

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

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

A situation, thus, exists in which conflict resolution practice is substantially different from significant parts of traditional conflict resolution theory. Examining three main schools of conflict resolution—integrative and consociational power sharing and power dividing—and contrasting their analysis and recommendations with current policy to resolve self-determination, this article 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, which is complemented, however, 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 article 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 make suggestions as to develop the concept itself further into its own conflict resolution theory.

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

## 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 micro-level incentives are provided to elites (and their supporters). This is a rational choice approach to institutions that presumes that institutions are chosen and will be stable when the actors involved in them have—and will continue to have—an incentive to adhere to them and, thus, ‘reproduce’ them. In other words, one needs to distinguish between incentive structures, i.e., the macro-level frameworks that allow for incentives to be enjoyed by elites and their supporters in a predictable and repetitive way, and the incentives themselves. From this perspective, self-governance and other conflict resolution mechanisms are the macro-level structures which provide incentives such as power, status, security, economic gain, etc. The stability of these macro-level structures, from a rational choice perspective, depends on both the general desirability of the incentives they provide and whether these incentives can be gained through alternative arrangements. If the incentives provided are desirable and cannot be gained otherwise, existing arrangements would appear to be acceptable and their maintenance desirable, and they would thus be likely to be stable.<sup>2</sup>

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

### *II. 1. 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 power sharing is mandatory, and if so, what the extent of prescribed inclusiveness is. Inclusiveness, at the same time, is also an important feature of legislative design and is primarily 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

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<sup>2</sup> This can then also be tested using certain empirical indicators, such as absence of violent conflict and/or absence of non-violent conflict about the arrangements (macro-level structures) *per se*, no violations of specific aspects of arrangements, absence of political parties opposed to the arrangements (‘weighed’ by the popularity of these parties), and evidence available from relevant public opinion surveys. My interest in this article, however, is primarily with the design of the macro-level structures on which I will focus in the following.

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 (see above), it is also about the degree of independence of the judicial branch and its powers of legislative and executive oversight. Institutional design thus not only prescribes certain outcomes in relation to the composition of the executive, legislative and judicial branches of government and the structure and organisation of the state as a whole but also entrenches them in different ways from hard international law to domestic legislation.

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

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 layers of authority with substantive decision-making competences and the extent of these competences. Several further decisions follow from this. The first one relates to the structural and functional symmetry of the political-territorial organisation of the overall state. 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. An example of this would be German or US federalism, regionalised states, such as France, or more strictly unitary states, such as Ireland. 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.

A second element of institutional design as far as the structure and organisation of the state as a whole are concerned relates to coordination mechanisms, including dispute resolution arrangements, between different layers of authority. This is primarily related to the different types of such mechanisms (e.g., cooptation, joint committees, judicial review) and their leverage (consultative vs. legally binding).

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

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.

Secondly, the relationship between individuals, groups and the state is about the degree to which institutional design favours particular groups and excludes others. This is related to whether different groups are given different status (e.g., constituent nations vs. minorities) and the political, economic and resource implications of this (e.g., mandatory inclusion in government, participation in proportional public sector job allocation, reception of public funding, etc.). In other words, the question here is about the degree to which specific group identities are recognised and protected and how this manifests itself in the way in which the boundaries of authority are shaped by territory or population groups.

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

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

#### *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

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>3</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>4</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>5</sup> Liberal 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. I’m not sure if ‘favour’ is the right word. However, this liberal consociational approach needs to be carefully distinguished from that of integrationists such as Horowitz who would partition regions against the wishes of the local population. Moreover, liberal consociationalists equally support the principle of asymmetric devolution of powers, i.e., the possibility for some self-governing entities to enjoy more (or fewer) competences than others, depending on the preferences of their populations (cf. McGarry 2007).

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

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<sup>3</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>4</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>5</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 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.”

and consensus among democratically legitimised elites, regardless whether they emerge on the basis of group identities, ideology or other common interest. They thus favour parliamentary systems,<sup>6</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>7</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 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>8</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. Integrative Power Sharing*

Integrative power sharing emphasises that rather than designing rigid institutions in which elected representatives have to work together *after* elections, 'intergroup political accommodation' is achieved by 'electoral systems that provide incentives for parties to form coalitions across group lines or in other ways moderate their ethnocentric political behaviour' Horowitz (2004: 507-8). This school of thought is most prominently associated with the work of Donald Horowitz (1985[2000], 1990, 1991, 2002), and more lately with that of Timothy D. Sisk (1996), Benjamin Reilly (2001) and Andreas Wimmer (2003). While Horowitz's remains the standard-setting integrationist work, Reilly's theory of centripetalism tries to encourage, among others, '*electoral incentives* for campaigning politicians to reach out to and attract votes from a range of ethnic groups other than their own...; (ii) *arenas of bargaining*, under which political actors from different groups have an incentive to come together to negotiate and bargain in the search for cross-partisan and cross-ethnic vote-pooling deals...; and (iii) *centrist, aggregative political parties* or coalitions which seek multi-ethnic support...' (Reilly 2001, p. 11;

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<sup>6</sup> Note, however, that, empirically, collective presidential systems are as widespread in existing functioning consociations than parliamentary ones. Cf. O'Leary (unpublished).

<sup>7</sup> For details on the d'Hondt rule, see O'Leary, Grofman and Elklit (2005).

<sup>8</sup> On regional consociations see Wolff (2004).

emphasis in original). This is partially echoed by Wimmer in his proposals for the Iraqi constitution to introduce ‘an electoral system that fosters moderation and accommodation across the ethnic divides’, including a requirement for the ‘most powerful elected official ... to be the choice not only of a majority of the population, but of states or provinces of the country, too’, the use of the alternative vote procedure, and a political party law demanding that ‘all parties contesting elections ... be organised in a minimum number of provinces’ (Wimmer 2003). In addition, Wimmer 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.

Horowitz emphasises the usefulness of electoral systems that are most likely to produce a Condorcet winner, i.e., a candidate who would have been victorious in a two-way contest with every other candidate in a given constituency. The most prominent such electoral systems are the alternative vote and the Coombs rule, both of which are preferential majoritarian electoral systems,<sup>9</sup> that are said to induce moderation among parties and their candidates as they require electoral support from beyond their own ethnic group in heterogeneous, single-seat constituencies (Horowitz 2003: 122-125).

### *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 Donald Rothchild in their 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

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<sup>9</sup> Under AV, lower-order preferences are redistributed among candidates by eliminating the candidate with the lowest number of first preference votes in each round until one candidate with more than 50% emerges. Under the Coombs rule, candidate elimination is based on the highest number of last-preference votes achieved. That means, under AV the least popular candidate is eliminated in each round, under Coombs it is the most *unpopular* one.

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).

### III. 4. The Different Theories Compared

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 (see Table 1).

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

	<b>Integrationist Power sharing</b>	<b>Liberal Consociational Power sharing</b>	<b>Power dividing</b>
<b>Principle recommendation</b>	Interethnic cooperation and moderation induced by electoral system design	Interethnic cooperation at elite level induced by institutional structure requiring jointness of executive decision making	Cooperation between different, changing coalitions of interest induced by separation of powers



<b>Government system</b>	Presidential	Parliamentary or Collective/Rotating Presidential system <sup>10</sup>	Presidential
<b>Executive power sharing</b>	Yes: voluntary	Yes: guaranteed	No, except in initial transition phase after civil wars
<b>Electoral system</b>	Plurality preferential	PR list or PR preferential	Plurality
<b>Independent judicial branch</b>	Yes	Yes	Yes
<b>Unitary vs. federal territorial organisation</b>	Federal: heterogeneous units	Federal: units based on self-determining communities	Federal: heterogeneous units
<b>Structural symmetry</b>	Yes	Possible, but not necessary	Yes
<b>Functional symmetry</b>	Yes	Possible, but not necessary	Yes
<b>Individual vs. group rights</b>	Emphasis on individual rights	Emphasis on combination of individual and group rights	Emphasis on individual rights
<b>Recognition of distinct identities</b>	Yes, but primarily as private matter	Yes, but as private and public matter	Yes, but primarily as private matter
<b>Legal entrenchment</b>	Yes	Yes	Yes

#### 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, as noted in the introduction, is that a very significant number of actual and proposed settlements involves forms of territorial self-governance. This reflects the assumption, but not necessarily the reality, 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

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<sup>10</sup> Lijphart is a strong advocate of parliamentary systems, while McGarry and O'Leary are open to other arrangements, insisting that what is crucial for consociation is not whether powers are fused or divided, but whether the different communities are represented in core institutions of the state. This view is supported empirically by the cases of Bosnia and Herzegovina and Switzerland which are both presidential and consociational (personal communication from John McGarry).

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> the Georgian president's peace initiative for South Ossetia,<sup>16</sup> and Sri Lanka.<sup>17</sup> Thus in virtually every conflict situation involving self-determination claims by territorially relatively concentrated identity groups at least proposals for territorial self-governance have been made. In many of them, these proposals have been implemented.

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

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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).

<sup>16</sup> For the full text of this document, see <http://www.president.gov.ge/?l=E&m=0&sm=5>.

<sup>17</sup> See documentation at <http://www.peaceinsrilanka.lk/>, a website run by the Secretariat for Co-ordinating the Peace Process set up by the government of Sri Lanka.

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>18</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 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), integrationism (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-)federalism, (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. The dimensions of the comparative analysis flow directly from the discussion of institutional design and the examination of the three approaches to conflict resolution above. As far as the composition and powers of the executive, legislative and judicial branches of government and the relationship between them is concerned, I will consider three separate issues:

- the nature of the government system and the choice of the electoral system;
- power sharing; and
- legal entrenchment.

The comparative analysis of the structure and organisation of the state as a whole in all the cases considered will focus on three aspects:

- symmetry and asymmetry in institutional design;
- distribution and separation of powers; and
- coordination mechanisms.

Finally, when examining the relationship between individual citizens, identity groups and the state, two dimensions are of particular importance:

- human and minority rights provisions; and
- recognition and protection of identities.

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<sup>18</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.

In line with the conceptual assumptions made about complex power sharing ten cases are subjected to a comparative analysis along the above dimensions: Bosnia and Herzegovina,<sup>19</sup> Bougainville/Papua New Guinea,<sup>20</sup> Brussels/Belgium,<sup>21</sup> Crimea/Ukraine,<sup>22</sup> **Gagauzia/Moldova**, Macedonia,<sup>23</sup> Mindanao/Philippines,<sup>24</sup> Northern Ireland/United Kingdom,<sup>25</sup> South Sudan,<sup>26</sup> and South Tyrol/Italy.<sup>27</sup> The degree and nature of complexity in 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. The Composition and Powers of the Executive, Legislative and Judicial Branches of Government and the Relationship between Them*

##### *IV.2.1. The Nature of the Government System and the Choice of Electoral Systems*

All three approaches to conflict resolution favour independent judicial systems, and these are present in all cases discussed here, at least in the structural sense that a formal judicial branch of government exists alongside the executive and legislature. A key difference between consociationalists on the one hand, and integrationists and power-dividers, on the other, is their disagreement over the utility of parliamentary or presidential systems, i.e., whether the chief executive of the government should be directly elected or emerge from within parliament. These differences are reflected in the practical aspects of the conflict settlements discussed here (see Table 2).

Table 2: Parliamentary vs. Presidential Systems

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19 “General Framework Agreement for Peace in Bosnia and Herzegovina”. [http://www.intstudies.cam.ac.uk/centre/cps/documents\\_bosnia\\_dayton.html](http://www.intstudies.cam.ac.uk/centre/cps/documents_bosnia_dayton.html).

20 “The Bougainville Peace Agreement”. [http://www.intstudies.cam.ac.uk/centre/cps/documents\\_bougainville\\_final.html](http://www.intstudies.cam.ac.uk/centre/cps/documents_bougainville_final.html); “The Constitution of the Autonomous Region of Bougainville”. <http://www.vanuatu.usp.ac.fj/library/Paclaw/Papua%20New%20Guinea%20and%20Bougainville/Bougainville.htm>.

21 “The Constitution of Belgium”, [http://www.fed-parl.be/constitution\\_uk.html](http://www.fed-parl.be/constitution_uk.html)

22 “The Constitution of Ukraine”, <http://www.rada.kiev.ua/const/conengl.htm>; The Constitution of the Autonomous Republic of Crimea, [http://www.rada.crimea.ua/index\\_konstit.html](http://www.rada.crimea.ua/index_konstit.html).

23 “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) “Law on Local Self-government of the Republic of Macedonia”. [http://www.urban.org/PDF/mcd\\_locgov.pdf](http://www.urban.org/PDF/mcd_locgov.pdf).

24 “Peace Agreement”. [http://www.intstudies.cam.ac.uk/centre/cps/documents\\_philippines\\_final.html](http://www.intstudies.cam.ac.uk/centre/cps/documents_philippines_final.html).

25 “The Agreement Reached in the Multi-party Negotiations”. <http://www.nio.gov.uk/agreement.pdf>; “The Agreement at St Andrews”; [http://www.nio.gov.uk/st\\_andrews\\_agreement.pdf](http://www.nio.gov.uk/st_andrews_agreement.pdf).

26 “Protocol between the Government of Sudan (GOS) and the Sudan People's Liberation Movement (SPLM) on Power-Sharing”. [http://www.usip.org/library/pa/sudan/power\\_sharing\\_05262004.pdf](http://www.usip.org/library/pa/sudan/power_sharing_05262004.pdf).

27 “The Statute of Autonomy for South Tyrol”, [http://www.consiglio-bz.org/downloads/Statuto\\_E.pdf](http://www.consiglio-bz.org/downloads/Statuto_E.pdf)

<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>28</sup>	
	Bosnia and Herzegovina*	Federation of Bosnia and Herzegovina	
Macedonia			
Moldova			Gagauzia
Papua New Guinea			Bougainville
	Philippines		Mindanao
	Sudan		South Sudan
	Ukraine*	Crimea	
United Kingdom		Northern Ireland	

\*Denotes semi-presidential system

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>29</sup> Bougainville,<sup>30</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 integrationist power sharing, 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 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

<sup>28</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'.

<sup>29</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>30</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.

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.

#### *IV.2.2. 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 and vertical power dividing. All the cases examined in this article are examples of state structures characterised by multiple vertical layers of authority and, in all but one of them, formal horizontal structures of power sharing exist as well (see Table 3).

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

<b>No horizontal power sharing</b>	<b>Horizontal power sharing at the centre</b>	<b>Horizontal power sharing at sub-state level only</b>	<b>Horizontal power sharing at the centre and sub-state level</b>
	Macedonia <sup>31</sup> Moldova <sup>32</sup>	Crimea <sup>33</sup> Northern Ireland South Tyrol <sup>34</sup>	BiH/Federation of BiH <sup>35</sup> PNG/Bougainville <sup>36</sup> Belgium/Brussels Philippines/Mindanao <sup>37</sup> Sudan/South Sudan <sup>38</sup>

As 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 system and electoral formula 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<sup>39</sup>). 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.

<sup>31</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>32</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>33</sup> Power sharing at regional level is not mandatory, but a likely outcome of the regional demographic and power balances.

<sup>34</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>35</sup> Mandatory power sharing at regional level only applies to the federation and cantons within it.

<sup>36</sup> The regional constitution of Bougainville determines mandatory inclusion of representatives of Bougainville’s three regions into the regional government.

<sup>37</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>38</sup> In the period prior to elections.

<sup>39</sup> Cf. Friedman (2005).

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>40</sup> More specifically, the South Tyrol arrangements can be described as a “nested consociation”, that is consociational structures exist at both the provincial (South Tyrol) and regional<sup>41</sup> (Trentino-South Tyrol) levels, a situation that has its causes in the particular territorial, demographic, and political dynamics of the South Tyrolean autonomy. On the one hand, it 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 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

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<sup>40</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.

<sup>41</sup> The Italian system distinguishes between regions and provinces as second and third-order levels of territorial administration.



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. Integrationists' favourite AV model is absent in all relevant cases—deputies to the Crimean Supreme Council are, since 1998, elected on the basis of a single-seat non-preferential majoritarian system, and Macedonia's members of parliament are elected by a parallel mixed system.

#### *IV.2.3. Legal Entrenchment*

Guarantees of institutional structures of horizontal and vertical power sharing and power dividing are essential to prevent the arbitrary abrogation of devolved powers and thus to ensure conflict parties of the relative permanence of the institutions they agreed upon. Guarantees are particularly important for the relatively weaker party in a self-determination dispute, i.e., a specific minority, to protect it from a state reneging on earlier concessions. However, such guarantees are also valuable for states in that they commit all parties to an agreed structure and, in most cases, imply that there can be no unilateral change of recognised international boundaries outside pre-determined procedures, such as the referenda provided for in the settlements for Bougainville, Northern Ireland and South Sudan).

In principle, guarantees can be either international or domestic, and in the latter case they can be part of a country's constitution or other legislation (see Table 4). Given the complexity of many of today's self-determination conflicts, guarantees often exist at more than one level. In addition, international guarantees can take the form of hard guarantees (international treaties) or of 'soft' guarantees (non-binding standards and norms, declarations of intent, etc.).

Table 4: Guarantees of Self-governance Institutions

International Guarantees		Domestic Guarantees	
‘Hard’	‘Soft’	Constitutional Guarantees	Guarantees in Specific Laws
BiH Northern Ireland South Tyrol	Bougainville Macedonia Mindanao South Sudan	BiH Bougainville Brussels Crimea Gagauzia Macedonia Northern Ireland <sup>42</sup> South Tyrol	Bougainville Brussels Crimea Gagauzia Macedonia Mindanao Northern Ireland South Tyrol

Table 4 illustrates that there is great variance across the cases considered here. In terms of the strength of the protection that they afford established horizontal and vertical power sharing and power dividing structures, hard international guarantees are preferable over other forms of guarantees, provided there is significant commitment of the international community to uphold its guarantees. In Bosnia and Herzegovina this commitment is unquestionable with the presence of peacekeeping forces in both territories and with the investment that has been made over the past years by the international community in order to foster economic development, and institution-building and reform. Whereas in Bosnia and Herzegovina there exist international bodies with a clear mandate (the multinational Peace Implementation Council and the UN Security Council, respectively), the situation in Northern Ireland is such that the hard international guarantee of the 1998 agreement exists in the form of a British-Irish treaty. The crucial difference here is that for any violation of the treaty (as has arguably occurred on several occasions with the unilateral suspension of the power sharing institutions by the UK government) to be addressed one of the signatory parties needs to bring a case before a relevant international legal institution (e.g., the European Court of Justice). If this does not happen, the protection theoretically afforded by the link between the agreement and an international bilateral treaty remains an empty shell. In the case of South Tyrol, the Paris Treaty of 1946 between Austria and Italy, annexed to the Italian Peace Treaty, called for the granting of autonomous status to South Tyrol. In 1992, the Austrian government deposited a declaration with the United Nations in which it declared that its dispute with Italy over the implementation of the Paris Treaty had been resolved following the implementation of the majority of the measures agreed in the Second Autonomy Statute of 1972. Both countries – Italy and Austria – subsequently agreed that any future dispute between them in the respect would be referred to the International Court of Justice. Soft international guarantees primarily manifest themselves in the form of the involvement of international organisations in the negotiation, implementation, and (potentially) operation of a particular peace agreement. While not of the same legally

<sup>42</sup> I am grateful to Brendan O’Leary for pointing out to me that the 1998 Agreement on Northern Ireland has guarantees in the Irish constitution and that the House of Lords in the UK also read the 1998 Northern Ireland Act, together with the Agreement, as a constitution.

binding and thus potentially enforceable status as hard international guarantees, a significant presence of international agents is often instrumental in shaping preference and opportunity structures for the conflict parties. In the cases studies, this has taken different forms. In Bosnia and Herzegovina, similar to Macedonia, an international troop presence, as well as the involvement of various international governmental and non-governmental organisations on an unprecedented scale, have, for better or worse, been instrumental in the implementation and operation of the respective agreements thus far. In Bougainville, a UN Observer Mission has been crucial in facilitating demilitarisation. In South Sudan, the significant engagement of regional and international organisations and individual states in the peace negotiations and their commitment to the reconstruction of Sudan ensures a certain degree of ‘compliance enforcement’ as well.

At the level of domestic guarantees, constitutional guarantees are more entrenched than those which have their source in normal legislation. Incorporation of specific provisions of peace agreements into constitutions is a common way of realising constitutional guarantees and has occurred in Bosnia and Herzegovina, Bougainville, Brussels, Crimea, Macedonia, and South Tyrol. In the case of Bougainville, an additional safeguard exists in that no changes to the agreed and constitutionally entrenched structure of the institutions created by the peace agreement is permissible except with the explicit consent of at least two-thirds of the members of the Bougainville parliament. In the case of Gagauzia, the constitution of Moldova specifically allows for territorial autonomy and makes specific mention of Gagauzia while an organic law provides details for the realisation of Gagauzia’s autonomous status. This organic law is ‘special’ in the sense that a three-fifths majority in the Moldovan parliament is required for any amendments. Similarly in South Tyrol, interlocked provisions in the Italian constitution and ordinary legislation provide a very strong set of domestic guarantees.

Guarantees through specific laws exist in the cases of Bougainville, Brussels, Crimea, Gagauzia, Macedonia, Mindanao, Northern Ireland and South Tyrol. In practice, they have proven weakest in Northern Ireland, where, in the absence of a written constitution, another law on the statute books has given the UK government the power to suspend the power sharing institutions at any given time, even though this appears to be in contravention of the legally binding international treaty between the UK and the Republic of Ireland of which the 1998 Agreement is a part.<sup>43</sup>

All three theories of conflict resolution emphasise the importance of judicial institutions and enforcement mechanisms to uphold the letter and spirit of conflict settlements. They also recognise the role of external actors and guarantees, but are divided on the usefulness of international intervention: power-dividers see a limited, transitional role for them; advocates of both consociational and integrative power sharing embrace them more readily as facilitators and guarantors of settlements. However, it is worth noting that a key difference remains between the two schools of power sharing. Integrationists consider that their institutions will be self-sustaining after they are set up with outsiders’ help, and that consociational institutions will need to be constantly propped up by external third parties. Consociationalists, by contrast, take their preferred arrangements to be much more likely to be acceptable to local elites and therefore less dependent on external imposition than integrative institutions.

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<sup>43</sup> I am grateful to Brendan O’Leary for clarifying this point for me.



### IV.3. The Structure and Organisation of the State as a Whole

#### IV.3.1. Symmetry and Asymmetry in Institutional Design<sup>44</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 across the eight case studies (Table 5).

Table 5: Variation in the Vertical Layering of Authority<sup>45</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

Table 5 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—the region—is missing, reducing the levels of government to two, namely the central government and local governments, which are both prescribed in the constitution and whose functions and powers are detailed there and in relevant legislation. There also exists a legally guaranteed opportunity for citizens to develop a further layer of government at the level of neighbourhoods, but this is regulated by by-laws of the individual local governments and thus a matter of local decision-making 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 complex 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. Interestingly, looking only at Brussels only a three-layered structure exists. However, within it, at the regional level,<sup>46</sup> three parallel layers of authority exist: the regional council and government, and the institutions of the French, Flemish and Joint Community Commissions. In the case of Mindanao, an existing four-

<sup>44</sup> For an excellent discussion of the usefulness of asymmetric designs for conflict resolution, see McGarry (2007).

<sup>45</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>46</sup> The Belgian political system distinguishes between (territorial) regions and (corporate) communities as principal loci of power.

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 in an effort to resolve the underlying self-determination conflict. 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 manifesting a distinct identity of the southern states.

Another way of looking at structural types of vertically layered authority is to examine the degree to which these cases represent institutions that are structurally and/or functionally symmetric or asymmetric (Tables 4–6),<sup>47</sup> as this perspective provides a more comprehensive picture of the structure of the entire polity concerned and the place and status of territorial self-governance institutions within it.

Table 6: Structural Symmetry and Asymmetry of Institutions

<b>Structural Symmetry</b>	<b>Structural Asymmetry</b>	
	<b>Single Asymmetry</b>	<b>Multiple Asymmetry</b>
Bougainville Brussels Macedonia South Tyrol	Crimea Mindanao Sudan	BiH Northern Ireland Gagauzia <sup>48</sup>

Table 7: Functional Symmetry and Asymmetry of Institutions

<b>Functional Symmetry</b>	<b>Functional Asymmetry</b>
Macedonia	BiH Bougainville Brussels Crimea Gagauzia Mindanao Northern Ireland South Sudan South Tyrol

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

<sup>47</sup> Structural asymmetry is meant to signify the existence of territorial entities that do not ‘fit’ the overall construction of the state, i.e., an autonomous territory in an otherwise unitary state as is the case with Crimea. Functional asymmetry is meant to signify that some territorial entities enjoy a different measure of competences, e.g., have wider legislative powers than others. “Multiple asymmetry” simply means that more than one such structural and/or functional asymmetry exists, and that the asymmetric entities in themselves are different from one another in terms of territorial status and/or competences.

<sup>48</sup> This presumes a future reintegration of Transnistria into the Moldovan polity which would give this entity a similar status, but more competences than Gagauzia.

	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

Tables 6 to 8 indicate that there is no clear-cut predominance of symmetric or asymmetric forms of institutional structures across the case studies, but that from a functional perspective, i.e., the way in which powers and functions are distributed horizontally at the relevant levels of government in a polity, asymmetry is more frequent than symmetry. In other words, the vertical layering of authority, regardless whether it is structurally ‘coherent’ across a given state or not, facilitates asymmetric distribution of powers and functions, thus enabling central governments and specific regions to create a special relationship in the sense that more powers and functions or parts thereof are devolved to a particular region, which thereby acquires greater autonomy in a wider range of policy areas compared to other territorial entities in the same country. This is also illustrated in Table 8: 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), integrative power sharing is not opposed to the use of territorial self-governance arrangements in either symmetric (federalism) or asymmetric (autonomy) forms, but crucially in this respect, integrationists 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 (integrationists) or 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.<sup>49</sup>

#### *IV.3.2. 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. As with other dimensions in this analysis, there is a certain degree of context-dependent variation across the cases under examination. Variation exists primarily with regard to the way in which powers are allocated and the degree of flexibility concerning new fields of policy-making not relevant or not included at the time a specific agreement was concluded.

The principle mechanism to handle the distribution of powers is the drawing up of lists that enumerate precisely which powers are allocated to which levels of authority and/or which are to be shared between different such levels. These lists can be very specific for each layer of authority (Bougainville, Mindanao, South Sudan and South Tyrol<sup>50</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, i.e., which layer retains residual authority for any partly devolved power or any other policy area not explicitly allocated elsewhere (see Table 9).

Table 9: Power Allocation in Self-governance Regimes

Specific Lists	Combination of Specific and ‘Open-ended’ Lists	
	Open-ended list at centre	Specific list at centre
Bougainville Mindanao Northern Ireland <sup>51</sup> South Sudan	Brussels Crimea Gagauzia Macedonia	BiH South Tyrol

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 (with the qualification that in the case of Bosnia and Herzegovina,

<sup>49</sup> I will return to a discussion of territory and population as boundaries of authority below.

<sup>50</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>51</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.



the Federation cantonal institutions assume most of these powers from the Federation entity).

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 integrationist power sharing (cf., for example, Wimmer 2003). For the consociational school of power sharing, it is important that power sharing is a more attractive option to conflict parties than recourse to violence, hence its advocates should be interested in substantive powers assigned to territorial self-government entities, which is best done either by way of assigning residual authority to these entities or by drawing up specific lists which clearly distribute powers between central and sub-state governments.

#### *IV.3.3. 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. The cases studied in this analysis suggest that, although there is a wide spectrum of individual coordination mechanisms, these can be grouped into four distinct categories: co-optation, joint committees and implementation bodies, judicial review and arbitration processes, and direct intervention by the international community (see Table 10).

Table 10: Coordination Mechanisms in Self-governance Regimes

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

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

Co-optation, 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. In the context of coordination between different vertical layers of authority in self-governance regimes, the need for joint committees and implementation bodies often arises from two sources – to find common interpretations for specific aspects of agreements and regulations and to coordinate the implementation of specific policies at state and sub-state levels. 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 how they see this issue of coordination best addressed. All three generally emphasise the importance of a law-based system and thus of the role played by independent judicial

institutions. Consociationalists further allow for additional coordination mechanisms. In fact, a key characteristic of “regional consociations” is the presence of such coordination mechanisms (cf. Wolff 2004). Integrationists, 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.4. The Relationship between Individual Citizens, Identity Groups and the State

##### IV.4.1. Human and Minority Rights Provisions

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

Table 11: International Human and Minority Rights Instruments<sup>52</sup>

	UN Membership	Convention on the Prevention and Punishment of the Crime of Genocide <sup>53</sup>	International Convention on the Elimination of All Forms of Racial Discrimination <sup>54</sup>	International Covenant on Economic, Social, and Cultural Rights <sup>55</sup>	International Covenant on Civil and Political Rights <sup>56</sup>	Optional Protocol to the International Covenant on Civil and Political Rights <sup>57</sup>	UNESCO Membership	UNESCO Convention against Discrimination in Education <sup>58</sup>
<b>Belgium</b>	Yes	1951	1975	1983	1983	1994	Yes	--

<sup>52</sup> With the exception of Moldova, the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions had not been signed by any of the countries concerned by 18 December 2006.

<sup>53</sup> Status as of 1 November 2006 (<http://www.ohchr.org/english/countries/ratification/1.htm>). Dates indicate ratification/succession.

<sup>54</sup> Status as of 1 November 2006 (<http://www.ohchr.org/english/countries/ratification/2.htm>). Dates indicate ratification/succession.

<sup>55</sup> Status as of 1 November 2006 (<http://www.ohchr.org/english/countries/ratification/3.htm>). Dates indicate ratification/succession.

<sup>56</sup> Status as of 1 November 2006 (<http://www.ohchr.org/english/countries/ratification/4.htm>). Dates indicate ratification/succession.

<sup>57</sup> Status as of 1 November 2006 (<http://www.ohchr.org/english/countries/ratification/5.htm>). Dates indicate ratification/succession.

<sup>58</sup> Status as of 1 November 2006 (<http://www.ohchr.org/english/countries/ratification/5.htm>). Dates indicate ratification/succession.

<b>BiH</b>	Yes	1992	1993	1993	1993	1995	Yes	1993
<b>Italy</b>	Yes	1952	1976	1978	1978	1978	Yes	1966
<b>Macedonia</b>	Yes	1994	1994	1994	1994	1994	Yes	1997
<b>Moldova</b>	Yes	1993	1993	1993	1993	2005	Yes	1993
<b>PNG</b>	Yes	1982	1982	--	--	--	Yes	--
<b>Philippines</b>	Yes	1950	1967	1974	1986	1989	Yes	1964
<b>Sudan</b>	Yes	2003	1977	1986	1986	--	Yes	--
<b>Ukraine</b>	Yes	1954	1969	1973	1973	1991	Yes	1962
<b>UK</b>	Yes	1970	1969	1976	1976	--	Yes	1962

Table 12: Regional Human and Minority Rights Instruments: Europe

	<b>Council of Europe Membership</b>	<b>(European) Convention for the Protection of Human Rights and Fundamental Freedoms<sup>59</sup></b>	<b>(European) Framework Convention for the Protection of National Minorities<sup>60</sup></b>	<b>European Charter for Regional or Minority Languages<sup>61</sup></b>
<b>Belgium</b>	Yes	1955	(2001) <sup>62</sup>	--
<b>BiH</b>	Yes	2002	2000	(2005) <sup>63</sup>
<b>Italy</b>	Yes	1955	1998	(2000) <sup>64</sup>
<b>Macedonia</b>	Yes	1997	1998	(1996) <sup>65</sup>

<sup>59</sup> Dates in this column indicate entry into force.

<sup>60</sup> Unless otherwise noted, dates in this column indicate entry into force.

<sup>61</sup> Unless otherwise noted, dates in this column indicate entry into force.

<sup>62</sup> Not yet ratified.

<sup>63</sup> Not yet ratified.

<sup>64</sup> Not yet ratified.

<b>Moldova</b>	Yes	1997	1998	(2002) <sup>66</sup>
<b>Ukraine</b>	Yes	1997	1998	2006
<b>UK</b>	Yes	1953	1998	2001

There are no regional human and minority rights instruments applicable to the Asian case studies in this analysis (Papua New Guinea and Philippines). Sudan ratified the African Charter for Human and People's Rights<sup>67</sup> in 1986.

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<sup>65</sup> Not yet ratified.

<sup>66</sup> Not yet ratified.

<sup>67</sup> For the text of the Charter, see [http://www.achpr.org/english/\\_info/charter\\_en.html](http://www.achpr.org/english/_info/charter_en.html).

Table 13: Domestic and Local Human and Minority Rights Provisions

	Constitutional Human Rights Provisions	Constitutional Minority Rights Provisions	State-wide Minority Rights Legislation	Local Human Rights Legislation	Local Minority Rights Legislation
<b>Belgium/Brussels</b>	Yes	No	No	Yes	Yes
<b>BiH</b>	Yes	Yes	Yes	Yes	Yes
<b>Italy</b>	Yes	Yes	Yes	Yes	Yes
<b>Macedonia</b>	Yes	Yes	Yes	N.A.	N.A.
<b>Moldova</b>	Yes	Yes	No	Yes	No
<b>PNG</b>	Yes	No	No	Yes	No
<b>Philippines</b>	Yes	No	Yes	No	No
<b>Sudan</b>	Yes	Yes	No	Yes	No
<b>Ukraine</b>	Yes	Yes	Yes	Yes	No
<b>UK<sup>68</sup></b>	Yes	No	No	Yes	No

This is not the place to examine in detail the legal provisions contained in any of these documents, nor the degree to which law translates into policy and is enforced in the countries covered by this comparative analysis. The general trend in legal provisions for human and minority rights, however, is obvious in that constitutional human rights provisions are universally present and in that, with the exception of Papua New Guinea, all countries are states parties to the key international conventions. There seems to be significantly greater reluctance to include minority rights provisions in constitutions or even provide for separate minority rights legislation either at the state or local level. This emphasis on individual human rights over (group-specific) minority rights is consistent with recommendations of power dividers and integrationists. Consociationalists, too, appreciate the value of individual human rights provisions, but their recommendations do not caution against the parallel use of minority rights provisions, which is consistent with

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<sup>68</sup> The UK does not have a single constitutional text, in accordance with the doctrine of parliamentary sovereignty.

their generally more pronounced emphasis on the recognition and protection of (self-determined) group identities.

#### *IV.4.2. Recognition and Protection of Identities: Territory and Population as Boundaries of Authority*

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

A central government has the authority to exercise its power within the territorial confines of the state it is governing and over the residents of this territory (with the exception of foreign diplomats for example). Some elements of a central government's authority may also extend beyond the territorial boundaries of its state, but then they will normally be limited to that particular state's citizens, for example in the field of tax collection. In terms of self-governance regimes, the extent of these two limitations placed on the exercise of authority is similar. Territorial self-governance regimes are spatially confined. The powers devolved to them only apply within the territorial boundaries of the region and, by extension, only to (permanent) residents of the region. An analogue to authority extending beyond territorial boundaries are instances of personal autonomy in which the autonomous body has authority over all individuals belonging to it no matter where they live in the territory of the state or region concerned.<sup>69</sup>

These observations are particularly relevant in three of the cases examined here. The territories of Gagauzia and of the Autonomous Region of Muslim Mindanao were determined by a referendum at the local level, giving the population an opportunity to express in a free vote whether they want to live under the authority of a newly created sub-state government or want to continue being governed within the existing structure of vertically layered institutions. In Mindanao, this vote took place at the level of provinces and towns, and in Moldova at that of local communities, thus allowing for a much more 'precise' gauging of popular will and the degree to which minority identities express themselves, in part, through a desire for self-governance. In both cases, the result was that the autonomous territory thus created is not in fact a contiguous area, but is made up of a number of patches of territory. Early indications suggest that this is not necessarily detrimental to the exercise of authority at the level of the autonomous territory. Additionally, a degree of personal autonomy exists in the Autonomous Region of Muslim Mindanao with regard to judicial affairs as Shari'ah and tribal courts have authority alongside lower-order courts of the state-wide judicial system in religious and family affairs to cater for the specific needs of the different religious, ethnic and tribal communities in these areas. In the third case, South Sudan, the relevant territory comprises the Southern States as they existed at Sudan's independence. Special

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<sup>69</sup> In reverse, this means that all members of the ethnic group concerned can enjoy the rights accorded to them in the autonomy arrangement anywhere in the territory of the relevant state. This form of autonomy is particularly useful in instances where groups are more dispersed. It is also used to complement territorial forms of autonomy in specific policy areas (culture, religious affairs, education, etc.) when autonomous territories are ethnically heterogeneous.



provisions apply to two disputed areas: Abyei and the Southern Kordofan/Nuba Mountains and Blue Nile States. The former is defined as the area of the nine Ngok Dinka chiefdoms which were transferred to Kordofan in 1905. Both territories were accorded special status during the interim period prior to the referendum on independence for South Sudan and have different options in this referendum.<sup>70</sup>

The cases of Gagauzia and Mindanao suggest that there is an additional degree of differentiation available that goes beyond the traditional territorial delimitation of authority in that it incorporates a public consultation process for the definition of the territorial boundaries of the autonomous area. If combined with levels of personal autonomy in specific policy areas, the range of authority that a self-governance entity enjoys can be tailored to the specific demographic and geographic situation, taking account of settlement patterns and ethnic, religious, cultural and other types of heterogeneity. While such 'fine-tuning' increases the complexity of self-governance regimes, it may also make them more suitable to particular contexts and thus more acceptable. In other words, careful territorial and personal delimitation of self-governance potentially increases the belief in the authority of the institutions established among those governed by them and is thus likely to contribute to greater stability of these same institutions and the political process of which they are part. However, as I have previously indicated, adding a further layer of authority to those already existing within the structure of an established state increases the complexity of institutional design, places greater demands on policy coordination and has the potential to undermine the authority of the territorial entity created specifically to increase the degree of self-governance enjoyed by a particular population group.

However, what is striking about the arrangements in both Gagauzia and Mindanao<sup>71</sup> is the fact that while the relevant local government units can decide in a referendum on whether they want to belong to the newly created autonomous entity, there seems to be no provision for the reverse process, i.e., units leaving the autonomous entity. In case of significant changes in the population balance in one or more such units, a new minority would be created within the autonomous entity (whose demands would have to be accommodated). Demographic developments always have implications for security perceptions and the stability of settlements of complex self-determination conflicts,<sup>72</sup> but it is reasonable to assume that their implications would be even more severe in cases where territorial (re)arrangements are recent, precisely because they will imply a degree of fluidity which is threatening to majorities and minorities at the same time. On the other hand, given reasonably and rationally acting political elites there is nothing to say that significant demographic shifts could not be addressed constructively.

Two further cases are worth mentioning. In Macedonia, devolution of significant powers to the local layer of authority was accompanied by boundary revisions to take better account of ethnic settlement patterns. In South Tyrol, the boundaries of the autonomous province were largely determined on the basis of the historical entity of South Tyrol, but

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<sup>70</sup> For further analysis of this issue, see Weller (2005).

<sup>71</sup> In Mindanao, an initial referendum took place in 1989 in which four of the twenty-two provinces and cities opted for inclusion into the ARMM. In 2001, a second referendum was held, and one further province and one further city joined the ARMM.

<sup>72</sup> I am grateful to Tom Trier for pointing this out to me.

some ‘adjustments’ were made to incorporate some predominantly German-speaking municipalities that would have otherwise been part of the province of Trentino. In half of the cases considered in this comparative analysis, thus, the recognition and protection of group identities went beyond the application of mere territorial principles. This is not to say that in the other cases identities are not institutionally recognised or protected. After all, self-governance in all cases is applied to territories inhabited, wholly or in part, by ethnically or otherwise distinct groups. Furthermore, in most cases, power sharing arrangements exist that explicitly recognise group identities and afford them a measure of institutional protection precisely because of the inclusiveness of resulting governance arrangements at various levels. What is important, though, is to recognise that among some of the complex power sharing arrangements discussed here the recognition and protection of group identities extends beyond the application of these principles, and establishes territorial entities, or adjusts pre-existing ones, to facilitate the inclusion of the maximum possible number of members of one particular ethnic group into self-governance regimes, without, of course, engaging in their (involuntary) resettlement. The recent use of local referenda, moreover, means that there is no automatic, predetermined equivalence of identity and territory.

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

#### 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 article 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 political and 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 the provinces that opted for membership in the Autonomous Region of Muslim Mindanao and in South Sudan, 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.

Where sub-state level or central (formal) horizontal structures of power sharing are missing, demography and the vertical layering of authority have combined favourably in ways that make them superfluous. In Crimea, demography, electoral system and party system 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, by-and-large, 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 contribute 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, but 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. Empirically, there are four important lessons for the role that complex power sharing regimes have in the conflict resolution toolkit. 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 integrationist power sharing and power dividing—to encourage heterogenous 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.

However, from the perspective of the minority community another mechanism can be equally important, namely the option to secede in case of major constitutional, demographic or political changes. Thus, Bougainville has a future option for a referendum on its independence from Papua New Guinea; Gagauzia will be given an opportunity to decide on its relationship with Moldova should the latter ever opt for reunification with Romania, in Northern Ireland the popular will regarding unification with the Republic of Ireland is to be gauged at regular intervals (to be decided by the Secretary of State for Northern Ireland); and South Sudan is set to have a referendum on independence after an interim period of six years.

These two observations on entrenchment and popular consultation also underscore again that the preservation of democratic procedures is a key factor for stabilising institutional structures created for the purpose of resolving self-determination conflicts, because it is through this longevity that institutions acquire their legitimacy. While democratic institutions in themselves are not necessarily and automatically technically viable, compliance with rules and regulations agreed between all conflict parties and their democratic accountability to voters increases the survival chances of smooth and efficient institutional processes. Any form of complex power sharing regime will always modify and constrain majoritarian forms of democracy, but this does not mean that its institutions can or should be run without popular support. Complex power sharing regimes *do* depend upon the willingness and ability of elites to cooperate and make compromises, but they *also* depend on the willingness of the people to support their respective elites in this process and to uphold a settlement negotiated to bring about a non-violent, stable and predictable political process.

Analytically, it appears clear that none of the three theories of conflict resolution fully capture the current practice of complex power sharing. Having said that, two additional points need to be made. Liberal consociationalism seems to emerge as the one theory that is most open to incorporation of elements of integrationist power sharing 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 integrative power sharing does not rule it out either should self-determined entities on that basis emerge and desire territorial or corporate self-governance. Liberal consociationalists and integrationists 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 article 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 article 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, despite incomplete implementation, achieved a reduction of violence. 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. Having said that, neither is power sharing generally doomed to collapse in renewed violence (as power dividing theory at times implies), nor is consociationalism practically dangerous or morally unjustifiable as some of its integrationist critics tend to suggest.

For complex power sharing to develop into a theory of its own, further research is necessary. While I hope to 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 does it succeed). The latter especially will require conflict resolution theorists to engage more thoroughly with conflict theory: what are the underlying causes 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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