority rights legislation, etc. As such, recent conflict resolution practice has manifested itself in complex institutional designs combining 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, or are considered unfeasible.

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—centripetalism, consociational power sharing and power dividing—and contrasting their analysis and recommendations with current policy to resolve self-determination, this chapter argues that there is an emerging practice of what can be referred to as complex power sharing, i.e., a hybrid model of conflict resolution that has a regime of self-governance at its heart, complemented, by a range of other mechanisms advocated by different schools of conflict resolution. This argument is presented in several steps: I first discuss the requirements of institutional design in divided societies and then examine the approaches of the three main schools of conflict resolution to institutional design. This is followed by a conceptual note on the nature of complex power sharing and an empirical analysis of ten cases which can be classified as manifestations of this emerging conflict resolution practice. The chapter concludes with a number of empirical and analytical insights from this comparative analysis that summarise the main features of current complex power sharing regimes, and makes suggestions as to develop the concept itself further into its own conflict resolution theory.

## II. INSTITUTIONAL DESIGN IN DIVIDED SOCIETIES

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 disputes among the conflict parties can be addressed politically and without recourse to violence. The challenge that institutional design in divided societies thus faces is to craft macro-level structures that regulate three contested areas (1) state construction, related particularly to questions of territorial structure; (2) the institutions of government, concerning among others the composition and powers of the executive, legislative and judicial branches of government and the relationship between them; and (3) rights and identities of individual citizens and groups, i.e., the question if, and to what extent, individuals or groups are privileged.<sup>2</sup> These three dimensions are inter-related and inter-dependent, but it is useful for analytical purposes to keep them separate when exploring their specific aspects in some degree of abstraction in the remainder of this section and in their practical manifestations in Section IV.

In Section III of this chapter, I turn to existing theories of conflict resolution, which have, to varying degrees, engaged with institutional design in all three of the above dimensions and have developed relatively coherent sets of recommendations to achieve a settlement of self-determination conflicts in the sense defined above. Liberal consociationalism, centripetalism, and power dividing thus serve as the theoretical

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<sup>2</sup> These different dimensions of state construction have been covered across the conflict resolution literature in different combinations and in varying degrees of breadth and depth. Apart from the principal works and authors covered below, see also Bastian and Luckham (2003), Benedikter (2007), Choudhry (2008), Darby and McGinty (2003), Ghai, (2000), Hechter (2000), Henrard (2000), Jarstadt and Sisk (2008), Lapidoth (1996), Noel (2005), Norris (2008), O’Flynn and Russell (2005), O’Leary, McGarry, and Salih (2005), Reynolds (2002), Schneckener and Wolff (2004), Taylor (2009), Weller and Metzger (2008), Weller and Wolff (2005), Wilford (2001), Woelk, Palermo and Marko (2008), and Wolff (2003). The synthesis of these and other sources is presented below.

foundation from which we proceed. The short comparative analysis of the main features of these three theories is then followed by an empirical analysis of a broader range of cases in an attempt to establish empirically the degree to which current conflict resolution theory and practice overlap. This will, in turn, offer some analytical insights into the failures and successes of conflict settlement to date and enable me to draw some more general conclusions about the viability of the concept of complex power sharing.

### *II. 1. State Construction*

The most important institutional design challenge in this area has to do with the territorial organisation 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 as well. The most important institutional design decision is about the number of levels of government 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. On the one end of the spectrum, a state may be organised territorially in a completely symmetric fashion with all territorial entities enjoying the exact same degree of functional competences, exercising them through an identical set of local political institutions. However, the nature of institutional design in divided societies may necessitate a different approach. Thus, even where there is structural symmetry, functionally speaking 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 necessary feature of conflict resolution.

## *II. 2. The Composition and Powers of the Executive, Legislative and Judicial Branches of Government and the Relationship between Them*

The key aspects of institutional design in this area 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 and/or legislative power sharing are 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 realised 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. Institutional design thus not only prescribes certain outcomes in relation to the composition of the executive, legislative and judicial branches of government but also entrenches them in different ways from hard international law to domestic legislation.

### *II.3. The Relationship between Individual Citizens, Identity Groups and the State<sup>3</sup>*

Institutional design in this area 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 recognised 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 emphasising differential treatment and affirmative action, the two are not contradictory but need to complement each other in ways that reflect the diversity of divided societies and contribute to its peaceful accommodation.

Moreover, 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 recognised and protected and how this manifests itself in the way in which the boundaries of authority are shaped by territory or population groups.

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<sup>3</sup> For reasons of space, subsequent empirical analysis will not include a separate examination of this dimension.

### III. INSTITUTIONAL DESIGN IN EXISTING THEORIES OF CONFLICT RESOLUTION<sup>4</sup>

Existing theories of conflict resolution generally acknowledge the importance and usefulness of institutional design in conflict resolution, but offer rather different prescriptions about what the most appropriate models are to achieve stable conflict settlements. The three dominant theories in this respect are liberal consociational power sharing, centripetalism, and power dividing. We discuss the main tenets of these three schools of thought now in turn, focussing on their recommendations in each of the three areas.

#### *III.1. 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 in the context of its use as a 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 and b, O'Leary 2005a and b; see 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

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<sup>4</sup> The following section draws on conceptual and empirical material presented in Wolff (2008a, b, 2009a-d).

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>5</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>6</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, see also Lijphart 1995 and O’Leary 2005a).

Territorial self-governance is a significant feature within the liberal consociational approach which, in this context, emphasises that the self-governing territory should define itself from the bottom up, rather than be prescribed top-down.<sup>7</sup> Liberal

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<sup>5</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>6</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>7</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 referendum. ... It is also possible for Shi’a dominated governorates that do not accept SCIRI’s vision to

consociationalists consider arrangements in which there are more than two, and ideally even more than three, self-governing entities within a given state, as conducive to the chances of state survival. 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).

Naturally, 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 (apart from ‘segmental autonomy’) continue to be favoured by liberal consociationalists, such as grand coalitions, proportionality and minority veto rights, the emphasis is on cooperation and consensus among democratically legitimised elites, regardless whether they emerge on the basis of group identities, ideology or other common interest. Liberal consociationalists thus favour parliamentary systems,<sup>8</sup> proportional (PR list) or proportional preferential (STV) electoral systems, decision-making procedures that require qualified and/or concurrent majorities, and have also advocated, at times, the application of the d’Hondt rule for the formation of executives<sup>9</sup> (cf. Lijphart 2004, O’Leary 2005a, see also Wolff 2003).

This means, liberal consociationalists prefer what O’Leary refers to as ‘pluralist federations’ in which co-sovereign sub-state and central governments have clearly defined exclusive competences (albeit with the possibility of some concurrent

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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>8</sup> Note, however, that, empirically, collective presidential systems are as widespread in existing functioning consociations than parliamentary ones. Personal communication from Brendan O’Leary.

<sup>9</sup> For details on the d’Hondt rule, see O’Leary, Grofman and Elklit (2005).

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 recognise, 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>10</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).

### *III.2. Centripetalism*

Centripetalism emphasizes that rather than designing rigid institutions in which elected representatives have to work together *after* elections, “intergroup political 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; 1990; 1991; 2002), as well as with

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<sup>10</sup> On regional consociations see Wolff (2004).

that of Timothy D. Sisk (1996), who uses the terms “integrative” and “integration” when referring to centripetalism (as do Rothchild and Roeder 2005b: 35), Matthijs Bogaards (1998; 2000; 2003), who initially criticized consociationalism on conceptual and methodological grounds (Bogaards 1998; 2000), before offering a strongly centripetal alternative (Bogaards 2003), Benjamin Reilly (1997; 2001; 2006), and Andreas Wimmer (2003). Reilly, for example, advocates, among others, ‘(i) *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, p. 11; emphasis in original). This is partially echoed by Wimmer in his proposals for the first post-Saddam 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 advocates non-ethnic federalism (ibid.: 123-5), 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”, according to Wimmer (2003: 125).

In what remains a classic work in the field of ethnic conflict and conflict resolution theories, Donald L. Horowitz (1985 [2000]) discusses a range of structural techniques and preferential policies to reduce ethnic conflict. Among them, he emphasises 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. In a later study, more explicitly focused on federation as a mechanism for conflict reduction, Horowitz (2007) accepts that homogeneous provinces, too, can prove useful for this purpose, but argues that rather than the aim being to facilitate group autonomy (the consociational rationale), homogeneous provinces offer the possibility to foster intra-group competition (2007:960–1; see also Horowitz 2008:1218). In an earlier contribution to the debate, Horowitz had recognized the need for federal or autonomy provisions, but cautioned that they could only contribute to mitigating secessionist demands if “[c]ombined with policies that give regionally concentrated groups a strong stake in the center” (Horowitz 1993: 36). Interestingly, however, this need for centripetal elements in territorial designs for conflict resolution is also echoed in some corners of the consociational school (cf. Weller and Wolff 2005). Similar to Wimmer (2003; see above), Horowitz, citing the Nigerian experience, sees utility in splitting large ethnic groups into several provinces as this potentially encourages the proliferation of political parties within one ethnic group, resulting in intra-group competition and a lessened impact of

relative numerical superiority of one group over others (Horowitz 2007:960–1; see also 2008:1218).

While centripetalism is thus open to engaging with, among others, territorial approaches to conflict settlement, “its principal tool is [...] the provision of incentives, usually *electoral incentives*, that accord an advantage to ethnically based parties that are willing to appeal, at the margin and usually through coalition partners of other ethnic groups, to voters other than their own (Horowitz 2008:1217, our emphasis). In particular, Horowitz emphasizes the utility 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 system is the alternative vote (AV), a preferential majoritarian electoral system, that is 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: 122–5).

### *III. 3. Power Dividing*

In the context of conflict resolution, the theory of power dividing has been put forward most comprehensively by Philip G. Roeder and the late Donald Rothchild in their co-edited volume *Sustainable Peace: Power and Democracy after Civil Wars* (Roeder and Rothchild 2005). Power dividing is seen 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”, thus “balanc[ing] one decisionmaking centre against another so as to check each majority ... [f]or the most important issues that divide ethnic groups, but must be decided by a government common to all ethnic groups” (Rothchild and Roeder 2005: 15).

The key institutional instruments by which power dividing is meant to be realised 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 specialised 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).

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The preceding overview of three main theories of conflict resolution illustrates two important aspects of current academic and policy debates about how to establish sustainable institutional settlements in cases of self-determination conflicts: while there are fundamental differences in the underlying assumptions about how such settlements can succeed, certain institutional arrangements that complement the basic prescriptions of each approach are largely similar, if not identical. As the following empirical analysis will demonstrate, this has significant implications for the *practice* of conflict resolution in that few, if any, real-world settlements conform to the predominant theoretical prescriptions.

#### IV. INSTITUTIONAL DESIGN IN PRACTICE: AN EMPIRICAL ANALYSIS WITH A CONCEPTUAL PREFACE

##### *IV.1. The Concept of Complex Power Sharing*

A striking feature of contemporary conflict resolution practice is that a large number of actual and proposed settlements involve forms of territorial self-governance. This reflects the assumption that such regimes can contribute to sub-state, state, regional and international stability. In ethnically, linguistically and/or religiously heterogeneous societies in which corresponding group identities have formed and become salient, the degree of self-governance enjoyed by the different segments of society is often seen as

more or less directly proportional to the level of acceptance of an overall institutional framework within which these different segments come together. Self-governance regimes are thus also meant to provide institutional solutions that allow the different segments of diverse societies to realise their aspirations for self-determination while simultaneously preserving the overall social and territorial integrity of existing states. In doing so, self-governance regimes above all offer mechanisms for conflict parties to settle their disputes by peaceful means.

There is a large number of such settlements that provide evidence for this trend in North America (Canada), Central and South America (Panama, Colombia, Mexico, Ecuador and Nicaragua), Africa (Sudan, Zanzibar),<sup>11</sup> Asia (Iraq, Indonesia, Papua New Guinea and Philippines),<sup>12</sup> and Europe (Belgium, Bosnia and Herzegovina, Macedonia, Moldova, Russia, Serbia and Montenegro,<sup>13</sup> Ukraine and United Kingdom).<sup>14</sup> In addition, proposals for self-governance regimes also figure prominently in proposed peace agreements, including in the Annan Plan for Cyprus.<sup>15</sup> Thus, in many conflict situations involving self-determination claims by territorially relatively concentrated

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<sup>11</sup> Proposals for decentralisation/federalisation also exist in Ethiopia, Nigeria and the Democratic Republic of Congo, but in all three cases lack serious implementation efforts. I am grateful to Sandra Joireman and Donald Rothchild for providing me with this information.

<sup>12</sup> In India, one could include the so-called Union Territories, such as Pondicherry (Puduchery).

<sup>13</sup> The 2003 constitution of the Union of Serbia & Montenegro provided for a bi-national federation between the two entities and included an option for Montenegrin independence after three years if at least 55% of people participating in a referendum would opt for it. The referendum was held on 21 May 2006, and Montenegro declared its independence on 3 June after the country's referendum commission confirmed as official the preliminary result which had already been recognised by all five permanent members of the UN Security Council on 23 May. For the text of the Constitutional Charter of the State Union of Serbia and Montenegro, see

<http://www.legislationline.org/upload/legislations/41/97/29d53b4d7dabbfe0af7023a6454a.htm>.

<sup>14</sup> This is not meant to be a comprehensive list of cases. For an analysis of some examples and general trends in the spread of territorial self-governance regimes as part of conflict settlements, see contributions in Weller and Wolff (2005).

<sup>15</sup> For the full text of this document, see [http://www.hri.org/docs/annan/Annan\\_Plan\\_Text.html](http://www.hri.org/docs/annan/Annan_Plan_Text.html).

identity groups at least proposals for territorial self-governance have been made. In many of them, these proposals have been implemented. It is also important to note that a number of these and similar arrangements are relatively ‘old’—the South Tyrol settlement has its origins in the 1969 ‘package deal’ between Rome, Bolzano/Bozen, and Vienna, the current status of Brussels within the Belgian system has evolved over several decades, as has that of Quebec in Canada. Other arrangements, such as those for the Åland Islands, date back even further, in this case to the period immediately after the First World War.

Yet, without exception, these cases also demonstrate that territorial self-governance on its own is insufficient to offer viable solutions to self-determination conflicts. Because of the complexity of such conflicts in terms of the parties directly or indirectly involved in them and their competing demands, further conflict resolution mechanisms are required to ensure that an overall stable and durable democratic settlement can be achieved. This has been increasingly understood by practitioners of conflict resolution and has led to an emerging practice of conflict settlement that I refer to as “complex power sharing”.<sup>16</sup>

Complex power sharing, in the way it is understood here, refers to a practice of conflict settlement that has a form of self-governance regime at its heart, but whose

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<sup>16</sup> I borrow the term ‘complex power-sharing’ from a research project funded by the Carnegie Corporation of New York (“Resolving Self-determination Disputes Through Complex Power Sharing Arrangements”). In this project, complex power-sharing regimes are distinguished “in that they no longer depend solely on consociational theory, or solely upon integrative theory”, involve international actors that “are often key in designing, or bringing experience to bear upon, the structure of the eventual agreement, or its implementation” and “consider a far broader range of issues ... and ... address structural issues as diverse as economic management, civil-military relations and human and minority rights, and ... do so at many different levels of government”, thus recognising “that at different levels of government, different strategies may be more, or less, applicable, and consequently more, or less, successful, in engendering peace and stability” (Kettley, Sullivan, Fyfe 2001: 4-5). O’Leary (2005a: 34-5) uses the term ‘complex consociation’ in a similar manner.

overall institutional design includes a range of further mechanisms for the accommodation of ethnic diversity in divided societies, including those recommended by advocates of liberal consociationalism (e.g., McGarry and O’Leary 2004a and b, McGarry 2006, O’Leary 2005a), centripetalism (e.g., Horowitz 1985[2000], 1990, 1991, 2002, 2004, 2006, Reilly 2001, 2002, Sisk 1996, Wimmer 2003) and power dividing (Roeder and Rothchild 2005). Complex power sharing is thus the result of the implementation of a self-governance regime whose success as a conflict settlement device requires a relatively complex institutional structure that cannot be reduced to autonomy/(ethno-)federation, (traditional) models of power sharing or power dividing.

In order to appreciate fully the degree to which this practice of complex power sharing has taken hold in current conflict resolution practice, the following empirical analysis compares and contrasts a number of relevant cases according to different aspects of institutional design. In line with the conceptual assumptions made about complex power sharing ten cases are subjected to a comparative analysis: Bosnia and Herzegovina (BiH), Bougainville/Papua New Guinea, Brussels/Belgium, Crimea/Ukraine, Gagauzia/Moldova, Macedonia, Mindanao/Philippines, Northern Ireland/United Kingdom, South Sudan, and South Tyrol/Italy.<sup>17</sup> The degree and nature of complexity in

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<sup>17</sup> The analysis is 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 Bougainville Peace Agreement” ([www.intstudies.cam.ac.uk/centre/cps/documents\\_bougainville\\_final.html](http://www.intstudies.cam.ac.uk/centre/cps/documents_bougainville_final.html)) and “The Constitution of the Autonomous Region of Bougainville” ([www.vanuatu.usp.ac.fj/library/Paclaw/Papua%20New%20Guinea%20and%20Bougainville/Bougainville.htm](http://www.vanuatu.usp.ac.fj/library/Paclaw/Papua%20New%20Guinea%20and%20Bougainville/Bougainville.htm)); “The Constitution of Belgium” ([http://www.fed-parl.be/constitution\\_uk.html](http://www.fed-parl.be/constitution_uk.html)); “The Constitution of Ukraine” ([www.rada.kiev.ua/const/conengl.htm](http://www.rada.kiev.ua/const/conengl.htm)) and 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” ([http://www.intstudies.cam.ac.uk/centre/cps/documents\\_macedonia\\_frame.html](http://www.intstudies.cam.ac.uk/centre/cps/documents_macedonia_frame.html)) and “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)) “Peace Agreement” ([www.intstudies.cam.ac.uk/centre/cps/documents\\_philippines\\_final.html](http://www.intstudies.cam.ac.uk/centre/cps/documents_philippines_final.html)); “The Agreement Reached in the Multi-party Negotiations” ([www.nio.gov.uk/agreement.pdf](http://www.nio.gov.uk/agreement.pdf)) and “The Agreement at St

each of these regimes differs, but as the following comparative analysis will demonstrate they all exhibit mechanisms in addition to territorial self-governance that allow their classification as complex power sharing arrangements.

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

### *IV.2.1. Symmetry and Asymmetry in Institutional Design*<sup>18</sup>

The first element to consider in the context of questions about symmetry and symmetry of institutional design is the number of layers of authority that actually exist. Table 1 illustrates that self-governance regimes rely predominantly on more than two layers of authority. In the cases of Bougainville, Northern Ireland and Crimea, these three layers are central, sub-state and local government. In Macedonia, on the other hand, the middle level of government is missing. The functions and powers of the central and local governments are detailed in the constitution 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 rather than of state construction.

In the cases of Bosnia and Herzegovina Brussels, Gagauzia, Mindanao, South Sudan and South Tyrol, 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

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Andrews” ([www.nio.gov.uk/st\\_andrews\\_agreement.pdf](http://www.nio.gov.uk/st_andrews_agreement.pdf)); “Protocol between the Government of Sudan (GOS) and the Sudan People's Liberation Movement (SPLM) on Power-Sharing” ([www.usip.org/library/pa/sudan/power\\_sharing\\_05262004.pdf](http://www.usip.org/library/pa/sudan/power_sharing_05262004.pdf)); “The Statute of Autonomy for South Tyrol” ([www.consiglio-bz.org/downloads/Statuto\\_E.pdf](http://www.consiglio-bz.org/downloads/Statuto_E.pdf))

<sup>18</sup> For an excellent discussion of the usefulness of asymmetric designs for conflict resolution, see McGarry (2007).

federal-confederal structure of the state. The complexity of domestic divisions and the process of federalisation in Belgium, leading to a structure in which regions and communities are simultaneously components of the overall federal structure, accounts for the four-layered structure of the Belgian system. In the case of Mindanao, an existing four-layered structure of government was altered with the creation of a specific and unique fifth layer – the legal-political entity of the Autonomous Region of Muslim Mindanao – to which powers were devolved. Similar to the case of Gagauzia, where a pre-existing three-layered structure was amended to accommodate the creation of the Territorial Autonomous Unit of Gagauzia, South Sudan represents an additional level of government between central and state governments expressing the distinct identity of the southern states.

Table 1: Variation in the Vertical Layering of Authority<sup>19</sup>

<b>Two-layered Structures</b>	<b>Three-layered Structures</b>	<b>Multi-layered Structures</b>
Macedonia	Bougainville Crimea Northern Ireland	BiH Brussels Gagauzia Mindanao South Sudan South Tyrol

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,<sup>20</sup> as this perspective provides a more

<sup>19</sup> This classification ignores purely or mostly ceremonial Heads of State as well as the fact that for all West European cases the European Union is an additional layer of authority.

<sup>20</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

comprehensive picture of the structure of the entire polity concerned and the place and status of territorial self-governance institutions within it.

Table 2: Structural and Functional Symmetry and Asymmetry of Institutions

	Structures			Functions	
	Symmetric	Single asymmetric	Multiple asymmetric	Symmetric	Asymmetric
<b>BiH</b>			X		X
<b>Brussels</b>	X				X
<b>Bougainville</b>	X				X
<b>Crimea</b>		X			X
<b>Gagauzia</b>			X		X
<b>Macedonia</b>	X			X	
<b>Mindanao</b>		X			X
<b>Northern Ireland</b>			X		X
<b>South Sudan</b>		X			X
<b>South Tyrol</b>	X				X

Table 2 indicates 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. 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 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

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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.

other territorial entities in the same country. Furthermore, while symmetric structures and symmetric functions may be correlated (Macedonia), symmetric structures do not preclude asymmetric functional capacities (Bougainville, Brussels, South Tyrol).

From a theoretical point of view, 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), centripetalism is not opposed to the use of territorial self-governance arrangements in either symmetric (federation) or asymmetric (autonomy) forms, but crucially in this respect, centripetalists and advocates of power dividing prefer 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 (centripetalists) or to facilitate multiple and changing majorities (power dividers). Having said that, it is evident that in the cases that form the basis of this empirical comparison the entities of territorial self-governance are exclusively those in which group identities form the basis of boundaries.

#### *IV.2.2. Distribution and Separation of Powers*

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. Naturally, there is a certain degree of context-dependent variation across the cases under examination, 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 (Bougainville, Mindanao, South Sudan and South Tyrol<sup>21</sup>) or they can be specific for one or more layers and ‘open-ended’ for others (Bosnia and Herzegovina, Crimea, Gagauzia, Macedonia and Northern Ireland). The key difference in the latter case is which layer of authority has an ‘open-ended’ list and retains residual authority for any partly devolved power or any other policy area not explicitly allocated elsewhere.

As Table 3 illustrates, in Brussels, Crimea, Gagauzia, and Macedonia, the centre holds residual authority over all matters not expressly devolved to the lower layers of authority, while in South Tyrol and Bosnia and Herzegovina the two entities retain all the competences not explicitly delegated to the centre.

Table 3: Power Allocation in Self-governance Regimes

Specific Lists	Combination of Specific and ‘Open-ended’ Lists	
	Open-ended list at centre	Specific list at centre
Bougainville Mindanao Northern Ireland <sup>22</sup> South Sudan	Brussels Crimea Gagauzia Macedonia	BiH South Tyrol

<sup>21</sup> Since the 2001 constitutional reforms, South Tyrol is in the unusual situation that has both specific lists of competences allocated to different layers of authority, as well as a general clause assigning all not specifically mentioned policy areas automatically to the legislative competence of the province.

<sup>22</sup> In case the Assembly in Northern Ireland asks for it, the regional power sharing institutions could enjoy an open-ended list of powers allocated to them, with only specifically excepted matters retained by the Westminster government.

In Mindanao, the multi-layered system of public authority that is in place there has very specific lists of powers allocated to the individual levels within it, even though the central government remains the original source of all authority, i.e., the reverse of the situation in South Tyrol (since 2001). This is also the case in Northern Ireland, but here the system of allocating powers operates on the basis of three different lists enumerating devolved, reserved (with the future possibility of devolution) and excepted (without the future possibility of devolution) matters. In Bougainville, which also operates a system of specific power allocation to the different layers of public authority, an additional feature is that there are specific arrangements as to how to deal with emerging policy areas (a joint commission that will resolve disputes over the allocation of new powers). Another distinctive feature of the Bougainvillean system is that initially all powers allocated to the autonomous province are retained at the central level and are, albeit almost automatically, devolved to Bougainville upon application to the central authorities by the provincial authorities. In the case of South Sudan, notably, specific lists of powers exist for the centre, the government of South Sudan and State governments, as well as a list of so-called concurrent powers whose exercise falls into the competence of more than one layer of government.

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 the

centripetalist approach (e.g., Wimmer 2003). For the liberal consociational school of power sharing, it is important that power sharing is a more attractive option to conflict parties than recourse to violence, hence it advocates that substantive powers be assigned to territorial self-government entities by assigning residual authority to these entities or by drawing up specific lists.

#### *IV.2.3. Coordination Mechanisms*

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. 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.

As demonstrated in Table 4, 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 relationships between different layers of public authority and an emphasis on the separation of powers between different branches of government, creating an independent judiciary.

Table 4: Coordination Mechanisms in Self-governance Regimes

<b>Co-optation</b>	<b>Joint Cttees. and Implementation Bodies</b>	<b>Judicial Review and Arbitration</b>	<b>Direct Intervention by the International Community</b>
Brussels Gagauzia Mindanao	Bougainville Brussels Gagauzia Macedonia Mindanao Northern Ireland South Sudan South Tyrol	BiH Bougainville Brussels Crimea Gagauzia Macedonia Mindanao Northern Ireland South Sudan South Tyrol	BiH

Co-optation, adopted in Belgium, Moldova, and the Philippines, is a mechanism to ensure the representation of sub-state level officials (from Brussels, Gagauzia, and the ARMM, respectively) at the centre. In all cases, sub-state level officials are *ex officio* members of relevant central government departments. This arrangement is symbolic and emphasises the special relationship between central government and autonomous region. In the cases of Gagauzia and Mindanao it is also necessary as the two autonomous entities are artificial constructions from an administrative-territorial point of view and do not fit into the pre-existing structures of authority in Moldova and the Philippines. 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 cases of Crimea and South Sudan, but well-compensated for in the latter through extensive power

sharing mechanisms. In Crimea, the Representative Office of the President of Ukraine acts, in part, as a coordination mechanism with oversight, but without executive powers.

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. Examples of the former are Bougainville and Gagauzia, while the latter can be found in Macedonia (inter-ethnic relations), Mindanao (development), Northern Ireland (cooperation between Northern Ireland and the Republic of Ireland and among all entities party to the British-Irish Council) and South Sudan (constitutional review, application of Shari'a law, human rights, elections, referendum, fiscal and financial allocation). Such bodies usually hold regular meetings (Bougainville, Macedonia, Mindanao, Northern Ireland, South Sudan); and they can be in their nature domestic, centre-periphery bodies (Bougainville, Macedonia, Mindanao, South Sudan) or reflect the international dimension of a particular self-determination conflict (Northern Ireland). They may be prescribed in agreements between the conflict parties (Bougainville, Mindanao, Northern Ireland, South Sudan) or arise from actual needs (Gagauzia and Macedonia).

In the case of South Tyrol, significant aspects of the original negotiations of the autonomy statute in the 1960s were carried out by the so-called Commission of Nineteen, involving representatives of South Tyrol and the Italian government. Subsequently two separate commissions were created to facilitate and oversee the implementation of the statute in relation to provincial and regional aspects of autonomy. Since 1997, a further commission, required according to article 137 of the autonomy statute has been operational which deals specifically with questions of minority protection and economic,

social and cultural development of the ethnic groups in South Tyrol. This commission must be consulted in case of any planned changes to the autonomy statute. A further special commission was created in 2001 to deal with the implementation of changes resulting from the 2001 reforms of autonomy statute and Italian constitution. A standing commission at the office of the Italian Prime Minister, created to monitor the implementation of the statute, has been in place since 1972. In addition to policy coordination at the level of commissions, South Tyrol's autonomy also benefits from a strong and independent judicial system, whose role, however, has changed significantly in the operation of the system, especially the role of the constitutional court in protecting South Tyrol's legislative acts from undue interference by the central government.

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 three underlying self-determination conflicts within Bosnia and Herzegovina 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.

The three theories of conflict resolution discussed above offer some limited guidance on coordination mechanisms. All three generally emphasise the importance of a law-based system and thus of the role played by independent judicial institutions. Liberal 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). Centripetalists, 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.

*IV.3. The Composition and Powers of the Executive, Legislative and Judicial Branches of Government and the Relationship between Them*

*IV.3.1. The Nature of the Government System and the Choice of Electoral Systems*

A key difference between consociationalists on the one hand, and centripetalists 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. These differences are reflected in the practical aspects of the conflict settlements discussed here.

Table 5: 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>
Belgium		Brussels	
Italy		South Tyrol <sup>23</sup>	
	BiH*	Federation of BiH	
Macedonia			
Moldova			Gagauzia
Papua New Guinea			Bougainville
	Philippines		Mindanao
	Sudan		South Sudan
	Ukraine*	Crimea	
United Kingdom		Northern Ireland	

\*Denotes semi-presidential system

<sup>23</sup> According to the 2001 revised autonomy statute, the *Landeshauptmann* can now be elected directly, but will at the same time remain head of the provincial government, which needs to be elected by the provincial parliament. Once the relevant legislation for the direct election of the *Landeshauptmann* has been passed, South Tyrol's system of government will be an unusual type of parliamentary system with a directly elected prime minister who at the same time is head of 'state'.

As illustrated in Table 5, there is a slight predominance of parliamentary systems, both at central, and where applicable, sub-state level of government. Of these, the UK, Papua New Guinea,<sup>24</sup> Bougainville,<sup>25</sup> and Crimea use plurality electoral systems, all others rely on PR systems for the election of members of their respective parliaments. Noteworthy is, however, the use of preferential systems in Northern Ireland (Single Transferable Vote) and South Tyrol (open party list system). Such preferential systems are generally more closely linked to the centripetalist approach, even though Horowitz's clear preference is majoritarian preferential systems. The fact that consociationalists have come to appreciate preferential systems more as well, indicates both a greater openness towards the potential benefits of preferential systems (i.e., election of more moderate leaders), and a 'liberalisation' and 'democratisation' of consociationalism away from Lijphart's earlier preference for the elite cartel.

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 are elected by either plurality systems in single-seat constituencies (Sudan), parallel mixed systems (Philippines, Ukraine), or List PR (BiH). At sub-state level, the electoral system for parliament in Mindanao is a parallel mixed system, in Gagauzia it is plurality in single-member districts. No elections have yet taken place in South Sudan and no electoral system has been determined yet.

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<sup>24</sup> Elections to the parliament of Papua New Guinea used a version of AV, the so-called Limited Preferential Vote, between 1964 and 1975, and since 2002. Between 1975 and 2002, a single member plurality system was in operation.

<sup>25</sup> According to the Bougainville Constitution, there are three reserved seats each for former combatants and women, representing the three regions of the Autonomous Region of Bougainville. Mandatory representation of former combatants can be abandoned by a two-thirds majority vote in the regional parliament.

### *IV.3.2. Power Sharing*

One element of the complexity of self-governing regimes as a mechanism to resolve self-determination conflicts stems from the fact that constitutional engineers have developed innovative ways to combine traditional structures of horizontal power sharing (i.e., at different levels of authority within a multi-level system of government) and vertical power dividing (i.e., the assigning of competences to different levels of authority within a multi-level system of government).

As shown in Table 6, the cases of Macedonia and Mindanao demonstrate, the absence of formal structures of power sharing at the centre does not preclude power nevertheless being shared to some extent. In Macedonia, this is more obvious, as the country's demographic balances, structure of the party and electoral systems combine in a way that make the formation of government coalitions between ethnic Macedonian and ethnic Albanian parties likely, and they have been a reality since 1992. In Mindanao, on the other hand, there is a somewhat greater degree of formality in power sharing arrangements at the centre as members of the sub-state level governments are co-opted into respective branches of the central government. Co-optation, however, limits the extent of the influence that can be exercised by the region at the centre as sub-state level co-optees are outnumbered by other members of the central government and have little, if any, leverage compared to situations in which a sub-state level party is a member of a governing coalition and can potentially exercise veto powers.

Table 6: Horizontal Executive Power Sharing at Central and Sub-state Levels of Authority

No horizontal power sharing	Horizontal power sharing at the centre	Horizontal power sharing at sub-state level only	Horizontal power sharing at the centre and sub-state level
	Macedonia <sup>26</sup> Moldova <sup>27</sup>	Crimea <sup>28</sup> Northern Ireland South Tyrol <sup>29</sup>	BiH/Federation of BiH <sup>30</sup> PNG/Bougainville <sup>31</sup> Belgium/Brussels Philippines/Mindanao <sup>32</sup> Sudan/South Sudan <sup>33</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), Brussels, Mindanao, Northern Ireland and South Tyrol.<sup>34</sup> More specifically, the South Tyrol

<sup>26</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. 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. My thanks to Eben Friedman for providing this information.

<sup>27</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>28</sup> Power sharing at regional level is not mandatory, but a likely outcome of the regional demographic and power balances.

<sup>29</sup> The self-governance arrangements in South Tyrol combine horizontal power sharing at the level of the province (South Tyrol) and the region (Trentino-South Tyrol).

<sup>30</sup> Mandatory power sharing at regional level only applies to the federation and cantons within it.

<sup>31</sup> The regional constitution of Bougainville determines mandatory inclusion of representatives of Bougainville's three regions into the regional government.

<sup>32</sup> To the extent that certain members of the government of the Autonomous Region of Muslim Mindanao are co-opted into structures of the central government, there is a certain degree of power sharing at the central level in addition to the mandatory power sharing at regional level.

<sup>33</sup> In the period prior to elections.

<sup>34</sup> Crimea's constitution does not provide for formal structures of power sharing, but local power demographic and power balances make voluntary inter-ethnic power sharing at least likely.

arrangements can be described as a “nested consociation”, that is consociational structures exist at both the provincial (South Tyrol) and regional<sup>35</sup> (Trentino-South Tyrol) levels. This reflects the territorial organisation of the Italian state into regions and (normally) subordinate provinces. On the other hand, Germans are a minority at the regional level, while Italians are in a minority position in the province. Given that, until the 2001 reforms, the region was a much more important political player in relation to the exercise of South Tyrol’s competences, concerns of German-speakers about political influence could be addressed by including them mandatorily in the regional cabinet. At the same time, the Italian minority in South Tyrol required similar protective mechanisms. To achieve a stable equilibrium in the face of this dual minority situation required the establishment of such an interlocking consociational mechanism that would recognise and protect both main linguistic groups within the existing structure of territorial-political organisation.

In contrast to the ‘abundance’ of power sharing arrangements in the case of South Tyrol, mandatory state and sub-state horizontal power sharing mechanisms are lacking in Macedonia, but their absence can be explained with reference to the same factors of 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

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<sup>35</sup> The Italian system distinguishes between regions and provinces as second and third-order levels of territorial administration.

in the Macedonian parliament and make their participation in a coalition government at least highly likely. This strength of Albanians that 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.

This indicates that under certain conditions—relative territorial concentration of ethnic communities, sufficient levels of devolution and a minimum degree of representation at the centre—vertical division of powers can function as a useful substitute for formal structures of horizontal power sharing both at central and sub-state level and suffice in addressing institutional dimensions of power (re)distribution in self-determination conflicts. The fact that vertically divided powers can only substitute for horizontal levels of power sharing under very specific conditions is also highlighted by the example of Bosnia and Herzegovina 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, however, 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. Centripetalists' 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.

#### V. CONCLUSION: SOME TENTATIVE EMPIRICAL AND ANALYTICAL OBSERVATIONS ABOUT THE EMERGING PRACTICE OF COMPLEX POWER SHARING

Complex power sharing in practice combines regimes of territorial self-governance with a variety of other macro-level techniques of conflict resolution—power sharing and power dividing—and a range of ‘supplementary’ mechanisms—specific electoral systems, human and minority rights legislation, and coordination and arbitration mechanisms—that need to fit the specificities of the particular case to which they are applied, but also, and importantly, have to fit each other. This means that there are limits to the extent to which designers of complex power sharing settlements can choose at random from the available menu of mechanisms and techniques.

This is borne out by the comparative analysis in this chapter which started from the empirical observation that a significant number of recent conflict settlements establish territorial self-governance regimes that combine forms of horizontal and vertical power sharing and power dividing in an effort to establish stable institutional processes conducive to resolving self-determination conflicts. Vertical power sharing and power dividing prove necessary complements of territorial self-governance in two ways: self-governance regimes cannot be established in specific territorial entities without it, and such entities become a locus of power, no power can be shared at the sub-state level. Power sharing and power dividing in the Bosnian-Croat Federation, in Bougainville, in

Brussels, in the Autonomous Region of Muslim Mindanao, in Northern Ireland, South Sudan and South Tyrol would not be possible if these regions had not been established as legal-political entities and powers had not subsequently been devolved to them.

The main difference between regions with horizontal structures of power sharing and those without is first of all one of the degree of ethnic (or other) heterogeneity. The bipolar ethnic and/or political demography of the Bosnian-Croat Federation, Bougainville, Brussels, Northern Ireland and South Tyrol, as well as the religious and tribal mix in South Sudan and in the provinces that opted for membership in the Autonomous Region of Muslim Mindanao, required constitutional designers to devise mechanisms of conflict regulation below the central state level and beyond traditional notions of subsidiarity and devolution. Context-sensitive institutional design is reflected, among others, in the differences in power that sub-state level power sharing authorities have in all these cases and the degree of power that lower levels of authority within them enjoy, such as the cantons in the Bosnian-Croat Federation, the individual provinces that make up the Autonomous Region of Muslim Mindanao, or the States that are part of South Sudan.

Sub-state level or central (formal) horizontal structures of power sharing are missing, where demography and the vertical layering of authority have combined favourably in ways that make them superfluous. In Crimea, demography and electoral and party systems combine to result in a reasonably equitable representation of the region's three main groups—Russians, Ukrainians and Crimean Tatars—in parliament and also encourage executive inter-ethnic power sharing. In Macedonia, the territorial concentration of ethnic Albanians in the west of the country, combined with a substantial

degree of autonomy and power for local communities, is considered sufficient to address the key concerns of the minority community. Moreover, the fact that the demographic balance in the country and the structure of its party system facilitate inter-ethnic coalitions at the centre contributes to the relative overall satisfaction that majorities in both ethnic groups derive from this settlement. In Moldova, the relative ethnic homogeneity of Gagauzia, the ability of residents in districts to determine by referendum whether they wanted to be part of the autonomous territory, and the fact that local affairs in these districts are run locally all combine to provide sufficient autonomy for individuals and communities to make formal sub-state level power-sharing unnecessary.

Mechanisms of power dividing exist in all cases discussed as well. Apart from the vertical division of power, i.e., the distribution of powers between different vertical layers of authority, one also finds a range of horizontal mechanisms advocated by power dividing theory: most obviously there is, in all cases, an emphasis on independent judicial institutions tasked with the upholding of the constitutional order and the enforcement of human and minority rights legislation. Division of power between executive and legislative branches of government exists as well, but is not as universal. Indeed, parliamentary systems are marginally more common both at central and sub-state levels of government. Where these systems are integral part of conflict resolution efforts, they are strongly correlated with the establishment of executive power sharing: they are prescribed in Belgium, Brussels, the Federation of Bosnia and Herzegovina, Northern Ireland and South Tyrol, and emerge voluntarily in Macedonia and Crimea. By the same token, presidential systems, favoured by power-dividers, do not preclude executive power

sharing. Bosnia and Herzegovina (albeit with a semi-presidential system), Sudan and South Sudan serve as illustrations.

From this degree of variation across the case studies one can draw a number of both analytical and empirical conclusions. Additionally, there is a more fundamental conceptual point worth noting. At the beginning of this chapter, I noted that the claims by groups invoking a right to self-determination can range from demands for independent statehood, unification with another state, territorial self-government within an existing state, and non-territorial self-government (or cultural autonomy). The analysis confirms the assumption that there is a general reluctance by the international community (a community of *states*, after all) to acquiesce to demands for external self-determination, while a wide-ranging, and at times quite innovative, range of mechanisms has been embraced to accommodate internal self-determination claims. At the same time, the rejection of external self-determination claims is not absolute: apart from the recent situations of Kosovo, South Ossetia, and Abkhazia, where some measure of international recognition has been extended in cases involving unilateral declarations of independence, some of the cases analysed in this chapter use the mechanism of an interim settlement to *postpone* the potential exercise of a right to self-determination qua secession in the future. Bougainville, South Sudan, and with some qualifications also Gagauzia and Northern Ireland, indicate that independent statehood or unification with another state are by no means off the agenda of conflict resolution. What distinguishes the latter four cases from the former three, however, is the intent to resolve the underlying self-determination disputes consensually, rather on the basis of a balance of power that favours one party over another. In this sense, complex power sharing, as discussed here, is just one

potential, albeit more likely, outcome of settlement negotiations. What matters most is that disputes are resolved peacefully and that the settlements achieved are workable and sustainable.

As far as complex power sharing is concerned, and thus the workability and sustainability of the respective settlements, there are four important empirical lessons for the role that complex power sharing regimes have in conflict resolution. First, dividing power along a vertical structure of institutions can serve as a useful substitute for formal horizontal power sharing at either state or sub-state levels, provided that state-wide or sub-state ethnic demographics create suitably homogeneous territories and that substantial powers are devolved from the centre. In other words, such cases lend themselves to the application of forms of territorial autonomy or of the subsidiarity principle, instead of the use of executive co-decision making as foreseen by power sharing institutions. Moreover, a reasonable degree of representation of minority groups at the relevant 'central' level (sub-state in the case of Crimea, central state in the case of Macedonia), in addition to these other two conditions, also seems to facilitate this kind of institutional structure.

Second, no attempt was made in any of the case studied to *create* heterogeneous entities as subjects of territorial self-governance. Heterogeneity, where it exists, was addressed by means of consociational powersharing within the self-governing territorial entity. This means that one key recommendation by advocates of the centripetalist approach and power dividing—to encourage heterogeneous territorial entities—was not followed by practitioners of conflict resolution in any of the cases studied.

Third, coordination between different vertical layers of authority and the establishment of a clear division of powers are important to ensure that vertical layering of authority remains meaningful and can contribute to the long-term sustainability of a particular conflict settlement. Where there is a danger of eroding the degree of self-governance enjoyed by specific territorial entities and their populations created as a particular layer of authority with the specific purpose of conflict resolution (such as Gagauzia, Mindanao, South Sudan, and with some qualifications, Crimea), conflict settlements may not be sustainable in the long term.

This means, fourth and finally, that without safeguards against arbitrary government interference, it is unlikely that the conflict parties will develop a sense of satisfactory permanence and predictability in relation to a particular conflict settlement. Legal and constitutional entrenchment, possibly alongside international guarantees, is thus one important mechanism for the stabilisation of institutional structures. These and other power dividing strategies that provide checks and balances on the exercise of power serve to ensure that principles of liberal democratic state construction shape complex power sharing regimes and enhance their longer-term legitimacy. These strategies, of course, are fully compatible with both schools of power sharing as well.

Analytically, it appears that none of the three theories of conflict resolution fully capture the current practice of complex power sharing. Having said that, liberal consociationalism emerges as the one theory that is most open to incorporation of elements of the centripetalist approach and power dividing. Within a liberal consociational framework, there is room (and a recognised need) for a range of power dividing strategies, including a strong role for judicial entrenchment and enforcement

mechanisms, and universally applicable and enforceable human rights legislation. Liberal consociationalism is also open to a vertical division of power on the basis of non-ascriptive, i.e., non-ethnic criteria, but in contrast to power dividing and centripetalism does not rule it out either should self-determined entities on that basis emerge and desire territorial or corporate self-governance. Liberal consociationalists and centripetalists share some common ground in terms of the principle of preferential electoral systems, even though they disagree about whether preferential PR or majoritarian systems are better suited to achieve outcomes conducive to stable settlements in the long-term. In support of power sharing more generally, the empirical evidence presented in this chapter also indicates that executive inter-ethnic power sharing is a component of all institutional designs discussed—either as a mandatory requirement or as an outcome of the application of certain institutional design features (especially the use of specific electoral systems) to particular (territorial-demographic) contexts.

The second point worth emphasising is related to the stability of the settlements discussed. In other words, is complex power sharing a feasible alternative to the purist implementation of existing theories, or is it the result of misguided and ill-informed diplomats and policy makers making choices of short-term convenience rather than long-term prudence? There is little point in making immodest claims at this stage about the feasibility of complex power sharing, as conceptualised and analysed here, as a conflict resolution strategy equal, if not superior to what existing theories prescribe. While complex power sharing practice *may* eventually lead to a synthesis of existing theories in a complex power sharing framework, there is as yet not enough real-world evidence about how stable such regimes can be under varying conditions. The cases examined in

this chapter were all similar to the extent that they comprised self-determination claims by territorially concentrated identity groups that lent themselves to the establishment of complex power sharing regimes with territorial self-governance arrangements at their heart. Some of them have proven relatively stable over time (i.e., over ten years): Belgium, Brussels, Bosnia and Herzegovina, Crimea, Gagauzia, and South Tyrol. Northern Ireland has, significant delays, achieved a remarkable institutional compromise. Others, including Bougainville, South Sudan and Macedonia are too short-lived to provide reliable data about their long-term stability. Mindanao has only achieved partial success in bringing peace to a troubled region of the Philippines. In all these cases, however, further analysis is required to determine causal relations between institutional design and the durability of peace.

For complex power sharing to develop into a theory of its own, further research is necessary. While I have demonstrated that it describes a particular phenomenon of conflict resolution practice in adequate detail, more work needs to be done to increase its predictive capabilities (i.e., when are complex power sharing regimes likely to emerge) and its explanatory value (i.e., when and why it succeeds). The latter especially will require conflict resolution theorists to engage more thoroughly with conflict theory: what are the causes and consequences of conflict that complex power sharing is meant to address? Only then will it be possible to make sure that complex power sharing does not emerge accidentally as a patchwork of different conflict resolution mechanisms cobbled together to accommodate a wide range of diverse (and most likely, incompatible) interests, but to provide a framework within which stable, lasting and ultimately successful conflict settlements can be designed.

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