Elements of Ethnic Accommodation: Territorial Self-governance

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Introduction

Territorial self-governance (TSG) is an essential element of ethnic accommodation in conflicts in which territorially concentrated identity groups (whose identity is, in part, derived from association with this 'homeland') demand greater rights of self-governance. It is a topic worthy of exploration because of the frequency, intensity, and often protracted nature of such conflicts.

Territorially concentrated identity groups in divided societies are more likely to demand self-governance (Jenne et al. 2007; Saideman and Ayres 2000; Toft 2003; Toft and Saideman 2010). According to one study (Quinn 2008), since the end of the Second World War alone, '79 territorially concentrated ethnic groups have waged armed conflicts for autonomy or independence, not counting the peoples of former European colonies' (Quinn 2008, 33). In a broader historical assessment focused on Europe only (Csergo and Wolff 2009) a total of 82 groups in 28 countries were identified who have sought a greater degree of political control over territories they consider their traditional homelands at some stage after 1945.

Ethno-territorial conflicts frequently involve the use violence (Fearon and Laitin 1999; Weidmann et al. 2010). Moreover, the initiation of peace negotiations in such conflicts is less likely as are government concessions (Walter 2003).

Territorial Self-governance: Definition and Institutional Arrangements

TSG as the legally entrenched power of territorially delimited entities within the internationally recognized boundaries of existing states to exercise public policy functions independently of other sources of authority in this state, but subject to its overall legal order. Conceptually, this definition of TSG applies its meaning as a tool of statecraft to the specific context of conflict management in divided societies and encompasses five distinct governance arrangements—confederation, federation, autonomy, devolution, and decentralisation.[1]

- *Confederation* is an empirically relatively rare form of voluntary association of sovereign member states which pool some competences (e.g., defence, foreign affairs, and currency) by treaty without normally giving executive power to the confederal level of government. Relevant examples include Serbia and Montenegro under the terms of the 2003-6 constitution (which was never fully implemented) and Switzerland between 1291 and 1848 (formally Switzerland retains the term confederation in its official name, functionally, however, it is now a federation).

- *Federation*, in contrast, implies a constitutionally entrenched structure in which the entire territory of a given state is divided into separate political units, all of which enjoy certain exclusive executive, legislative and judicial powers independent of the central government. Commonly cited contemporary examples of successful federations include Canada and Belgium, historically failed federations are those of Yugoslavia, the Soviet Union, and Czechoslovakia. The verdict on success is still open on cases like Bosnia and Herzegovina and Iraq, among others.

- A *federacy* enjoys similar powers and constitutional protection as federal entities, but is distinct in that it does not necessitate territorial sub-divisions across the entire state territory. Federacy arrangements are a feature of otherwise unitary states, such as in the cases of the Åland Islands (Finland), South Tyrol (Italy), Aceh (Indonesia), Bougainville (Papua New Guinea), and Gagauzia (Moldova).

- *Devolution*, like federacy, can be applied to selected territories in an otherwise unitary state. However, the degree of legal protection for entities with devolved powers is weaker and often extends only to protection by 'regular' rather than constitutional laws. Spain and the United Kingdom are most commonly used to illustrate this form of TSG.

- *Decentralisation* means the delegation of executive and administrative powers to local levels of government. It is rarely constitutionally entrenched and does not include legislative competences. Recent examples of the application of this form of TSG as a mechanism of conflict management in divided societies include Macedonia (under the 2001 Ohrid Agreement) and Kosovo (under the terms of its 2008 constitution and related 'Arthisaari legislation').

These five different forms of TSG can be further distinguished and specified according to a series of dimensions, including the range of competences exercised, the extent of constitutional entrenchment, the existence of dispute resolution mechanisms, the degree of symmetry and asymmetry between multiple instances of TSG in a single country,[2] and whether they operate in combination with specific other governance mechanisms for conflict management, such as power sharing or corporate (cultural) autonomy. Such further specification is essential because it allows a more context-sensitive analysis and understanding of TSG arrangements. For example, federations can be highly centralized with very few powers actually exercised by the federal subjects (for example, a large number of republics in the Russian Federation) or they can border quasi-confederal power structures with very little real power left for the centre (as in the case of Belgium). At the same time, local municipalities may enjoy a relatively significant degree of competences and may even be constitutionally mandated (for example, Macedonia and Kosovo). Sami TSG in Finland, Sweden and Norway is primarily a matter of decentralised local government, but incorporates elements of cultural autonomy and power sharing. Bosnia and Belgium are examples in which TSG is intrinsically linked with consociational power sharing at the centre, whereas in Northern Ireland and South Tyrol TSG arrangements emerged alongside consociational power sharing at the level of the self-governing entity.

Feasibility: Under what conditions is territorial self-governance suitable as an element of ethnic accommodation?

The specification of different forms of TSG raises a question about when TSG, and any particular manifestation thereof, is a suitable as an element of ethnic accommodation. The most obvious factor determining the suitability of TSG as an element of ethnic accommodation is that it can only be of real benefit to identity groups that live territorially concentrated (Brancati 2009; McGarry et al. 2008; Treisman 2007; Wolff 2009).

Beyond that almost trivial point, what also needs to be considered is that TSG is often only *one element* in a broader package of arrangements for ethnic accommodation. Its suitability, under specific conditions of comparative demography and significance, therefore is also shaped by the possibility of combining it with other means of ethnic accommodation.

This is perhaps most obvious in the case of power sharing. Self-governance arrangements for a territorial entity characterized by ethnic (or another identity-based form of) heterogeneity would exhibit local power-sharing institutions, whereas those for a more homogeneous one might not—compare Brussels to the Flemish region, the Federation of Bosnia and Herzegovina to Republika Srpska, or Northern Ireland to the Åland Islands. The institution of such local power-sharing mechanisms, ideally in combination with comprehensive and enforceable human and minority rights legislation, also addresses one frequent criticism and potential flaw of TSG arrangements—that they empower a local majority to the disadvantage of one or more local minorities.

Where a particular self-governing territory is highly significant relative to the rest of the state (in terms of geographic or population size, economic, strategic or cultural value, etc.), power-sharing institutions at the level of the central government are needed to reflect the bargaining position that a given self-determination movement has—the greater that is, the more it can assert its position at the centre. Moreover, a carefully designed set of power-sharing institutions at the centre can also address a frequently-mentioned reservation about TSG arrangements, namely that they empower self-determination movements while weakening the central government by creating an asymmetric power relationship that privileges separatists. Recognising and institutionally entrenching interests that self-determination movements have in the state as a whole, including agreed dispute resolution mechanisms, enable state- and TSG-preserving outcomes (rather than state break-ups or abrogation of TSG arrangements). Consociational power sharing in the Belgian federation, combined with the so-called alarm-bell mechanism, is one example of this. Belgium is also an instructive illustration of the notion of 'significance'. The country has three linguistic groups—French-speakers, Dutch-speakers, and German-speakers—but only the former two are large enough to warrant inclusion in central power-sharing

arrangements. In the UK, none of the three devolution settlements (Northern Ireland, Scotland, and Wales) provided for central-level power sharing, given the predominance of England within the UK. In Macedonia and Kosovo, even though TSG here only exists in the form of decentralized local government, Albanians (in Macedonia) and Serbs (in Kosovo) share power at the centre, and agreed dispute resolution mechanisms are in place.

Viability: Under what conditions is territorial self-governance sustainable as an element of ethnic accommodation?

The conditions under which TSG offers a sustainable element of ethic accommodation are best conceived of as three specific factors: leadership, diplomacy, and institutional design. The latter has been discussed to some extent in the preceding section. The important point to reiterate is that for TSG arrangements to be sustainable, they often require a number of complementary, balancing mechanisms so that the overall institutional package of ethnic accommodation 'fits' the specific conflict context to which it is applied.

Yet, to achieve such a settlement often requires assistance from the outside. Diplomacy, in this sense, plays a facilitating and enabling role at the same time. It enhances parties' capacity to conduct meaningful *negotiations*; it assists, technically, financially, and with various guarantees, the *implementation* of a negotiated TSG settlement, and it helps parties to overcome problems in the longer-term *operation*, including by facilitating reviews and reforms to the original settlement and by mediating in disputes over particular issues.

As important as the details of institutional design and the resources deployed by diplomatic efforts, neither can make up for shortcomings in leadership by the parties. Unless local leaders are genuinely committed to negotiate, implement and operate an agreement, and have the necessary skill, vision, and determination to do so, no amount of ingenuity in institutional design or of diplomatic effort can make territorial self-governance feasible or sustainable.

Conclusion

As the case of Macedonia illustrates, TSG is an essential element of ethnic accommodation and can make a significant contribution to the sustainability of a comprehensive package of arrangements to accommodate population diversity. In Macedonia and elsewhere, TSG has contributed to building a more peaceful and more democratic society in which different population groups can live together in dignity and mutual respect. This is only possible if institutions of TSG are carefully designed to match the specific context of a conflict situation, if the international community is ready to assist in the negotiation, implementation and operation of such agreements, and above all if local leaders are willing and able to commit credibly to peaceful coexistence. This is not an easy set of conditions to meet, but experience with the Ohrid Agreement clearly shows that it is possible to achieve sustainable ethnic accommodation, and this makes the Ohrid Agreement an important example successful conflict settlement.

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[1] This definition was originally developed by Wolff and Weller (Wolff and Weller 2005). For further uses and applications, see Csergo and Wolff (Csergo and Wolff 2009), and Wolff (Wolff 2011a, 2011b, 2010a, 2010c, 2010b, 2009).

[2] On asymmetry more generally and as applied in specific cases, see among others, Bolaji (2010), Keating (1999), McGarry (McGarry 2007; Bolaji 2010; Keating 1999), and Tillin (2007).